



EXHIBIT Y 8

**NKOSINATHI PHIWAYINKOSI
NHLEKO**



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

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COPY

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

In the matter between: –

NKOSINATHI NHLEKO

Applicant

And

THE COMMISSION'S LEGAL TEAM

First Respondent

ROBERT MCBRIDE

Second Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT the applicant intends to make an application on a date and time to be determined by the Commission for an order in the following terms: –

1. Granting the applicant condonation for the late filing of his statement;
2. Granting the applicant leave to cross-examine the second respondent;
3. Granting the applicant leave to testify; and
4. Granting the applicant leave to call witnesses.

BE PLEASED TO TAKE NOTICE FURTHER THAT any of the respondents who wishes to oppose this application is given seven (7) days from the date on which this application is served on them to file the notice and affidavit in opposition thereto.

BE PLEASED TO TAKE NOTICE FURTHER THAT the affidavit of **NKOSINATHI PHIWAYINKOSI THAMSANQA NHLEKO**, attached hereto, together with annexures thereto shall be used in support of this application.

TAKE NOTICE FURTHER THAT the applicant has chosen **NDUMISO VOYI INC.** whose contact details appear below as his attorneys of record for purposes of this application.

DATED AT JOHANNESBURG ON THIS THE TH 4 DAY OF JULY 2019.



NDUMISO VOYI INC.

Ground Floor, Building 5
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TO: THE CHAIRPERSON

**JUDICIAL COMMISSION OF INQUIRY INTO
ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC
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Hill on Empire

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

SWORN STATEMENT BY NKOSINATHI
PHIWAYINKOSI THAMSANQA NHLEKO

I, the undersigned,

NKOSINATHI PHIWAYINKOSI THAMSANQA NHLEKO

do hereby make oath and state that:

1. I am an adult male person and I am the former Minister of Police and I was later also appointed Minister of Public Works, the position I occupied until the cabinet reshuffle by the current President of the Republic in 2018.
2. I hold a Master of Science Degree in Leadership and Change Management with Leads Metropolitan University, United Kingdom, as well as a National Diploma in Labour Law rated at an Honours Degree level with the Global Institute of Management Technologies. I am a member of the African National Congress in good standing. I am currently unemployed. My term as a member of Parliament ended with the fifth parliament during the national elections on 8 May 2019.

em.

hpa

**APPLICATION IN TERMS OF RULE 3.3.6 READ WITH
RULE 3.4 OF THE COMMISSION'S RULES**

3. This statement is submitted to the Commission of Inquiry in terms of Rule 3.3.6 of the Commission's rules, published in Government Gazette No. 41772 of 13 July 2018 ("the Rules").
4. The Commission communicated to me by notice in terms of Rule 3.3, dated 8 April 2019 that Mr Robert McBride ("McBride"), the former Executive Director of Independent Police Investigative Directorate ("IPID") has implicated me in the affidavit that he submitted to the Commission. The portions of the paragraphs where it is alleged McBride implicates me in wrongdoing were attached to the notice, and the paragraphs implicated were also identified in the notice. Subsequently McBride testified before the Commission, although I was not notified, and I only saw him when he was already testifying.
5. Rule 3.3.6 allows a person implicated to:
 - 5.1 give evidence;
 - 5.2 call any witness(es) to give evidence on his/her behalf;
 - 5.3 cross examine the witness (the person who has implicated him/her).
6. I, therefore, in terms of Rule 3.4, submit an application in terms of Rule 3.3.6 to:
 - 6.1 cross examine Mr Robert McBride (McBride);
 - 6.2 give evidence myself;
 - 6.3 call witnesses where appropriate on my behalf, to corroborate my version.

CP2



7. Rule 3.4 requires the application to be made within 14 calendar days from the date of the notice in terms of Rule 3.3. This application is out of time and an application for condonation will be made on grounds of interest of justice, prejudice and good cause having been shown.
8. The statement serves two purposes. First, to support my application to cross examine McBride as contemplated by Rule 3.3.6 .3 and secondly, to ask leave of the Commission to give evidence myself, as contemplated by Rule 3.3.6.1. Thus, the statement is a statement contemplated in Rule 3.4 responding to McBride's statement insofar as it implicates me.
9. In responding to some allegations, I rely on matters that do not fall within my personal knowledge, and the probative value of such evidence is dependent upon the person from whom they emanate, hence the request to call such persons, failing which the Commission would exercise its powers to invite such persons to testify. In certain instances, although I may not have personal knowledge of what I say, such evidence is corroborated by objective evidence from the documents which are not disputed and could not be disputed thus making it unnecessary to call anybody to corroborate.
10. For instance, the Werksmans report exists as a matter of fact and law and is not been challenged or set aside by a court. The interviews conducted by Mr. Sandile July (Mr July), of Werksmans and his team of investigators were mechanically recorded and subsequently transcribed. McBride does not dispute the transcripts of the interviews as accurately recording what was said by him and other interviewees. The Werksmans report and the transcript of the interviews conducted by Werksmans will be submitted to the Commission in

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by

separate files and be incorporated as forming part of the record of my evidence as contained in the statement. The files will accordingly be paginated and indexed.

11. The disciplinary proceedings record of Mr. Mathews Sesoko (Sesoko) is in the custody of IPID. Similarly, the guilty plea of Mr. Innocent Khuba (Khuba), reduced to writing and signed by Khuba himself, acknowledges that himself, Sesoko and McBride unlawfully altered the final report. When Khuba pleaded guilty, he was properly represented by an attorney and did so freely and voluntarily.
12. However, it is necessary for the Commission to invite Khuba to explain why he deposed to an affidavit uninvited two days after he had pleaded guilty trying to distance himself from his guilty plea. Khuba's guilty plea will also form part of the file once it is procured. Advocate Anthony Mosing, of the National Prosecuting Authority testified at the disciplinary inquiry of Sesoko. That record is with IPID.
13. Importantly, advocate Mosing authored a memorandum in which he confirmed that the investigation was completed and submitted the final report signed by Khuba dated 22 January 2017 for a decision to prosecute. Khuba also confirmed that the report dated 22 January 2017 signed by him was the final report. As such, McBride say so evidence that the 22 January 2017 report was a provisional report is neither corroborated by documentary evidence nor Khuba himself. That evidence is patently false.
14. In this statement I also deal with condonation at the end.



15. I have therefore structured the statement as follows. In section A, I first deal with the chronology of facts as part of the evidence I intend to give if leave to do so is granted. Secondly I deal in section B with the allegations in McBride statement paragraph by paragraph. Thirdly I deal with condonation for the late submission of this statement.

SECTION A

BACKGROUND

16. I have 33 years of experience in managing people and organisations. These years exclude a period of social activism in student and youth politics; which is an account of and on its own. I essentially started off as a young student activist, interested in turning around our learning and teaching conditions that obtained at the time under an apartheid colonial system.
17. I joined the African National Congress in 1983 which also coincided with the formation of the United Democratic Front. Two years later, in June 1985, I was recruited into Umkhonto WeSizwe, the People's Army. Functioning at these levels led to a number of activities and other developments dictated to by operational needs and requirements obtaining at the time. It is not my intention to delve into the detail thereof in this submission.
18. In 1987, I joined the Transport and General Workers Union as a Branch Organiser in Northern Natal; an affiliate of the Congress of South African Trade Unions. In March of 1987, I began to serve as a Branch Secretary of the same union. Briefly; my tasks were coordination and management of trade union

operations within the geographical scope of the branch. These activities entailed:

-

- 18.1 Supervision of branch staff members; Organisers and Administrators
- 18.2 Staff development and maintenance of discipline.
- 18.3 Principal liaison officer on behalf of the union.
- 18.4 Administrative coordination in the branch.
- 18.5 Ensuring proper books of account and reporting.

19. In December 1989, I was elected General Secretary of the Transport and General Workers Union; a responsibility which entailed the following: -

- 19.1 Enforcing compliance with all the Union's policies and its Constitution.
- 19.2 National administrative responsibility and accounting.
- 19.3 Financial management and budget holding.
- 19.4 Coordinating policy development, monitoring and review.
- 19.5 Strategic planning of the union, including sector and industrial analysis.
- 19.6 Ensuring synergy, effectiveness and efficiency.
- 19.7 Performance management of both the organisation and staff.
- 19.8 Establishing and maintenance of effective relationships throughout the organisation.
- 19.9 Maintaining external relations and being chief spokesperson to external stakeholders, including representing the union at Executive Committee meetings of COSATU.

20. In August 1993, I stepped down as General Secretary, as I wanted to go back to KZN. It is during this period that, in September 1993, I got elected at a Special

CP2.



COSATU Congress for ANC candidature for parliament. I was among the 20 COSATU delegates so identified by the said congress.

21. During the period of September 1993 and April 1994, I was assigned to be part of setting up a COSATU election machinery in support of the advent of democracy and the ANC taking over. Activities included: -
- 21.1 Ongoing critical analysis of the political and security situation in KZN.
 - 21.2 Participated in efforts to negotiate peace.
 - 21.3 Coordinating broader political activities and programmes, including mass activities such as the Worker's Forum.
 - 21.4 Integrating a COSATU election machinery into the ANC's at a provincial level.
22. After the April 1994 elections, I was sworn in as a Member of Parliament. Soon after this, portfolios of government were constituted. I was appointed to chair the ANC study group on transport. In that regard, I was responsible for coordinating of work plans and programmes, chairing and directing weekly meetings of the study group; as well as drawing up of annual programmes and plans and reports for consideration by the Chief Whip and the ANC national caucus.
23. In fulfilling section 236 of the Constitution, I was, in 1998, assigned to chair an Adhoc committee on funding of represented political parties in parliament.
24. This meant developing policy with regard to funding of political parties; coordinating consensus and agreement among parties represented in parliament on a funding formula. Developing a funding model for political parties; reporting and accounting to the Joint Rules Committee.



25. In 1999, I chaired the Public Service and Administration Portfolio Committee; whose responsibilities were: -
- 25.1 Drawing up of annual programmes and plans.
 - 25.2 Directing work programmes of the portfolio committee.
 - 25.3 Presentation of reports for consideration by parliament and other structures.
 - 25.4 Liaison with stakeholders; Ministers, Departments, Institutions Supporting Democracy, Civil Society and others.
 - 25.5 Ensuring weekly meetings of the committee.
26. In 2001, I was appointed Chairperson of the ANC Parliamentary Caucus, a function that required that I had to serve as a point of contact between ANC MP's and the leadership of the organisation. Enabling discussion on the work of study groups, which play a role of portfolio committee work and are sub-structures of the national caucus. Enabling Members of Parliament to discuss and agree on the approach pertaining to all matters on the parliamentary agenda. I also had to represent the ANC caucus at the ANC NEC.
27. In 2002, I was appointed Chief Whip of the ANC, whose responsibility was political and financial resource management of the ANC in parliament. It is a function that required coordination between relevant structures of parliament, Cabinet Ministers and ANC Headquarters. I had to liaise between political parties, Presiding Officers and the Programming Committee.
28. In 2004, I served as the House Chairperson in the National Assembly, in fulfilling section 55(2) of the Constitution, I was responsible for oversight and

CPR



accountability, parliamentary villages, labour relations, information, communication and technology, and the public participation unit.

29. I resigned from parliament in September 2005. In February 2006, I started working for the Department of Correctional Services as KZN Regional Commissioner; which meant managing and coordination of correctional services and programmes in KZN province. Duties also involved: -

- 29.1 Coordinating a security programme as constitutionally mandated.
- 29.2 Ensuring adherence to policies and guidelines of DCS in all management areas.
- 29.4 Setting standards to ensure high quality services.
- 29.5 Promoting coordination of stakeholders within the Criminal Justice System.
- 29.6 Promoting community involvement and awareness in correctional matters.
- 29.7 Managing the KZN Region in accordance with the Public Finance Management Act.
- 29.8 Reporting to the Accounting Officer, the National Commissioner.

30. In November 2008, I started working for Umhlathuze Municipality. I was hired as Deputy Municipal Manager; however, 75% of the time, due to other circumstances in the municipality, I functioned as an Acting Municipal Manager.

My responsibilities were the following: -

- 30.1 Implementation of the Integrated Development Plan.
- 30.2 Maintaining Organisational Management System.
- 30.3 Coordinating human resources activities and industrial relations.

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- 30.4 Risk management
- 30.5 Strategically, direct and manage the IDP, PMS and Internal Audit functions.
- 30.6 Strategic management of local Economic Development initiatives.
- 30.7 Public Relations and Communication.

31. In the period under review, I also served in other structures; such as in 2002 to 2005, a period in which I served as a member of the Judicial Services Commission. A structure primarily concerned with courts and the administration of justice, as well as the appointment of judges.
32. In the same period, I served as Deputy Chairperson of the ANC Political Committee; a committee whose task was to give political direction to the work of the ANC in parliament. It is a sub-structure of the ANC National Executive Committee.
33. I left uMhlathuze Municipality at the fall of 2010; as I had to take up a position with the Department of Public Service and Administration in 2011. The Minister of Public Service and Administration, Minister Baloyi requested me to come in and assist him in setting up a Special Anti-Corruption Unit.
34. I then became Head of the Special Anti-Corruption Unit in DPSA. This unit was at a conceptual stage with the view to structure it up as a government entity. I served DPSA in this capacity for only four months.
35. In May 2011, I was hired as Director General of the Department of Labour. Essentially, I was the accounting officer of the department. I held onto this position until May 2014 when I was appointed Minister of Police

36. In summation, my work in KZN as a student and political activist, trade unionist, ANC MP and senior management experience equipped me with an ability to constructively deal with community needs, as well as issues of institutional support and reform of structures of governance.
37. Chairing the Public Service and Administration Portfolio Committee provided a legislative and policy formulation processes of government, as an experience. On the other hand, the Judicial Services Commission experience, enhanced my understanding of the challenges of transforming not only the judiciary but also the criminal justice system in its entirety. An experience that served me well in later assignments.
38. Post the May 2014 general elections, I was appointed Minister of Police by the then President Jacob Zuma. Section 206 of the Constitution states that; - ***‘A member of the Cabinet must be responsible for policing and must determine national policing policy...’*** Furthermore Section 207 states that: - ***‘The National Commissioner must exercise control over and manage the police service in accordance with the national policy and the directions of the Cabinet member responsible for policing’.***
39. I was indeed the Cabinet member responsible for policing.
40. I relinquished this responsibility, soon after the then President reshuffled his Cabinet, as a result of which, in 2017, I assumed a new role as Minister of Public Works. A position I held onto until another Cabinet reshuffle by the current President, President Ramaphosa, in 2018.
41. Democracy is a social construct, established through elections, societal institutions and an active citizenry. All institutions arising from the democratic process are established and controlled by civilians as an expression of

democratic practice. The SAPS is part of the institutions established by democracy.

42. This viewpoint is also galvanized by the fact that the constitutional and legal framework governing the security environment is informed by the ANC's final submissions on the Constitution. These proposals were published on 15 June 1995 as a basis for the liberation movement's engagement with the Constituent Assembly. The African National Congress said:

42.1 The fundamental approach of the ANC is that the final responsibility for security should be taken out of the hands of the security apparatuses.

42.2 Final responsibility for security should be placed squarely in the jurisdiction of the democratically elected Parliament and Executive.

42.3 The security services are to be bound explicitly.

42.4 Civilian control over the security services at ministerial level and through other mechanisms should be constitutionally enshrined.

42.5 The right of the public to access information must be provided for constitutionally, with limitations in the interests of national security – a reasonable balance between democratic transparency and secrecy.

42.6 Security institutions should not act on their own authority, but under the guidance of Parliament and the Executive.

42.7 Threats to security are not limited to military aggression but also include poverty, social justice, social economic deprivation, abuse of human rights and disjunction of the environment.

43. The existing Constitution is underpinned by the principles of the liberation movement, as the ANC essentially spoke of the need for:

- 43.1 Final responsibility to be given to democratically elected representatives.
- 43.2 Explicit binding of security services.
- 43.3 Civilian control of security services; and
- 43.4 These find expression in the Constitutional provision giving the Executive Authority powers in regard to both the Defence Force and the Police Service and enhancing their respective capacity through civilian secretariats.
44. I firmly believe that these principles are fundamental. They need to be jealously guarded as they talk to the realization of a democratic society. They also, when firmly upheld, would ensure stability of our society.
45. This part of the statement is sequenced in the following manner:
- A. The appointment of Leon Mbangwa as the Chief of Staff;
 - B. The Reference group;
 - C. Werksmans report on rendition of Zimbabweans;
 - D. McBride's disciplinary process;
 - E. Suspensions and eventual dismissals of Mr Innocent Khuba and Mr Matthews Sesoko;
 - F. Appointment of Mr Israel Kgamanyane;
 - G. Condonation
 - H. Conclusions.

A. MR LEON ABEDNIGO MBANGWA

46. Largely two issues have been raised in the past and before the Commission on State Capture; by both Mr Robert McBride and others at public ventilated levels. These are that he is: -

46.1 a fraudster, and

46.2 a foreigner.

47. After assuming the office of the Police Ministry, I had a Chief of Staff, Ms Cathy Hendriks; who left my office to assume another role with the South African Police Service. This left me with a gap as I then had no one to head my office as Chief of Staff. I started a process of recruitment.

48. That process led me to KwaZulu/Natal Legislature, where in I located Mr Mbangwa, who held a position of Senior Manager which was an equivalent of a Chief Director in the Public Service. I went through his profile and found him suitably qualified for the position in my office.

49. Mr Mbangwa holds a master's degree in Business Administration with Regent Business School, a Diploma in Human Resources Management, a Diploma in Industrial Marketing with UNISA, a Diploma in Public Relations Practice with the Public Relations Institute of South Africa, a Teachers Diploma with the University of Zimbabwe, Program and Project Management with The American Graduate University. He is awaiting results of his dissertation for his Master's in Public and Development Management with Wits University.

50. On the work experience, Mr Mbangwa has a range of work experience which started with him:

42.



- 50.1 Teaching in Zimbabwe, Zambia, Botswana, and South Africa between 1986 and 1995;
- 50.2 Heading Communications: Mpumalanga Provincial Government, 1995 to 1998;
- 50.3 Being a Director: Independent Electoral Commission of South Africa, 1999 to 2001;
- 50.4 Being a Director: Department of Justice, 2001 to 2002;
- 50.5 Being Chief Director: KZN Department of Health, 2005 to 2010;
- 50.6 Being Senior Manager: KwaZulu Natal Legislature, 2011 to 2015
51. The above work experience shows that Mr Mbangwa has been with the South African public service for over twenty years. He was awarded a Merit Certificate by the Mpumalanga Provincial Government; as Director for IEC, together with Judge Kriegler represented South Africa in East Timor as an Electoral Officer of the United Nations. He was in the Minister of Justice office dealing with the implementation of the eJustice project.
52. I was satisfied that Mr Mbangwa was the correct candidate for Chief of Staff position in my office and I accordingly arranged for a lateral transfer from the KZN legislature to the Ministry of Police. At this point nothing was ever said about his possessing a criminal record or having been convicted for identification fraud. Understandably so, because any of these matters, would have been declared at the initial point of employment and not transfer.
53. On one particular occasion, I participated in a Power FM talk show. The focus was on the police portfolio. The anchor of the show asked a question relating to Mr Mbangwa's employment and citizenship, particularly that he had a criminal

record. I undertook to make a follow up on issues raised. On further enquiries on my part from Mr Mbangwa; indeed, he declared that he had a criminal record which occurred in 2002. He was arrested in connection with information on his South African identity document and charged with fraud. His identity document did not accurately reflect details of his birth. It recorded that his place of birth was Transkei and did not give the correct name of his birth mother; as well as his name was not properly recorded.

54. He was sentenced to 36 months imprisonment, for which he served 18 months and released from prison in 2004. At which point, he was given a letter to apply for citizenship by descent. He was not deported. Mr Mbangwa informed me that in all positions of employment, post his prison sentence, he declared his criminal record and completed his Z204 form for security clearance.

55. Upon his release in 2004, he took steps to rectify his citizenship and identity document, in accordance with Section 3(1) of the South African Citizenship Act, No. 88 of 1995. However, to date the Department of Home Affairs has not been forthcoming, as a result of which the Pietermaritzburg High Court was approached to give force to this attempt. The following was the result: -

55.1 The Pietermaritzburg High Court, Case Number 6840/09, ordered that an oral evidence be held on 16, 17, 18 March 2011 on determining descendency for Mr Mbangwa.

55.2 On 17 March 2011, a settlement agreement was entered into before the Pietermaritzburg High Court for a DNA test between Mr Mbangwa and a surviving sibling in South Africa.

55.3 Such a DNA test results were in Mr Mbangwa's favour.

56. The Department of Home Affairs has continuously reneged from this Court Order.
57. In any case, it is strange and anomalous to refer to an African person as a foreigner in the African Continent. At issue here, is what European powers did in 1884, on account of being white and considering themselves as being supreme to humankind, to carve and dissect Africa in pursuance of their exploitative interests.

B. THE REFERENCE GROUP

The establishment of the reference group

58. Following the announcement of the new Cabinet by the then President, in May 2014, I as Minister of Police then, embarked on a programme aimed at familiarising myself with the policing environment. This included meeting with senior management of the institutions for which I was responsible; as well as studying the Constitutional and legal framework governing the environment.
59. I met with various stakeholders to solicit their views and perceptions on what was required to improve the delivery of the policing function aligned to the National Development Plan – Vision 2030, which seeks to: -
- 58.1 Strengthen the criminal justice system
 - 58.2 Make the police service professional
 - 58.3 Demilitarise the police service
 - 58.4 Build safety using an integrated approach and
 - 58.5 Build community participation in community safety.



60. During the familiarisation process many critical issues were brought to the fore. In this regard a number of legal and disciplinary issues and long outstanding matters relating to institutional reform and transformation were identified as requiring urgent intervention and resolution as they impacted negatively on the morale, efficiency, effectiveness and image of the Service.

61. The burning and topical matters were: -

60.1 **Human Resources Management**

60.1.1 In this category, appointments, suspensions, disciplinary and criminal proceedings involving senior management, was a specific focus.

60.2 **Operational Issues**

60.2.1 The focus here was the alleged involvement of police members in illegal renditions of Zimbabwean nationals.

60.3 **Crime Intelligence**

60.3.1 At the time, there were lots of matters that were publicly ventilated. Those matters ranged from management and leadership instability to perpetual suspension of Mr Richard Mdluli.

60.4 **Integration and Transformation Issues**

60.4.1 There were allegations pertaining to rank structure including promotions and perceived salary discrepancies.

Lack of progress with regards to integration of non-statutory forces.

60.5 **Reviewal of the National Key Points Act.**

60.6 **The Secure in Comfort report by the Public Protector (anticipated referral by parliament at the time)**

62. As Minister of Police, I had to objectively deal with the dynamic issues in the policing environment, as well as respond objectively to the critical issues dominating the public discourse. Thence the establishment of the Reference Group.

The legal framework in establishing the reference group

63. The Civilian Secretariat for Police, in terms of Section 3(e) and (j) of the South African Police Act, 1995, must: -

(e) *“provide the Minister with legal services and advice on constitutional matters”*

(j) *“evaluate the functioning of the Service and report to the Minister thereon”*

64. Section 9 (b) of the Civilian Secretariat for Police Act, 2011, further states, that the Secretary may do all that is necessary to perform the functions of the Secretariat, including; *“requesting and obtaining information and documents relating to any matter under the control of the police service”*

65. Section 12A of the Public Services Act, 1994 states that:

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"...executive authorities as the Cabinet may appoint one or more persons under a contract, whether in a full-time or part-time capacity –

- (a) To advise the executive authority on the exercise or performance of the executive authority's powers and duties;*
- (b) To advise the executive authority on the development of policy that will promote the relevant department's objectives; or*
- (c) To perform such other tasks as may be appropriate in respect of the exercise or performance of the executive authority's powers and duties"*

66. Part III G of the Public Service Regulations, 2001 states that:

"An executive authority may, within the relevant budget, employ persons additional to the approved establishment where... (b) a temporary increase in work occurs; or it is necessary for any other reason to temporarily increase the staff of the department"

67. These are the legal prescripts that, I, as Minister then, had to follow to the letter in establishing a Reference Group. In this instance, the Reference Group, under the auspices of the Civilian Secretariat for Police, was to provide legal services and advice on constitutional matters and evaluate the functioning of the service and report to the Minister thereon. I accordingly proceeded to establish the Reference Group guided by our law.

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The composition of the reference group

68. The Reference Group was made of five (5) individuals who possessed a variety of skills that were required for the task at hand. Members possessed legal, strategic planning management, organisational development, intelligence and security work, as well as institutional reform skills. In approaching its work, the Reference Group was to:

- 67.1 Gather all necessary background information and material in relation to each of the identified areas.
- 67.2 Invite inputs on the specific issues from police management and directly or indirectly from affected or involved individuals from within the service.
- 67.3 Interview any relevant person/s who may provide any information in connection with identified matters.
- 67.4 Conduct research, examine and analyse any written material, document or media article relevant to each identified matter.
- 67.5 Conduct research and analyse the implications of the legal, regulatory or governance environment pertaining to the identified matters.
- 67.6 Compile reports in respect of each identified matter.

69. Essentially, in its work, the Reference Group, was to interrogate and review the legal and disciplinary implications in respect of specific matters that required urgent intervention and resolution. It also had to interrogate and review good corporate governance issues in relation to such identified matters. Consequently, the Reference Group was to advise the Minister as to the best course of action to be taken to resolve the issues so identified and bring about closure with the view to impact positively on the creation of stability within SAPS.

The process followed

70. On or about the 30 September 2014 and 01 October 2014, I called in the National Commissioner of Police at the time, General Riah Phiyega, and hours later her top management team; to advise and inform them of my decision to constitute the Reference Group. Such a meeting was held at the SAPS College on 01 October 2014. On the same day, I addressed the media and released a statement in this regard.

71. This was followed by an official communique' of 03 October 2014, addressed to the National Commissioner, which among other things, called upon:

"The National Commissioner and the Administration will be required to cooperate fully with the Reference Group and is particularly required to timeously provide all documentation requested, to ensure that the Reference Group completes its responsibilities within the stipulated time-frame. All necessary steps have been undertaken to safe-guard the confidentiality and security of information obtained."

72. Communication was also distributed to all structures within the Police portfolio, including all agencies reporting to the Minister of Police.

The work of the reference group

73. The Reference group commenced with its work and continued functioning. It produced reports on a variety of issues. In the execution of its tasks, the Reference Group was at liberty to co-opt any other person/s that would have been resourceful and of value to its work. It also focused itself on different streams. In certain areas of work, the Reference Group was able to rope in experts for opinions and guidance.
74. In its existence, the Reference Group produced reports in the following areas: -
- 73.1 Fitness of the National Commissioner of Police to hold office.
 - 73.2 Secure in Comfort – the four aspects of the main report referred to the Minister of Police by Parliament.
 - 73.3 The illegal rendition of the Zimbabwean nationals.
75. The Reference Group, in dealing with unlawful rendition of Zimbabwean nationals, identified that there was an investigation report by IPID conducted earlier and signed off on the 22 January 2012. It also identified that there was another report by IPID, soon after Mr Robert MacBride had assumed function as Executive Director of IPID in March 2012. The predicament with this was that, there were now two (2) reports on the same subject matter of the rendition of the Zimbabwean nationals; each report with recommendations that were in contradiction with one another, save the last recommendation on both reports.



76. The initial report by the Reference Group also pointed out to the seriousness of this matter. The report pointed to the violation of the Extradition Act, the African Union Protocol and the United Nations Convention, among others.

77. It must also be remembered that the Criminal Justice Cluster was also seized with this matter in 2012 as this matter attracted media and public interest, after the expose' by the Sunday Times publication. In 2014, when I appeared on SABC talk channel for the presentation of crime statistics, the show anchor jumped me with a sudden question on the renditions and asked as to why disciplinary steps were not instituted against senior police personnel, such as General Dramat and others, as they were implicated in the said report. I undertook right there and then that I was going to follow up on the said complaint.

78. Given all these matters as they were brought to the fore, I felt the need for more detailed investigation to clarify ourselves on these issues. I then proceeded to appoint the Werksmans Attorneys to conduct an investigation.

C. THE WERKSMANS REPORT

79. The investigation was guided by the following terms of reference: -

78.1 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;

- 78.2 Whether any misconduct or offence has been committed and if so by whom?
- 78.3 Whether there is prima facie evidence of misconduct and criminal liability by Lieutenant General Dramat; Major-General Sibiya; and any other officers mentioned in the original report;
- 78.4 The circumstances under which report, and the docket handed in the NPA and what happened to the docket whilst in the NPA possession;
- 78.5 Any other matter that might come to your attention during the investigation which is relevant to your conclusions and findings.
80. The report with its conclusions and findings was given to me as the Minister of Police for information. The Werksmans report is attached hereto and marked "NN1". It is on the basis of this report that I commenced further disciplinary processes against the implicated individuals. I now set to deal with the investigation report. The report is in four separate sections as follows:
- 79.1 Section A: Circumstances surrounding the compiling of each report;
- 79.2 Section B: Deletion of evidence from the First Report;
- 79.3 Section C: Analysis and findings; and
- 79.4 Section D: Recommendations.
81. For the sake of brevity, I do not intend to reproduce the Werksmans report verbatim herein but to only highlight those salient aspects thereof.

Factual background of the rendition



82. 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.
83. 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.
84. The arrests of the five Zimbabwean nationals was effected in three (3) stages which will be summarised briefly, below.

83.1 The first operation

- 83.1.1 The first operation relating to the arrest of Zimbabwean nationals took place on 5 November 2010 where four Zimbabwean nationals (Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma) were arrested in Diepsloot and detained in the Orlando police station in Soweto.

83.1.2 The reasons stated for their detention was that they were illegal immigrants. The operation was conducted by the Directorate for Priority Crime Investigation (DPCI) head office and DPCI provincial office Tactical Operations Management Section (TOMS). It was alleged that DPCI and TOMS were accompanied by two Zimbabwean police officers. The members of the operation were informed during a briefing meeting that they were tracing suspects involved in a robbery committed in Zimbabwe during which a Zimbabwean police superintendent was fatally shot.

83.1.3 After the four Zimbabwean nationals referred to 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.

83.1.4 Maluleke indicated 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.

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83.1.5 The circumstances under which the Zimbabwean nationals were deported, was circumspect. The docket which was used during the deportation did not belong to the Department of Home Affairs, as it was required to be in the case of deportations.

83.1.6 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 appeared from an analysis of such documentation by an expert in that regard, that the documents which purported to be issued by the Department of Home Affairs, were forged.

83.1.7 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.

83.2 Second operation

83.2.1 A second operation was conducted on or about 22 November 2010 by the same police units which conducted the first operation. In the 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.

83.2.2 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.

83.2.3 Prichard Chuma was never seen again. It is presumed that he also died in Zimbabwe under police custody.

83.3 **Third operation**

83.3.1 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 his arrest, which took place in Diepsloot on or about 11 January 2011, Dube was shot and injured.

83.3.2 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.

83.3.3 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 Weirbrug police station. The same gun was allegedly used in the robbery in Zimbabwe which resulted in the death of the Zimbabwean superintendent.

83.3.4 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.

83.3.5 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.

83.3.6 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.

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83.3.7 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.

Circumstances surrounding the compiling of each report

First Report (January Report)

85. Prior to Khuba conducting any investigations into the Rendition, there were two investigations into the Rendition that had already been undertaken, by: –
- 84.1 the DPCI, in terms of which the DPCI members involved in the Rendition were exonerated from any wrongdoing in the Rendition; and
- 84.2 a member of Crime Intelligence, Colonel Moukangwe. According to the investigation conducted under the auspices of Crime Intelligence was never concluded, instead it was done jointly with IPID.
86. The First Report was compiled by Khuba with the assistance of Moukangwe and the guidance of Advocates Mosing and Moeletsi.
87. 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 was headed by Mosing assisted by Moeletsi. The role

of Mosing and Moeletsi was never to make a decision on whether to prosecute or not.

88. 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.
89. 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.
90. 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 by Crime Intelligence.
91. 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.
92. On 7 March 2013, Khuba visited the office of 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.

93. 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.
94. 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 in relation to the murder of a Zimbabwean police officer in Zimbabwe.
95. 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.

96. As part of the investigation, Khuba met with members of crime intelligence. At their offices. He noticed that the photographs obtained from Maluleke's laptop relating to the operation were posted on the office walls of some members of crime intelligence. He 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.
97. 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.
98. 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.
99. Information about the investigation was leaked and 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.
100. Khuba also interviewed Maluleke specifically regarding his promotion from captain to colonel. Khuba was not successful in obtaining the file regarding Maluleke's promotion.
101. Khuba recorded 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 of Maluleke, Makoe, Nkosi and constable Radebe at Diepsloot on the night of the arrests.

102. The booking in and out of certain police stations of the relevant Zimbabwean nationals following their arrests at Diepsloot was also examined by Khuba. He 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, they required to be interpreted by an expert.
103. 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.
104. At some point 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.
105. Subsequent to the advice by Mosing and Moeletsi, Khuba and Moukangwe conducted further investigations to address the concerns raised by Mosing and Moeletsi. According to Khuba, Dramat, Sibiya, Maluleke and Leonie Verster, refused to provide warning statements.
106. In light of their refusal to provide warning statements, 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.

107. 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.
108. Moukangwe corroborated Khuba's version regarding his (Moukangwe's) involvement in the investigation and the compilation of the First Report when interviewed by Werksmans.
109. Moukangwe explained why he, as a member of SAPS, was tasked with conducting an investigation on behalf of IPID. He said 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.
110. 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.
111. 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:
- 110.1 Dramat told them that he wants to involve his attorney and would only give a statement after discussing same with his attorney;

110.2 Sibiya requested that he be sent questions and would thereafter respond to such questions; and

110.3 Maluleke refused and advised them that he will answer all the questions in Court. Vester, who in their view was quite knowledgeable about the operation, was also refusing to provide them with a statement.

112. 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.

113. Moukangwe went on to say that the report of 22 January 2014 was final as they could not force anyone to make statements or give evidence. He did not know anything about the Second Report and was not involved in the drafting of the said report.

114. Khuba and Moukangwe's evidence in relation to their involvement of Mosing's office in the investigation into Rendition was corroborated by him. 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.

115. 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.

116. Paragraph 4 of Mosing's memorandum specified the outstanding investigations required at that stage to finalise the report. That included: -

115.1 The reports of analysis of cell phone records;

115.2 The report on analysis of vehicle tracking information of the members involved during the operations and;

115.3 The statements from Dramat, Sibiya and Maluleke.

117. 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.

118. 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. This was done two days after 22 January 2014. The report was subsequently signed by Khuba. 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.

119. 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.
120. Jiba confirmed that the internal memorandum was drafted on her advice and she confirmed receipt of both internal memorandums from Mosing.
121. 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.
122. 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. It recommends that Dramat, Sibiyi, 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. It further recommends that Maluleke, Radebe, Nkosi and Makoe be prosecuted for assault and theft.
123. After the submission of the First Report, on 3 March 2014, McBride was appointed as Executive Director of IPID. He requested an update of all the high-profile matters that were handled by IPID, including the Rendition.
124. 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.

125. A careful perusal and analysis of the First and Second Reports reveal that the Second Report is actually a version of the First Report which was altered by the deletion of certain evidence in order to arrive at a conclusion which was far removed from the conclusion of the First Report. There was no valid explanation for the deletion of evidence.
126. 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.
127. While the First Report was signed by Khuba, the Second Report was signed by Khuba, McBride and Sesoko. It was Khuba's version 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.
128. Both Moukangwe and Mosing confirmed 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.
129. In his interview with Werksmans Khuba said that he met with McBride in order to discuss his investigation, however, prior to meeting with McBride, he provided Sesoko with an email copy of his report to pass along to McBride so that McBride would be able to prepare for their meeting. Sesoko confirmed receipt of such email from Khuba. He was unclear of whether he provided McBride with a hard copy or a soft copy of the report.

130. Khubafurther stated 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. However, both Sesoko and McBride were adamant in stating that they did not have knowledge of the First Report. This version by McBride was contradicted by Khuba who said that in his first meeting with McBride, it was evident from their discussion regarding the Rendition, that McBride had had regard to the First Report. On 5 March 2014, McBride met with Khuba.
131. The following day, on 6 March, Khuba met with McBride, Sesoko and Angus. It was on that day that McBride requested Khuba to retrieve the docket from the NPA and to provide him with every document he possessed regarding the Renditions matter.
132. 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.
133. The first draft of the Second Report went to and fro amongst the Khuba, Sesoko and McBride.
134. Khuba stated that he signed the last page of the Second Report once it was finalised and did not initial each page; as such, he was not in a position of knowing if any information was added or removed. He said the Second Report was then submitted and dated 18 March 2014.
135. When the discrepancies between the recommendation of the First Report was drawn to Khuba's attention during his interview, his initial explanation for certain deletions was related to the fact that an evaluation of the evidence in relation to Sibiya and in conjunction with his discussions with Sesoko, it was decided that it

would not be possible to prove that Sibiya was guilty of assault beyond a reasonable doubt.

136. Khuba later stated that he was strongly concerned about the removal of certain information, specifically the deletion of evidence which implicates Dramat. He stated 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.
137. Khuba could not 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.
138. 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 him he did not check whether the final version of the report was the same document that he emailed to Sesoko. Furthermore, 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.
139. McBride's version was that the only input he had into the Second Report related to grammatical changes he made and that he did not see the First Report, nor did he make substantive changes. This version was contradicted by Khuba who stated that McBride had seen the First Report and had given input into the report which was not just grammatical.
140. According to McBride, he was provided with the Second Report which was already signed by both Khuba and Sesoko.

141. The First and the Second Reports differed in a number of aspects.
142. 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: -
- 141.1 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.
- 141.2 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 were removed from the Second Report.

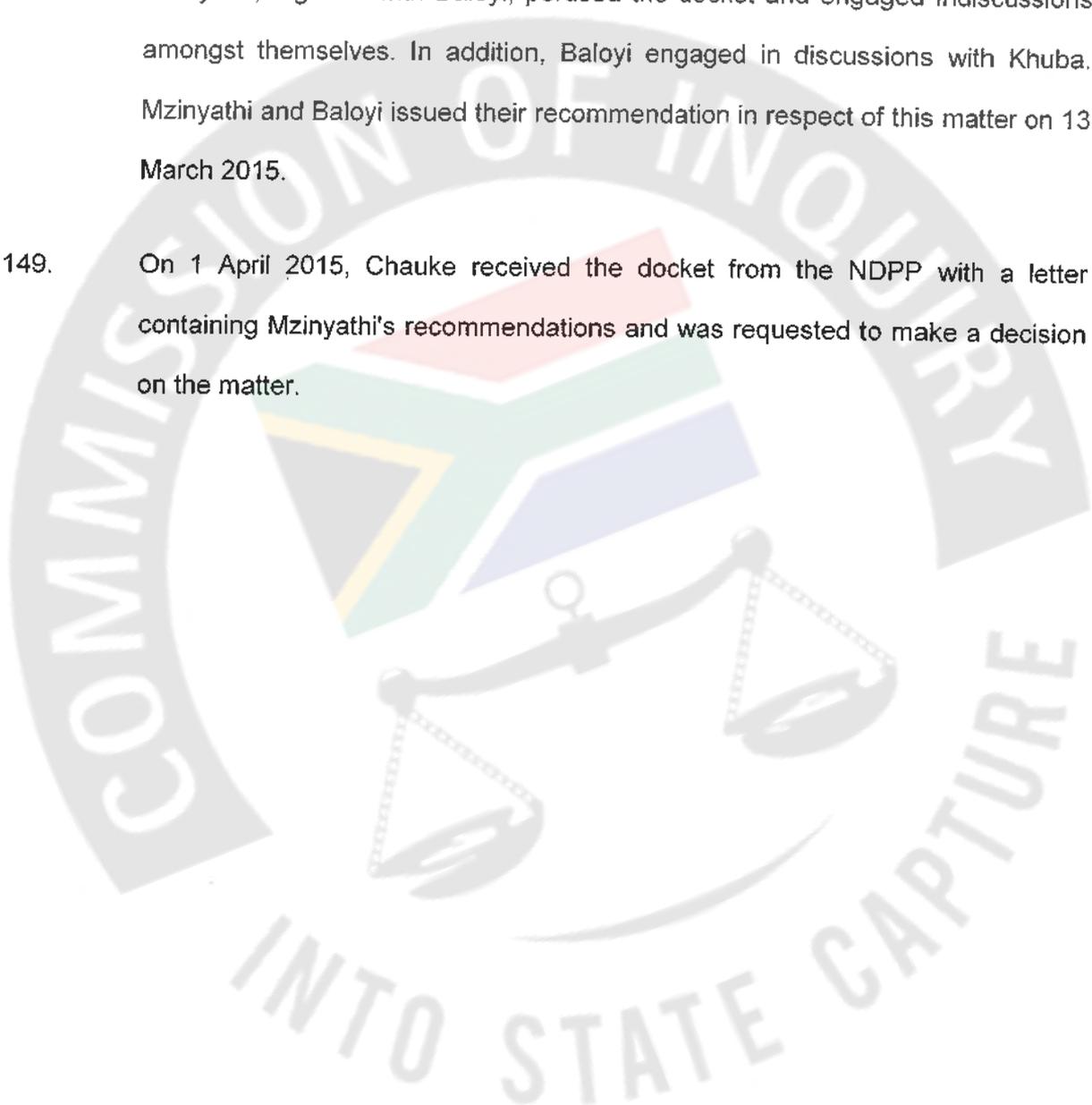
141.6 Pertinent information relating to the analysis of cell phone records were removed and the records were analysed in a way that falls short of the scrutiny contained in the First Report and which was required in an investigation process.

The docket

143. On 18 June 2014 Advocate Van Zyl telephonically requested the docket from Khuba. Khuba's response was that McBride had instructed him to return the docket to the NDPP and that, that had been done.
144. 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.
145. 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.
146. 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.

147. Shortly after his return from leave and 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.
148. 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.
149. 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 the matter.



Deletion of evidence from the first report

150. What follows is a tabular presentation of evidence deleted from the first report.

IPID REPORT 1	IPID REPORT 2
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Page 9: The statement of Ndanduleni Richard Madilonga	Page 9: The statement of Ndanduleni Madilonga
	<p>The following paragraphs are contained in this report in terms of Madilonga's statement:</p> <p><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>The statement of Madilonga states as follows in the relevant paragraphs:</p> <p><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><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</i></p>	<p>(The paragraph that follows the above preceding paragraph has been deleted)</p> <p><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>The paragraph that begins with <i>"He will state.."</i> from the first report is deleted in the second report.</p>

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"



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.

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."*

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

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."

Lebeya at 0825751899. These SMS were sent at various milestone of the operation as deduced from witnesses' statements and documentary proofs."

<p>Dramat's cellular phone records aren</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>
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Cell phone Records of Maluleke are analysed in the following manner:

"Cell phone records of Captain "Cowboy" Maluleke (08277295181 *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.*

There is no analysis of Maluleke's cell-phone records, only that there is a prima facie case against him



<p>Cellular phone records of Col Neethling are analysed thus in this report:</p>	<p>There is no mention of this information and statement by Neethling in this report.</p>
<p>Page 24: Cellular phone records of Nkosi, Makoe and Radebe.</p>	<p>Page 24: Cellular phone records of Nkosi, Makoe and Radebe</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 to Major General Sibiya".</i></p>	
<p>Telephone call made by Madilonga to Dramat <i>"Cell phone records of Lt Colonel Madilonga: He is a police officer who was posted at the border during the operation. He assisted Captain Maluleke to cross the border with suspects. <u>He contacted Lt General Dramat when he welcomes the Zimbabwean police for the first time. His cell phone records his interaction with Captain Maluleke in line with his statement.</u></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>This report does not contain the cellular phone records of these employees.</p>	<p>This report contains the cellular phone records of the above employees:</p>
<p>Statement by Khuba explaining his findings, the relevant deleted paragraph in the second report is as follows:</p>	<p><i>"The record confirms that they were at the scene even though the allegation of theft is not corroborated"</i></p>
<p><i>"On 28/01/2013 he was called by the former Executive Director who gave him the</i></p>	

following



A handwritten signature in black ink, appearing to be 'Lyn', is located at the bottom right of the page.

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 (DNS – 1689) for Nelson Ndlovu, Shepard Chums and t1.4aghwawe Sibanda. The documents are file in the docket as per A36. An enlarged copy of death certificate was made from a copy of Sunday Times Newspaper he received from Brigadier Zangwa dated 23/10/2011 titled " journey to death in an unmarked car' and is filed as per A35.

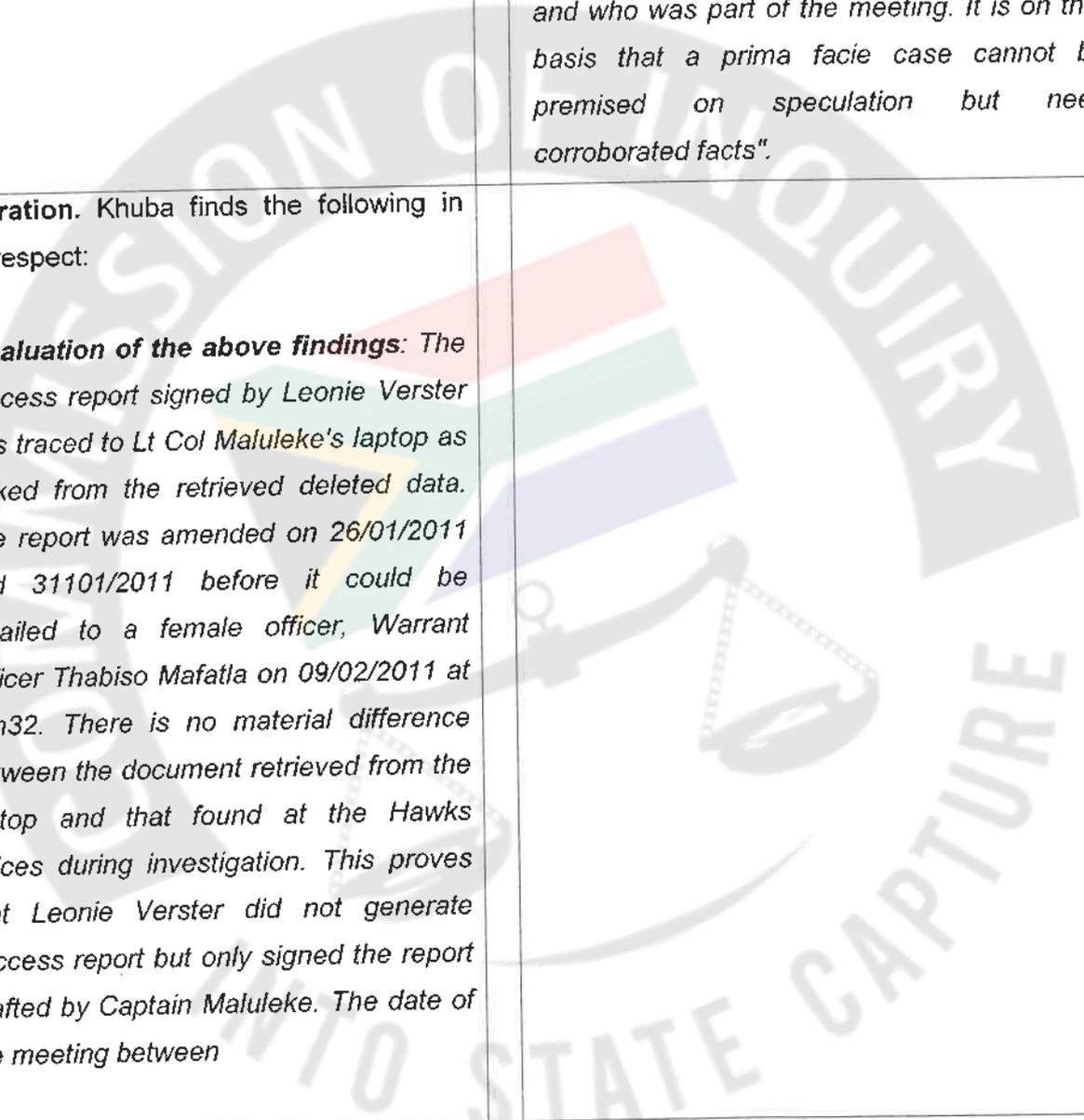
Khuba's findings on Dramat Page 29.

Analysis and Findings of Dramat's cell-phone records is recorded by Khuba as such:

"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.

Khuba's findings on Dramat

Nothing is said about this issue

<p>Dramat held a meeting on 05/11/2010 with Zimbabwean police planning the</p>	<p>•Dramat held a meeting on 05/11/2010 with Zimbabwean police planning the operation</p> <p>Khuba states the following in respect of this allegation in this report:</p> <p><i>·"The success report that claim that Lt General Dramat had a meeting with the Zimbabwean police lacks detail about the meeting itself. There is no indication of what was discussed and who was part of the meeting. It is on that basis that a prima facie case cannot be premised on speculation but need corroborated facts".</i></p>
<p>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 31101/2011 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</p>	



<p><i>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: "Evaluation of the above findings: <i>Despite the fact that General Dramat as an Accounting Officer did not sign any claim of Captain Maluleke, delegating responsibility to Major General Sibiya to assist the Zimbabwean Police in tracing • wanted suspects invariably commit government resources into an unlawful operation that amount to a criminal offense</i></p>	<p><input type="checkbox"/> 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><i>"Evaluation of the above findings: Words of appreciation from General Dramat show both interest in the arrest of the Zimbabwean Nationals and his knowledge of the operation. If the operation was lawful, he would not have warned them not to tell anyone about it".</i></p>	<p>•Congratulating the officers for the arrest of John Nyoni.</p> <p>Nothing is said about this issue</p>
<p>He received communication regarding success reports and photos of the operation through his personal assistant Phumla</p> <p><i>" According to the information retrieved from the seized laptop, Captain Maluleke sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails 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 Sibiya shows 30 SMS sent to General Dramat at various milestones of the operation. He also received an SMS from Captain Maluleke shortly after the arrest of Zimbabwean Nationals. He never responded to any of the SMS which may suggest that they were only informing him of the progress".</i> <p>□</p>	
<ul style="list-style-type: none"> • Report to parliament in response to the allegation: <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 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><input type="checkbox"/> 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 2013/03/07 confirmed that General-Sibiya was appointed to be the Head of TOMS which he created to trace wanted suspects.</i></p>	
<p><input type="checkbox"/> 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 WarrantOfficer 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</i></p>	

Sibiya was in the car rather than seeing him personally"

□ The meeting with Zimbabwean Police for Cross-Border Crimes

"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"



Recommendations	Recommendations
<p>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;</p> <ul style="list-style-type: none"> • 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) 	<p>"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 Cot M Maluleke, there is a prima facie case to sustain charges of kidnapping and defeating the ends of justice".</p>

Lieutenant-General Anwar Dramat

151. Khuba's analysis of findings in respect of Dramat and Sibiya in the first report recommended that Dramat be criminally prosecuted. His findings were based on the following, amongst others: -

Dramat met with the Zimbabwean police prior to the commencement of the operation

- 150.1 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.

150.2 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.

150.3 The success report dated 4 February 2011, addressed to, inter alia, Dramat and signed by Leonie Verster, recorded as its first point that on 5 November 2010, the Zimbabwean police visited the office of DPCI met with Dramat regarding Zimbabwean nationals who allegedly shot and killed a senior Zimbabwean police officer.

224.4 The success report furthermore gave information relating to the arrest of two of the wanted Zimbabwean nationals. This success report was addressed to Dramat and there was no record of Dramat contradicting any statement of fact in the success report.

Dramat received communications during and after the commissioning of the Rendition

150.5 The cell phone records of Sibuya showed that 30 SMSs 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 the SMSs, 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 SMSs led to the conclusion that he was aware of the operation as it unfolded.

- 150.6 The evidence of 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.

Dramat congratulated members of crime intelligence after completion of the operation

- 150.7 According to Mkasibe and Ngwenya, 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.

Dramat's statement to Acting National Commissioner of SAPS

- 224.8 According to former 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.

- 150.9 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.

Sibiya

152. Sibiya was the head of the TOMS unit. Its main objective was to fight priority crimes, which included inter alia, combating armed robberies by dangerous criminals, investigating and arresting those responsible for ATM bombings.

153. Sibiya stated 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".

154. This confirmed Sibiya's 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. Furthermore, Maluleke carried out the operation on instructions of his superiors.

155. The Rendition was carried out by the members of TOMS under the leadership of the Maluleke. The First Report suggested 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. These were the statements by:



154.1 **Bongani Henry Yendewho** stated that:

"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".

154.2 **Petros Jawukewho** said at paragraphs 2, 9 and 10 of his statement, that:

"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."

- 154.3 **Shepard Tshumawho** gave an account as to what transpired during the operation of 5 November 2010. Shepard stated the following in relation to Major-General 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."

- 154.4 **Maqhawe Sibanda** who stated the following in relation to 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

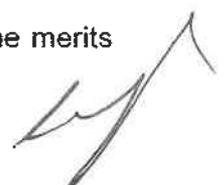
saw Leburu (coloured police officer) taking the money at the back pocket of the trouser of Shepard."

156. The above statements by eyewitnesses from Crime Intelligence confirmed 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 was confirmed by the presence of Zimbabwean Police officials during operations.
157. The statements were made under oath and were from the Zimbabwean nationals as well as members of Crime Intelligence who claimed that they all saw Sibiya at either the first or the second operation of the Rendition.
158. The assessment of Sibiya's cell phone records revealed that Sibiya communicated with officers who were involved in the operation, one of which was Maluleke and he sent 30 SMSs to Dramat at the 0825515311 number during various milestones of the Rendition. Khuba recorded in the First Report that Dramat never responded to any of the SMSs from Sibiya.

Handling of the Second Report and the docket to NPA

159. 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.

160. It was against that 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.
161. 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.
162. 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.
163. The investigation team finalised its investigation on or about 22 January 2014 and compiled a report with final recommendations. That 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.
164. 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.

165. 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 was the Deputy Director of Public Prosecutions for South Gauteng.
166. 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 mentioning 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.
167. 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 it had been done. Khuba did not give or specify the date by which the docket was returned to the NDPP by himself.
168. 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.
169. Chauke addressed a letter on 3 July 2014 to the NDPP informing him about the above sequence of events regarding the docket. 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.

170. Sometime in December 2014, the NDPP enquired from Chauke about the case and wanted to know whether he 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.
171. Mzinyathi told Werksmans 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.
172. 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.
173. 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.

174. 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.

175. 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.

176. The letter from the NDPP, inter alia, stated 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.

D. MCBRIDE'S DISCIPLINARY PROCESS

177. On or about 10 March 2015 I wrote a letter to Mr McBride inviting him to make written representations as to why I should not place him on precautionary suspension pending an investigation of certain various acts of serious misconduct. Chief amongst those various serious acts of misconduct was the altering of the IPID report which recommended that Lieutenant General Dramat and Major General Sibiya be criminally charged with kidnapping and defeating the ends of justice.

178. Mr McBride denied the allegations I had put forward in my letter of intention to place him on precautionary suspension. He launched an urgent application before the High Court in which he sought to interdict me from suspending him from his position as Executive Director. The interim interdict was sought pending the final determination of Part B of the application in which he sought the declaration of my decision to initiate a process to suspend him from his position to be unlawful and invalid and it be set aside. He also wanted the court to declare certain provisions of the IPID Act to be unconstitutional and unlawful to the extent that they purport to authorise me to suspend or remove him from office. These provisions were section 6(6) of the IPID Act, section 17(1) and 17(2) of the Public Service Act, as well as paragraph 2.7(2) of chapter 7 and paragraph 18 of chapter 8 of the Senior Management Service Handbook, 2003.
179. Part A of the application was heard on 13 March 2015 and on 18 March 2015 judgment was handed down in which the application was struck off the roll for lack of urgency.
180. After the application was struck off the roll for lack of urgency and on 24 March 2015, I placed Mr McBride on suspension. His suspension was effected in terms of section 6(3)(a) and (6) of the IPID Act; section 16A (1), 16B, 17(1) and (2) of the Public Service Act and Regulation 13 of the IPID Regulations.
181. On or about 6 May 2015 Mr McBride was served with a notice to attend a disciplinary enquiry. The charges proffered against him included amongst others:
- 180.1 Alteration of recommendations in the 22 January 2014 report which report recommended that Lieutenant General Dramat and Major General Sibiya of the DPCI be charged with kidnapping and defeating the ends of justice;

- 180.2 The deletion/omission of evidence in the original 18 March 2014 incriminating Lieutenant General Dramat and Major General Sibiya in which it was recommended that no criminal charges be brought against the two;
- 180.3 Misrepresentation of facts surrounding the two reports to me;
- 180.4 Interference with the investigation by instructing Mr Khuba not to attend an interview with Werksmans Attorneys;
- 180.5 Misrepresentation that Lieutenant General Dramat and Major General Sibiya had been cleared by the IPID investigation;
- 180.6 Dishonesty in that he advised Werksmans Attorneys that he had only seen the March 2015 report and not the January 2014 report;
- 180.7 Gross insubordination and contravention of the PFMA in that he made a payment of R500 000.00 towards his legal fees by IPID for services relating to his High Court urgent application.”
182. The enquiry was scheduled to sit for the first time on or about 21 May 2015. Advocate Phillip Mokoena SC from the Johannesburg Bar was appointed to chair the enquiry. A day before the scheduled sitting of the enquiry Mr McBride launched an application before Advocate Mokoena to have the disciplinary enquiry stayed pending the final determination of the constitutional challenge of certain provisions of the IPID Act in the High Court, or alternatively that the



enquiry be stayed pending Cabinet's decision of a chairperson in terms of clause 7(3)(b) of the Disciplinary Code and Procedure of the Public Service.

183. Advocate Mokoena ruled against Mr McBride on or about 14 July 2015 and by agreement between the parties the enquiry was scheduled to reconvene on 27 to 31 July 2015.
184. Around 16 July 2015 Mr McBride launched an urgent application before the Labour Court wherein he sought to interdict the disciplinary enquiry pending the final determination of the constitutional challenge in the High Court. He also challenged the appointment of Advocate Mokoena in terms of clause 3(c)(i) of the Public Service Collective Bargaining Council Resolution 1 of 2003 as he alleged that the presiding officer for the enquiry ought to have been appointed by Cabinet.
185. Advocate Mokoena's ruling in which he declined to stay the disciplinary proceedings pending the Constitutional Court challenge in the High Court by Mr McBride was also sought to be reviewed. The Labour Court granted the interdict pending the final determination of Mr McBride's Constitutional Court challenge in the High Court.
186. Before the High Court, Mr McBride's case rested solely on the constitutionality of the removal provisions. The initial allegations of me acting in bad faith and with an ulterior motive were abandoned and did not feature in court. He persisted with an order declaring the removal provisions to be unconstitutional as they did not permit the necessary security of tenure for the executive of the IPID and as a result they also did not afford the IPID with the standards of independence required by section 206(6) of the Constitution.

187. Judgment was handed down on 4 December 2015 and it basically held that the removal provisions were unconstitutional to the extent that they purport to empower me to unilaterally suspend, institute disciplinary proceedings or remove the executive head. The order to suspend the declaration of invalidity to allow Parliament to rectify the defects in the IPID Act was made and an interim measure was that section 6(6) would be replaced by sections 17DA (3) to (7) of the South African Police Service Act 68 of 1995.
188. Mr McBride applied to the Constitutional Court for confirmation of the order of the High Court in terms of section 172(2)(d) of the Constitution and Rule 16(4) of the Constitutional Court Rules.
189. Before the Constitutional Court the issue was narrow and was whether the Minister's powers to suspend and remove the executive head as contained in section 6(6) of the IPID Act were constitutionally permissible or unduly impeded on the independence of the IPID as required by section 206(6) of the Constitution.
190. The Constitutional Court made the following order:
- *1. *It is declared that the following provisions are invalid to the extent that they authorise the Minister of Police to suspend, take any disciplinary steps pursuant to suspension, or remove from office the executive director of the Independent Police Investigative Directorate –*
 - 1.1 *Section 6(3)(a) and section 6(6) of the Independent Police Investigative Directorate Act 1 of 2011;*
 - 1.2 *Sections 16A (1) and 16B, 17*1) and 17(2) of Public Service Act, Proclamation 103 of 1994;*
 - 1.3 *Regulation 13 of the IPID Regulations for the operation of the Independent Police Investigate Directorate (GNR98 of Government Gazette 35018 of 10 February 2012), (IPID Regulations).*

2. *Parliament is directed to cure the defects in the legislation within twenty-four months from the date of this order.*

3. *Pending the correction of the defects:*

3.1 *Section 6(6) of the Independent Police Investigative Directorate Act 1 of 2011 is to be read as providing as follows:*

“Subsections 17DA (3) to 17DA (7) of the South African Police Service Act 68 of 1995 apply to the suspension and removal of the executive director of IPID with changes as may be required by context.”

3.2 *Section 16A (1), 16B, 17(1) and 17(2) of the Public Service Act, Proclamation 103 of 1994 and Regulation 13 of the IPID Regulations are declared inconsistent with section 206(6) of the Constitution and shall not apply to the executive director of the Independent Police Investigative Directorate.*

4. *It is declared that the decision of the Minister of Police to suspend Mr McBride from his position as executive director of the Independent Police Investigative Directorate is invalid and is set aside.*

5. *The order in paragraph 4 is suspended for thirty days in order for the National Assembly and the Minister of Police, if they so choose, to exercise their powers in terms of the provisions referred to in paragraph 3.1 above.*

6. *It is declared that the sin of the Minister of Police to institute a disciplinary enquiry against Mr Robert McBride, which was to commence on 21 May 2015, is invalid and is set aside.*

7. *The Minister of Police is directed to pay the costs of Mr Robert McBride including the costs of two counsel.”*

191. As is evident from paragraph 5 of the order of the Constitutional Court, the invalidity of my decision to suspend Mr McBride was suspended for a period of thirty days in order to allow the National Assembly and myself, if we so chose, to exercise our powers in terms of the provisions of the South African Police Service Act.

192. It is noteworthy that in all the forums that Mr McBride approached, none of them set aside his suspension and ordered his reinstatement.
193. In compliance with paragraph 5 of the Constitutional Court order in paragraph 5, I referred the matter to Parliament through its Parliamentary Portfolio Committee on police for Parliament to make a decision on whether to press on with the misconduct charges against McBride. I submitted the charge sheet and files containing portfolio of evidence in order to enable Parliament to make a decision.
194. Despite repeated follow ups to the Parliament whether a decision to charge McBride with misconduct had been taken, nothing happened until the 30 das prescribed by the Constitutional Court order had lapsed and McBride returned to work. In essence, Parliament blatantly violated the Constitutional Court order.
195. Subsequent to the lapse of the thirty-day period stipulated in the order of the Constitutional Court, there was no legal impediment to Mr McBride resuming his duties as the executive head of IPID.
196. Mr McBride resumed his duties as the executive head of IPID not as a result of being exonerated from the charges that were preferred against him, but because of a failure to take a decision to pursue the preferred charges against him by the committee authorised to do so pursuant to the Constitutional Court order. The merits or otherwise of the charges preferred against him were never tested and he also never had to place his version of events and contradict the *prima facie* evidence of altering the January report.
197. It is also noteworthy that there was no finding by any of the courts that I acted in bad faith, *mala fide* or for ulterior purpose in suspending and instituting disciplinary proceedings against Mr McBride. What was found by the court was that the provisions (which were the law then) that I relied on in suspending and

instituting disciplinary proceedings against Mr McBride unduly impeded on the independence of the IPID as required by section 206(6) of the Constitution and nothing else.

E. KHUBA AND SESOKO'S DISMISSALS

198. I have already stated and demonstrated that Mr McBride was not truthful when he, amongst others, alleged that he did not even know about the existence of the January report as it pre-dated his appointment as IPID Executive Director. He further alleges that the Werksmans report was the only evidence against him, Khuba and Sesoko, and it ultimately led to Khuba and Sesoko's dismissals.
199. Khuba was placed on precautionary suspension on or about 21 May 2015 and was notified to attend a disciplinary enquiry on or about 7 July 2015. The charges preferred against Mr Khuba related to gross dishonesty and defeating the ends of justice.
200. On 23 September 2015, the date of the disciplinary enquiry, Mr Khuba was represented by an attorney. He freely and voluntarily pleaded guilty to the charges preferred against him. IPID and Mr Khuba reached an agreement with regards to the sanction to be imposed on Mr Khuba for pleading guilty to serious charges of gross dishonesty and defeating the ends of justice. IPID agreed to impose a sanction of a final written warning valid for a period of six (6) months and to uplift Mr Khuba's suspension allowing him to resume his duties on or about 28 September 2015.

201. In pleading guilty to the charges preferred against him Mr Khuba essentially admitted that he in collaboration with Sesoko and McBride altered the January report. Despite the serious charges preferred against him, IPID agreed to a lenient sanction because the then Acting Executive Director, Mr Kgamanyane, believed that Mr Khuba was candid in accepting his wrongdoing.
202. On or about 25 September 2015 Mr Khuba deposed to an affidavit which contradicted what he pleaded guilty to. In IPID's view this was a perpetuation of Mr Khuba's dishonesty and defeating the ends of justice. In the affidavit he deposed to on behalf of Mr Sesoko, Mr Khuba sought to assert that Mr Sesoko and McBride were not aware of the existence of the January report and that the January report was not a final report. This was in stark contrast to what he pleaded guilty to. When interviewed by Werksmans he admitted that he regarded the January report as the final report and that in submitting the January report to the NPA, he was accompanied by Sesoko.
203. Mr Khuba was given an opportunity to make written representations as why he should not be dismissed in light of his dishonest conduct of deposing to a contradictory affidavit in favour of Mr Sesoko. Subsequent to a consideration of the written representations by him, IPID decided to summarily dismiss Mr Khuba on the grounds of the employment relationship having irretrievably broken down as a result of his dishonest conduct. A continued employment relationship in light of his dishonest conduct would have been intolerable and would have invariably put IPID into disrepute. IPID was of the view that the public would lose confidence in it if it knew that IPID kept in its senior ranks dishonest people such as Mr Khuba.

204. Subsequent to his dismissal, Mr Khuba approached the Labour Court on an urgent basis seeking, amongst others, payment of his salary pending the outcome of an unfair labour practice dispute that he had declared with the Bargaining Council. He effectively sought reinstatement. The application was dismissed by the Labour Court.
205. After the dismissal of his application by the Labour Court he declared a dispute with the Bargaining Council which was also dismissed. The arbitrator found that Mr Khuba's misconduct was serious and constituted a breach of the trust relationship. He also found that the trust in the employment relationship between Mr Khuba and IPID had been destroyed and that rendered the continued employment intolerable. He concluded that he could not interfere with the sanction that was imposed by IPID and considered it appropriate under the circumstances.
206. The same charges that were preferred against Mr Khuba were also preferred against Mr Sesoko. Both Mr Khuba and Mr Sesoko were scheduled to appear on the same day for the disciplinary enquiry, being 23 September 2015. However, Mr Sesoko did not attend the enquiry on the scheduled date.
207. Mr Sesoko's disciplinary enquiry ultimately commenced on or about 20 June 2016 and it was scheduled to run the entire week ending on 24 June 2016. Mr Sesoko was represented by attorney and counsel in the enquiry.
208. He raised certain preliminary objections which included, amongst others, the challenge of Mr Kgamanyane's appointment as Acting Executive Director as well as seeking the stay of the disciplinary proceedings until Mr McBride's case was heard in the Constitutional Court and judgment delivered. The preliminary

objections were dismissed on or about 3 June 2016 by the appointed chairperson, Advocate Mxolisi Zondo.

209. While the disciplinary enquiry was proceeding, Mr Sesoko launched an urgent application before the Labour Court in which he sought the stay of the disciplinary proceedings on the basis that he was challenging the Acting Executive Director's appointment by me. In essence Mr Sesoko's challenge was that the appointment of the Acting Executive Director, Mr Kgamanyane, by me was unconstitutional and invalid and consequently the basis upon which Mr Kgamanyane had initiated disciplinary proceedings against him was equally invalid. The application was dismissed with costs.
210. The enquiry proceeded and the evidence of Advocate Mosing was led and he testified, amongst other things, that the January report was in fact the final report. Advocate Mosing was cross examined by Mr Sesoko's counsel. The chairperson of the enquiry, Advocate Mxolisi Zondo, found that the January report was the final report and that Mr Sesoko's conduct in co-authoring the March report amounted to alteration of the January report which constituted misconduct on his part. He found Mr Sesoko guilty of misconduct.
211. On the last day of the enquiry Mr Sesoko elected to waive his right to be heard. He did not give his version of the events and did not attend the proceedings. He instead, through his legal representative, provided the enquiry with what purported to be a sick note with the hope that the chairperson would allow for another postponement and thereby delaying and frustrating finalisation of the proceedings.
212. The chairperson of the enquiry gave an *ex tempore* ruling with regard to Mr Sesoko's guilt. He thereafter invited the parties to address him with regards to

aggravation and mitigation. Mr Sesoko's counsel declined to address the chairperson on mitigating factors as he was of the view that it would serve no purpose as Mr Sesoko was not there. IPID's counsel proceeded to advance aggravating factors where after consideration by the chairperson of the enquiry, he ruled that the appropriate sanction to be imposed in respect of Mr Sesoko's serious misconduct was that of a dismissal.

F. APPOINTMENT OF MR KGAMANYANE

213. Mr. Kgamanyane was appointed by me to act as Executive Director after I had suspended McBride. At the time of his appointment as acting Executive Director he was the provincial head of IPID in the Free State. I appointed him in an acting capacity and nothing more. He was a suitable candidate to be appointed as an acting Executive Director by virtue of his experience as well as his qualifications which include a Masters degree. His curriculum vitae will be made available with all corroborating documentation that will be provided to the commission once received.

SECTION B

AD SERIATIM RESPONSE TO CERTAIN PARAGRAPHS OF MCBRIDE'S STATEMENT

Ad paragraph 16

214. The allegation that IPID issued a progress report on 22 January 2014 is false. It is also false that McBride did not know about the 22 January 2014 report. The report dated 22 January 2014, which was signed by Khuba, the lead investigator was the final report. This was not only confirmed by Khuba, but the Werksmans

investigation also came to the conclusion that the 22 January 2014 report was the final report.

215. This conclusion on every conceivable basis, cannot be faltered. Prior to the final report of 22 January 2014, Khuba produced two draft reports, to the best of my recollection, one was produced in October 2013 and the other in November 2013. Those were drafts, hence Khuba never signed them. Any suggestion that one would sign a draft or so-called progress report is absurd. The final report which implicates Mr Anwar Dramat (Dramat) and Mr Shadrack Sibiya (Sibiya) is the one which McBride deleted crucial and material information from it in order to unlawfully exonerate Dramat and Sibiya.

Ad paragraph 17

216. I admit that McBride was appointed on Friday March 2014 by my predecessor. However, he did not resume his duties on that day. He assumed his duties on or about 6 March 2014. On his arrival, on his first day of duty, he wanted the files pertaining to the "rendition" investigation. Prior to his appointment Ms. Koekie Mbeki was the acting Executive Director of IPID. She resigned shortly after McBride's arrival at IPID.
217. If Ms. Koekie Mbeki is invited to testify, she would shed light on the final report of 22 January 2014 because when the investigation was finalized, she was the acting Executive Director of IPID.

[Handwritten signature]

Ad paragraph 18

218. Whilst McBride said he wanted to be briefed on all high-profile matters, I understand that the only matter that he was interested in was the rendition matter and never thereafter asked about other high-profile matters.

219. This paragraph confirms that McBride was not only briefed about the rendition matter on the first day in office, but he was told about the final report, hence he concluded that he was rejecting the outcome of the investigation as being not conducted independently and impartially in line with the IPID Act. Thus, McBride's evidence that he did not see the 22 January 2014 report is false and should be rejected outright.

Ad paragraph 19

220. This paragraph confirms that McBride was briefed with a case file and that he looked at the case file. Otherwise, it would have been absurd for McBride to be briefed about the investigation in the absence of the file and without him asking to look at the file before concluding that the investigation was not conducted independently and impartially and before he could formulate his view that the evidence contained in the file was not satisfactory, fair and credible.

221. It follows that during the briefing, Khuba told him about the report that he had already submitted to the NPA and that the investigation was finalized. It also follows that once he told him about the report that he had submitted to the NPA, McBride asked for it. That is logical, otherwise it would not make sense for McBride to reject the evidence in the file without wanting to see how Khuba dealt with the evidence in the report and the recommendations Khuba had made in the



report. Besides, neither the report by Khuba and the Werksmans report say that Dramat and Sibiya were at the crime scene.

222. McBride's understanding seems to be that in order for Dramat and Sibiya to be guilty of anything, they ought to have been at the scene of the assault, kidnapping and transportation of the Zimbabwean nationals. Such a proposition by McBride is absurd.

Ad paragraph 20

223. The contents of this paragraph are denied.

224. There was no additional investigation that was undertaken which Khuba was not aware of when he submitted the final report to the NPA. The issue of the analysis of the cell phone records was already been alluded to by Khuba in his report. It matters not whether the cell phone records analysis placed them at the scene of the crime. The available evidence according to Khuba and supported by Mosing's memorandum established that Dramat and Sibiya were implicated in the unlawful rendition and that they were aware of it, hence Khuba and advocate Mosing proceeded to submit the report for a decision to prosecute.

Ad paragraph 21

225. I deny the contents of this paragraph.

226. The 18 March 2014 report is the unlawful report which is the product of unlawful tempering with the original report (final report) of 22 January 2014. The 18 March 2014 report is word for word the same as the 22 January 2014 report save for

the paragraphs which McBride deleted in order to exonerate Dramat and Sibiya and also altering the conclusion.

227. McBride deleted information from the 22 January 2014 report which confirmed that he (McBride) was aware of the 22 January 2014 report, saw it, read it and made alterations from it. The Werksmans report also correctly found that McBride deleted information from the final report in order to exonerate Dramat and Sibiya thus defeating the ends of justice. This conclusion cannot be faltered having regard to the overwhelming documentary evidence and common cause facts.

228. When interviewed by Werksmans, McBride confirmed that he was making deletions on the computer. What else was he deleting if it was not the information from the final report? Werksmans has tabulated the paragraphs deleted in the final report and those added in the doctored report of 18 March 2014.

Ad paragraph 22

229. This paragraph is false and misleading.

230. The IPID final report signed by Khuba is the one which recommends that Dramat and Sibiya be criminally charged. McBride unlawfully altered the report in order to exonerate them. McBride has not explained in his statement why he instructed Khuba and Angus to collect the docket from the NPA.

231. The docket was indeed collected from the Director of Public Prosecutions, South Gauteng from the office of advocate Van Zyl. When they collected the docket

they phoned McBride to find out whether they should deliver the docket to him at Benoni where he was attending a conference/workshop or whether they should take it to his office. McBride informed them to take it to his office. Mosing had confirmed that the final report was in the docket submitted for a decision to prosecute. Khuba also confirmed as such.

232. They (Khuba and Angus) gave the docket to McBride when they took it to his office. McBride does not say that he did not read the docket. It is logical that he read the docket. When reading the docket, he also read the report which was in the docket. Khuba said that McBride had requested him to email the report to him in soft copy which he did. This is to make it easy in order to effect changes in the report electronically, hence McBride's concession that he deleted or worked on the document.

233. The evidence am told is that he was physically sitting in front of the computer making the changes to the report. This again, demonstrate without a shadow of doubt that McBride is misleading this Commission when he says that he did not see the 22 January 2014 report.

Ad paragraph 23

234. I deny the contents of this paragraph.

235. The 22 January 2014 report was the final report. That is why it was signed by Khuba. Ms. Koekie Mbeki if called to testify would explain as she did to Werksmans Mr. July that she told Khuba to sign the report alone and submit it to the NPA for a decision which he did. She also told Sesoko not to be directly involved in the investigation because the outcome could be challenged by those

implicated on grounds of Sesoko's criminal record which at the time he was in the process of trying to have it expunged.

236. There is no legislative provision which requires the final report to be signed by three people. That was not the case during the time of Ms. Koekie Mbeki. This requirement was introduced by McBride himself after his appointment.

Ad paragraph 24

237. I confirm that I suspended McBride in terms of the powers vested in me by the then statute before the provisions of section 6 of the IPID Act was declared unconstitutional by the court.

Ad paragraph 25

238. To the best of my knowledge, McBride has not in any of the affidavits he filed in the courts, challenged the Werksmans report. Hence no application to set it aside has ever been made.

Ad paragraph 26

239. The judgment was only confined to my powers as conferred by the impugned provisions. McBride has failed to motivate his allegations of ulterior motive and had faith and abandoned them before the High Court and the Constitutional Court. Both the High Court and the Constitutional Court declined to lift his suspension. He remained suspended until after 30 days had lapsed since the Constitutional court's judgment and after the Portfolio Committee of Parliament failed to take the decision as mandated by the Constitutional court order.

Ad paragraph 27

240. I deny the allegations in this paragraph.

Ad paragraph 28

241. I deny the contents of this paragraph. The allegation is not even substantiated, and neither is it supported by any evidence.

Ad paragraph 29

242. I deny the contents of this paragraph.

243. Werksmans was not appointed to look into the rendition, but it was appointed to investigate thereto, report and make a finding on which of the two reports was the final report. The terms of reference that I gave to Werksmans are self-explanatory.

Ad paragraph 30

244. I deny the contents of this paragraph.

Ad paragraph 34

245. McBride was at all material times legally represented, that he knew the legal process available to him if he was not happy with the Werksmans report and he chose not to follow the legal process to challenge the report.

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246. I accepted the findings and recommendations of Werksmans report because they were both factually and legally sound. The process they followed was procedurally and substantively fair and they afforded those they interviewed including McBride a fair opportunity to deal with the questions put to them as is evident from the transcripts.
247. It is also disconcerting that McBride seeks to impugn the integrity of a reputable and respected lawyer, Mr. July without producing any shred of evidence of impropriety. It is also disconcerting that this issue was not taken further with McBride when he testified to produce evidence of impropriety.
248. McBride made no allegations of impropriety in any of the affidavit he filed in the High Court, Labour court and the constitutional court and never in those affidavit and in argument presented on his behalf in those courts attack the Werksmans report as flawed and illegitimate.

Ad paragraph 35

249. The report was in the very docket that McBride instructed Khuba and Angus to collect from the NPA. It is false that I got the report from the NPA. It is correct that the report signed by Khuba was submitted to the NPA with the docket and it was part of the docket. The statement that McBride said he considered to formulate a view that he was not satisfied with the evidence, were attached to the report. How did he consider the statements but at the same time not having seen the report? There is no doubt that McBride was attempting to mislead this Commission when he said he did not see the 22 January 2014 report.

Ad paragraph 36

250. It is again disconcerting that McBride simply without evidence makes defamatory allegations that Werksmans was in cahoots with me to conduct a sham investigation and he was not called upon to produce evidence to back up his defamatory allegations when testifying.

251. Rule 3.8 of the Commission's rules requires a member of the Commission's legal team to put questions to any witness who gives evidence, including putting questions aimed at assisting the Commission in assessing the truthfulness of the evidence of that witness.

252. I deny that Werksmans was in cahoots with me to conduct a sham investigation. I deny that I wanted to get rid of McBride. It would have been improper and reckless of me if I simply turned a blind eye to the serious allegations of tampering and defeating the ends of justice when people died during this illegal rendition. Werksmans is one of the largest reputable law firms in the country.

Ad paragraph 37

253. I admit the contents of this paragraph.

Ad paragraph 38

254. I have no knowledge of the contents of this paragraph.

255. Even if that could have happened, there was nothing wrong in the supervisor advising his subordinates to cooperate with an investigation.

Ad paragraph 39

256. I deny that McBride strongly contested the Werksmans report.

257. McBride never contested the Werksmans report at all. In the High Court, and the constitutional court, McBride was contesting my powers to suspend and institute disciplinary proceedings against him as he was challenging the constitutionality of section 6 of the IPID Act. I have no knowledge of the leakage of the report to the media and I deny that I was involved in a false narrative to discredit "them" publicly. McBride has produced no evidence to back this false allegation.

Ad paragraph 40

258. The Werksmans report was the investigation report, the evidence is in the documents and the statements taken from the people who were interviewed, being the people upon whom the probative value of the evidence depends. McBride interdicted the disciplinary inquiry at the Labour Court, and the witnesses never got the opportunity to testify and advise evidence which implicated him in support of the charges that were levelled against him.

Ad paragraph 41

259. I deny the contents of this paragraph.

260. I have never instructed Kgamanyane to suspend Khuba and Sesoko. This is yet another unfortunate allegation which McBride has not backed up with evidence.

Ad paragraph 42

261. The contents of this paragraph are patently false.
262. I have already demonstrated that McBride knew about the report and deleted certain paragraphs from it.

Ad paragraph 43

263. I have already stated that McBride did not challenge the Werksmans report in any of the court processes that he had embarked upon.

Ad paragraph 44

264. The contents of this paragraph are a blatant misrepresentation of what transpired between Mr. July and the prosecutor.
265. Mr. July told the prosecutor that it would serve no purpose in a criminal trial for the prosecutor to call him because whatever evidence he would have tendered would have been hearsay. He told the prosecutor that he should call those persons mentioned in the report as witnesses.

Ad paragraph 45

266. The contents of this paragraph are patently false. This is yet another unfortunate allegation made by McBride without providing proof.



Ad paragraph 46

267. The contents of this paragraph of false.

268. McBride has not provided evidence to back up this allegation that Khuba and Sesoko were suspended on my instruction. I have already demonstrated without a shadow of doubt that not only did McBride knew about the 22 January 2014 report but that he read it and then deleted some crucial information from it.

Ad paragraph 47

269. Mr Israel Kgamanyane (Kgamanyane) stabilized IPID during McBride's absence and managed it professionally and efficiently.

Ad paragraph 48

270. The constitutional court did not pronounce on the substantive merits of McBride's misconduct.

Ad paragraph 53

271. I have already stated that Kgamanyane performed exceptionally well at the helm of IPID during McBride's absence. The contents of this paragraph are denied.

Ad paragraph 54

272. The settlement aforesaid was unlawful because Sesoko was dismissed following a properly constituted disciplinary inquiry. Sesoko approached the Labour court

unsuccessfully during the disciplinary inquiry to interdict it. The settlement was to circumvent the court process so that the arbitrator and the courts do not pronounce on the fairness or otherwise of Sesoko's dismissal.

Ad paragraph 55

273. Khuba pleaded guilty to unlawfully altering the report together with McBride and Sesoko.

Ad paragraph 56

274. The contents of this paragraph are denied.

Ad paragraph 58

275. I have no knowledge of any discussion between Mr Berning Ntlemeza (Ntlemeza) and Khuba.

Ad paragraph 60

276. McBride unfortunately does not say which were those disparaging remarks that I made about the judiciary. I deny that I have ever made disparaging remarks about the judiciary.



Ad paragraph 61

277. I deny any interference with the IPID's independence. At the time I suspended McBride I acted on the strength of the law that empowered me to do so until that provision of the IPID Act was declared unconstitutional by the court.

Ad paragraph 72

278. I have never instructed that IPID should pay for the legal costs incurred by the police.

Ad paragraph 73

279. I have no knowledge of these allegations.

Ad paragraph 74

280. I deny the contents of this paragraph.

Ad paragraph 75

281. I am unaware of any instability which was occasioned by the transfers in IPID.

Ad paragraph 76

282. I have no knowledge of the interactions between Kgamanyane and McBride. Kgamanyane is better placed to deal with this allegation, should the Commission grant me permission to call witnesses or the Commission mero motu call him



Ad paragraph 77

283. I deny that Kgamanyane was irregularly transferred.

Ad paragraph 131

284. The contents of these paragraphs are not worthy of a response as they are ridiculous and far-fetched. Legal practitioners place their expertise and services at the disposal of all who need their services without discriminating against anyone.

Ad paragraph 135

285. Mr Leon Mbangwa is not a foreigner nor is he an illegal immigrant. He is a South African citizen. His dispute with the Department of Home Affairs ended in court and it was resolved in his favour. The appointment of Mbangwa was a transfer from another organ of State. Mbangwa would be available to give evidence. He was transferred from KwaZulu Natal legislature, where he was a senior manager.

Ad paragraph 138

286. The reference group was a legitimate structure or group which was established in terms of the relevant provisions of the Public Service Act.



Ad paragraph 139

287. I deny that there was an ulterior purpose to the establishment of the reference group.

G. CONDONATION

288. The commission's legal team served me with a notice in terms of rule 3.3 of the rules of the commission. My attention was drawn to the fact that the commission's legal team intends to present the evidence of McBride from 11 April 2019.

289. In paragraph 5 of the notice the commission's legal team advised me that if I wish to give evidence, call any witnesses to testify on my behalf or cross examine McBride I had to apply within 14 calendar days of the notice in writing to the commission for leave to do so. Such application was to be submitted to the secretary of the commission.

290. Unfortunately, I have not been able to meet the 14 days given to me. It is for this reason that I apply for condonation. The reasons for the lateness are the following. Firstly I had to apply for legal assistance from the State through the office of the State Attorney. I engaged the services of a private attorney, a senior counsel and a junior counsel. I requested that the State carry the legal costs of my legal team. It took some time for the legal funding to be approved. In order not to be way out of time, I requested my legal team to start working on the matter so that by the time legal funding is approved, they do not have to start



from the beginning. Indeed my legal team started requesting relevant documents from the Department, Werksmans Attorneys and Hogan Lovells Attorneys.

291. It was only on 23 May 2019 that I had my first consultation with my legal team to consider the statement by McBride as well as the supporting documentation to his statement. This was to enable me to give my legal representatives instructions with regards to the allegations by McBride that seek to implicate me.
292. Further documentation is still in possession of IPID whilst others is in the archives at Hogan and Lovells and Werksmans attorneys. It has not been easy to obtain all the required documentation. The legal team had commenced to peruse the documents received whilst awaiting others. Confirmation of legal funding was communicated on 25 June 2019. I then arranged a further consultation with my legal team to finalise the statement.
293. My legal team finalised the statement on 30 June 2019 for me to consider, make comments and then sign before Commissioner of oath. I had to arrange for my attorneys to travel to KwaZulu Natal where I currently reside to collect the statement.
294. I submit that I took all reasonable steps to minimize the delay. This is evidenced by me instructing my legal team to commence working on the matter despite having no confirmation of me being legally funded. This was on the understanding that when the approval for funding is granted, it would retrospectively apply from the date the legal team started working on the matter.
295. This Commission performs an important function, thus the interest of justice is paramount requiring the Commission to hear my version in rebuttal to the unfounded allegations by McBride.



296. It is in the interests of the work of the commission that I be granted condonation, and then leave to cross examine, testify and call witnesses is necessary.

297. Neither the Commission nor the evidence leaders or McBride have been prejudiced by the late submission of the statement. Non have suffered prejudice. The Commission is still dealing with other matters arising from time to time and continues to hear evidence of other witnesses. Its work is not hamstrung by the delay. Beside, the delay is not excessive. It is compensated by fairness and interest of justice.

298. The delay was not deliberate. It was simply beyond my powers.

H. CONCLUDING REMARKS

299. In one of his judgments, the then Chief Justice of the Constitutional Court, Justice Arthur Chaskalson once said, *"The rights to life and dignity are the most important of all human rights. By committing ourselves to a society founded on the recognition of human rights we are required to value these two rights above all others. And this must be demonstrated by the State in everything that it does, including the way it punishes criminals. This is not achieved by objectifying murderers and putting them to death to serve as an example to others in the expectation that they might possibly be declared thereby."*

300. The right to life stands at the apex of all the rights in the Bill of Rights. It ensures the continued existence of humanity, and awareness of all life. Without it, there is no one to say, *"This is life,"* and therefore no concept of life itself.

301. Our social experience as South Africans recognizes also, the sanctity of life – the idea of the ultimate importance and inviolability of human life. In our faith-based



traditions the concept of the sanctity of life transcends its “inviolability”, to include the view that, because people are made in God’s image, human life as an inherently sacred attribute that should be protected and respected at all times.

302. And thus, to entrench the full measure of the protection of human life, clauses 9 – 11 of our Constitution ensure:

301.1 Protection for everyone before the law and the rights to equal protection and benefit of the law;

301.2 Protection and respect of everyone’s dignity; and

301.3 Protection of the rights to life itself.

Primitive communism

303. In 1877, Lewis Henry Morgan describes “*liberty, equality and fraternity of the ancient gentes.*” He details how “*communism in living*” was reflected in the village architecture of native Americans.

304. In this “*communism in living*” – which is as he defines it, as, “*the collective right to basic resources, the absence of hereditary status or authoritarian rule, and the egalitarian relationships that preceded exploitation and economic stratification in human history.*” Thus, humanity, by and large, enjoys equality, dignity and lives in solidarity.

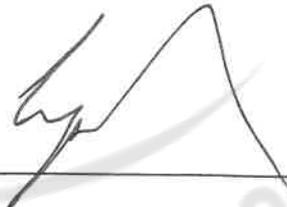
305. The transition from production for use to production for commodities for exchange – from slave owning to feudal and capitalist system of production; which transforms and reduces human life to a tradable economic asset in the labour market. The lesser the economic value of the individual, the lesser their

value as a human being. The intersection of race and class in South Africa, determined that the life of an African, in particular, would be viewed by many as worthless.

Rights in practice

306. Applied in lived reality, the clauses on equality, the right to life, dignity of the human person, etc. in our Bill of Rights, stand at the apex of rights, the “continued existence of humanity, and awareness of all life, as well as the sanctity of life.”
307. What is the value of the bill of rights if we do not make it part of our lived reality and experience? What are the implications thereof, for our country’s future stability and peace? Can our country’s best interests ever be best served by us taking tactical detours even in relation to the bill of rights? Can you do so and still maintain the people’s faith in the Constitution? We do not think so.
308. If we do not attend to issues affecting the rights to life, equality and human dignity, we will slowly but surely, be eroding the very foundations of our just order, and planting the seeds of future generalized turmoil.
309. One life lost is one too many. We must protect it ferociously. The issues relating to the former Executive Director of IPID, McBride must be dealt with fairly and honestly, for they go to the very heart of the struggle for justice and the future of our country. The matter at issue resulted in a number of African lives being lost, some foreign nationals and others, South African. The two South Africans were both key witnesses on the renditions case.

310. For centuries, African lives have been brutalized, emasculated and molested particularly by people claiming to hold the highest of moral virtue. This destruction and dehumanization of African lives must be brought to a stop. The few of us, that still remain true and committed to the cause for humanity, with all our might, shall ensure a stop to this anti-human behaviour.
311. The issues in question irrevocably, put an end to some people's rights to life, and to all their other personal rights. Nothing of the people was left, except the memory in others. The issues resulted in human lives being treated like objects to be eliminated. This is the issue that inevitably required to be investigated, but most importantly, the conduct of McBride in interfering with the cause of justice by deleting crucial information from a final investigation report which was already in the hands of the NPA, awaiting the NPA's decision. The mere fact that McBride never got to answer to these serious charges because Parliament decided to do nothing, is on its own a miscarriage of justice, and lessons should be learned from it so that it is never to be repeated.
312. And, as Chief Justice Moegoeng Moegoeng once said during one of his interviews, *"if the proper application of the Constitution and the law caused the heavens to fall, then let them fall."*



NKOSINATHI PHIWAYINKOSI THAMSANQA NHLEKO

CP2
 THIS SIGNED AND SWORN TO BEFORE ME AT Awadukuza ON THIS
 THE 07 DAY OF JULY 2019, THE DEPONENT HAVING ACKNOWLEDGED THAT
 THE DEPONENT KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT,

THAT IT IS BOTH TRUE AND CORRECT TO THE BEST OF THE DEPONENT'S KNOWLEDGE AND BELIEF, THAT THE DEPONENT HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH AND THAT THE PRESCRIBED OATH WILL BE BINDING ON THE DEPONENT'S CONSCIENCE.



COMMISSIONER OF OATHS

SOUTH AFRICAN POLICE
DETECTIVES
2019-07-02
KWADUKUZA
KWAZULU-NATAL

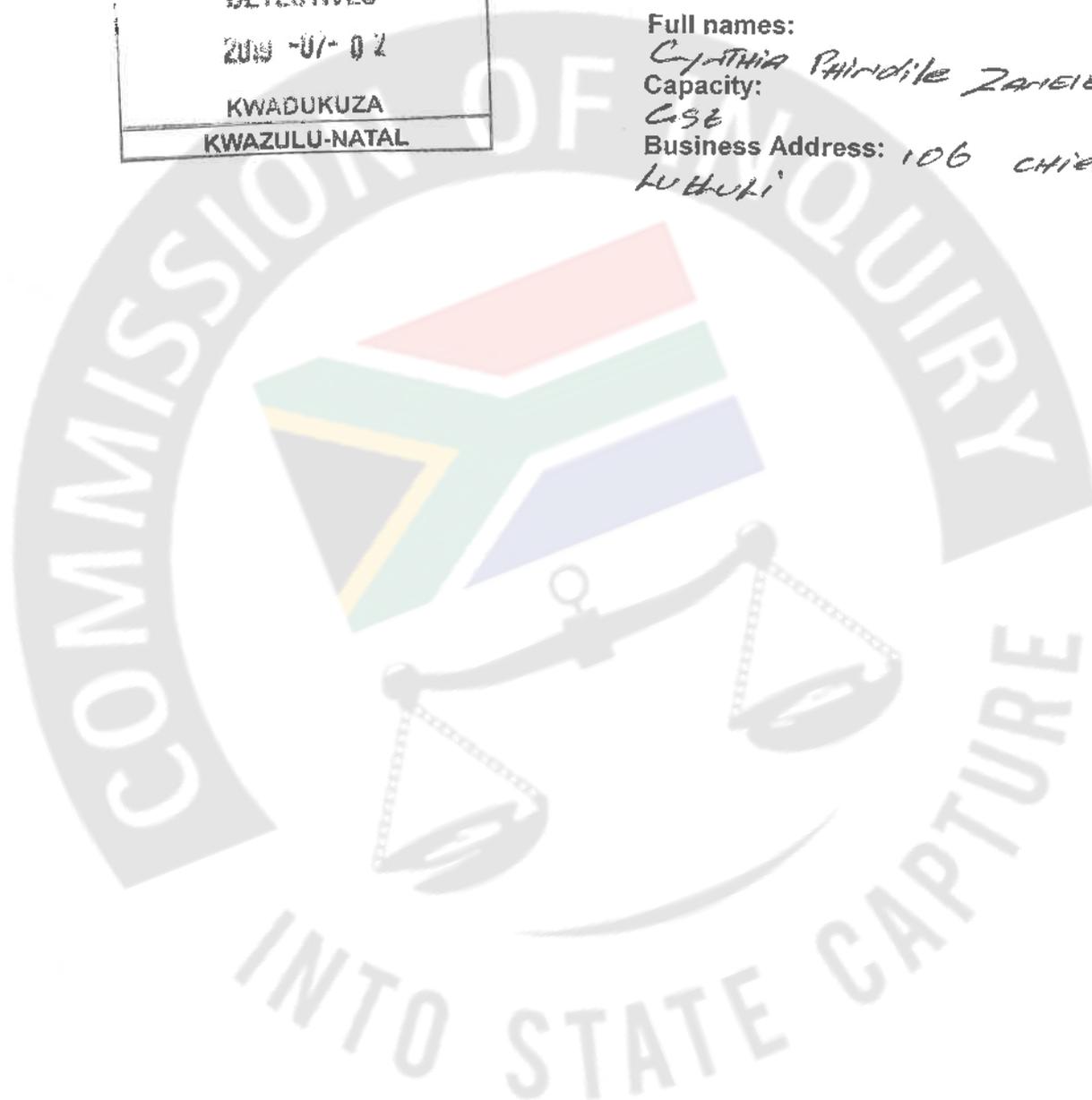
Full names:

Cynthia Phindile Zanele

Capacity:

CSE

Business Address: *106 Chief Abeshe Lutshuli*



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

In the matter between: –

NKOSINATHI NHLEKO

Applicant

And

THE COMMISSION'S LEGAL TEAM

First Respondent

ROBERT MCBRIDE

Second Respondent

SERVICE AND FILING SHEET

**HEREWITH: ANNEXURE NN1 TO THE APPLICANT'S SWORN STATEMENT
[WERKSMANS REPORT]**

DATED AT MIDRAND ON THIS THE 30TH DAY OF JULY 2019.


NDUMISO VOYI INC.

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REF: **F SITHOLE/NHL1/0001**

Email: Fezile@voyi.co.za

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TO: THE CHAIRPERSON

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

Hill on Empire
16 Empire Road
Parktown

FILED BY HAND

**AND TO: MABUNDA INC.
COMMISSION'S LEGAL TEAM**

2 Protea Road, Corner Riley
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Tel: 011 450 2284/1641

Fax: 011 450 1566

Ref: Algernon

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SERVED BY EMAIL



Fezile Sithole

From: Fezile Sithole <fezile@voyi.co.za>
Sent: 30 July 2019 09:19 AM
To: 'busani@mabundainc.com'
Cc: 'Ndumiso Voyi'
Subject: NKOSINATHI NHLEKO / THE COMMISSION'S LEGAL TEAM & ROBERT MCBRIDE
Attachments: SERVICE [WERKSMANS REPORT].pdf; Final Report 24 04 15.pdf

Dear Sirs,

Please find attachments herein for your attention.

Kind Regards

Fezile Sithole

Attorney

**NDUMISO VOYI INCORPORATED | Tel: 011-312 7537 | Fax: 086 246 2216 | Email: fezile@voyi.co.za |
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Main Road (nearest cnr LeRoux Road) Halfway House, Midrand, Johannesburg, South Africa, P O Box
2592, Halfway House, 1685** **Please consider the environment before printing this email and/or
any related attachments**





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





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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



- 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





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.



- 2.2.2 During the period November 2010 until January 2011, a number of Zimbabwean nationals were arrested by SAPS together with Zimbabwean police officials. The arrest of these individuals was explained by the DPCI, in response to a parliamentary question posed by a member of the Congress of the People. The DPCI, through Dramat, advised parliament that the individuals in question were deported as illegal immigrants and had been arrested on suspicion of having committed or been involved in certain crimes, such as ATM bombings. The DPCI in its parliamentary response, further stated that when it came to light that the arrested individuals could not be linked to specific crimes, the individuals were deported to Zimbabwe.
- 2.2.3 From the documentation provided for our review, it appears that The DPCI was aware that the response to the parliamentary question was not factually correct. It is our view that they deliberately misled parliament in this regard.
- 2.2.4 The circumstances surrounding the arrests appeared to be questionable and raised a number of legal considerations relating to, inter alia, the lawfulness of the process followed by the SAPS in deporting the relevant Zimbabwean nationals.
- 2.2.5 The arrests of the five Zimbabwean nationals was effected in three stages which will be summarised briefly, below.
- 2.2.5.1 *The first operation*
- 2.2.5.1.1 The first operation relating to the arrest of Zimbabwean nationals took place on 5 November 2010 where four Zimbabwean nationals (Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma) were arrested in Diepsloot and detained in the Orlando police station in Soweto. The reasons stated for their detention was that they were illegal immigrants. The operation was conducted by the DPCI head office and DPCI provincial office (TOMS). It is alleged that DPCI and TOMS were accompanied by two Zimbabwean police officers. The members of the operation



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

Maghawe Sibanda was later released by Zimbabwean police after allegedly spending eleven days in custody and being tortured. Dumisani Witness Ndeya died while in the custody of the Zimbabwean police.



2.2.5.2 *Second operation*

2.2.5.2.1 A second operation was conducted on or about 22 November 2010 by the same police units which conducted the first operation. In this second operation, Prichard Chuma was arrested in Diepsloot and detained at Alexandra police station under a Zimbabwean police reference number, being Bulawayo case number: 1337/11 and was booked out on 23 November 2010 and taken to Silverton police station.

2.2.5.2.2 It would appear that on 24 November 2010 W/O Selepe of the Gauteng TOMS unit of the DPCI, on instruction by Maluleke, booked out Prichard Chuma from Silverton police station and transported him to Beitbridge border post, accompanied by Maluleke, where Prichard Chuma was handed to Zimbabwean police.

2.2.5.2.3 Prichard Chuma was never seen again. It is presumed that he also died in Zimbabwe under police custody.

2.2.5.3 *Third operation*

2.2.5.3.1 Maluleke conducted this part of the operation with the assistance of the CIG (Crime Intelligence Gathering) members of Pretoria. Gordon Dube ("**Dube**"), a Zimbabwean national was arrested in conjunction with two other individuals. Dube had a number of criminal cases pending against him. During the arrest, which took place in Diepsloot on or about 11 January 2011, Dube was shot and injured.

2.2.5.3.2 Due to the fact that Dube was being treated at hospital instead of being held at Wierdabrug police station, he did not appear in court with the two other individuals who were arrested with him. He was, however, due to appear in court on 28 January 2011.



- 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 Weirdabrug police station. The same gun was allegedly used in the robbery in Zimbabwe referred to at 2.2.5.1.1 which resulted in the death of the Zimbabwean superintendent.
- 2.2.5.3.4 Maluleke informed the investigating officer, Lean Meyer, that Dube would be dealt with through immigration channels. Maluleke then transported Dube to Beitbridge and Dube never returned to South Africa.
- 2.2.5.3.5 Maluleke once again enlisted the services of CIG in order to trace an additional Zimbabwean national, Johnson Nyoni ("**Nyoni**"). Nyoni was traced in Diepsloot and arrested by the CIG members and the TRT unit of the Johannesburg Central police station, on 26 January 2011.
- 2.2.5.3.6 Nyoni was taken to the DPCI head office where the members who participated in the arrest of Nyoni were congratulated by Dramat. Photographs depicting the members involved in the arrest, Nyoni, two Zimbabwean police members and their vehicle, and the gun retrieved from Dube's possession, were taken by a third Zimbabwean police officer.
- 2.2.5.3.7 Nyoni was thereafter booked out on 28 January 2011 by Maluleke and taken, together with Dube, to Beitbridge border post. The entry in the registers at the relevant police station reflect that Nyoni was booked out for the purpose of extradition to Zimbabwe through the Beitbridge border post. Nyoni was killed while in the custody of the Zimbabwean police.



2.3 Relevant legislation

2.3.1 In conducting our investigation and for the purposes of drawing any legal conclusions, we have considered the following pieces of relevant South African legislation:

2.3.1.1 Immigration Act

2.3.1.1.1 The deportation of a fugitive must be dealt with in terms of an extradition agreement between South Africa and the country of nationality of the fugitive. If no such extradition agreement exists and the individual is an illegal; immigrant, the Immigration Act applies.

2.3.1.1.2 In the circumstance, there is no extradition agreement between Zimbabwe and South Africa. Notwithstanding that there exists an organisation formed in Zimbabwe in order to facilitate international police cooperation (namely, Southern African Regional Police Chiefs Co-operation Organisation) this organisation does not govern the deportation of Zimbabwean nationals who are illegal immigrants in South Africa. As such, the Immigration Act governs the deportation of Zimbabwean nationals who are illegal immigrants in South Africa.

2.3.1.1.3 The process which is required to be followed in deporting an illegal immigrant is governed by Section 34 of the Immigration Act. In terms of the aforementioned Section -

"34(1) *Without the need for a warrant, an immigration officer [our emphasis] may arrest an illegal foreigner or cause him or her to be arrested, and shall, irrespective of whether such foreigner is arrested, deport him or her or cause him or her to be deported and may, pending his or her deportation, detain him or her or cause him or her to be detained in a manner and at a place determined by the Director-General, provided that the foreigner concerned -*



- (a) shall be notified in writing of the decision to deport him or her and of his or her right to appeal such decision in terms of this Act;
- (b) may at any time request any officer attending to him or her that his or her detention for the purpose of deportation be confirmed by warrant of a Court, which, if not issued within 48 hours of such request, shall cause the immediate release of such foreigner;
- (c) shall be informed upon arrest or immediately thereafter of the rights set out in the preceding two paragraphs, when possible, practicable and available in a language that he or she understands;
- (d) may not be held in detention for longer than 30 calendar days without a warrant of a Court which on good and reasonable grounds may extend such detention for an adequate period not exceeding 90 calendar days, and
- (e) shall be held in detention in compliance with minimum prescribed standards protecting his or her dignity and relevant human rights."

2.3.1.1.4

It is evident from the above that an immigration officer is mandated to follow a particular process when dealing with illegal immigrants.

2.3.1.1.5

The Immigration Act defines 'immigration officer' to mean –

"an officer appointed by the Director-General to perform the functions of either the permitting office, port of entry or inspectorate as contemplated in the [Immigration] Act."



2.3.1.1.6 None of the police officers involved in the Rendition are or were, at the time, immigration officers in terms of the Immigration Act and as such, none of these persons were legally authorised to conduct a deportation of any Zimbabwean nationals.

2.3.1.1.7 The Immigration Act further provides in terms of Section 49 that-

"(2) Anyone who knowingly assists a person to enter or remain in, or depart [our emphasis] from the Republic in contravention of this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding five years;

...

(7) Anyone participating in a conspiracy of two or more persons to conduct an activity intended to contravene this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding seven years: Provided that if part of such activity is conducted or intended to be conducted in a foreign country, the offence shall be punishable by imprisonment not exceeding eight years without the option of a fine.

(8) Anyone who wilfully or through gross negligence produces a false certification contemplated by this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding three years.

(9) Anyone, other than a duly authorised public servant, who manufactures or provides or causes the manufacturing or provision of a document purporting



to be a document issued or administered by the Department, shall be guilty of an offence and liable on conviction to imprisonment not exceeding 10 years without the option of a fine. "

2.3.1.1.8 It is evident that the procedure to be followed in respect of deporting an illegal immigrant is governed by the Immigration Act. The fact that the Immigration Act was not complied with in the Rendition, was part of the impetus giving rise to an investigation of the Rendition.

2.3.1.1.9 It is further evident that a deliberate contravention of the Immigration Act is a crime, subject to the penalties stipulated in the Immigration Act.

2.3.1.1.10 As already stated above, the Immigration Act was contravened during the Rendition.

2.3.1.2 **The Act**

2.3.1.2.1 The objectives of the Act are set out in Section 2 of the Act which provides-

- "(a) to give effect to the provision of Section 206(6) of the Constitution establishing and assigning functions to the Directorate on national and provincial level;*
- (b) to ensure independent oversight of the South African Police Service and Municipal Police Services;*
- (c) to align provincial strategic objectives with that of the national office to enhance the functioning of the Directorate;*
- (d) to provide for independent and impartial investigation of identified criminal offences allegedly committed by members of the South African Police Service and Municipal Police Services;*



- (e) to make disciplinary recommendations in respect of members of the South African Police Service and Municipal Police Services resulting from investigations conducted by the Directorate;
- (f) to provide for close co-operation between the Directorate and the Secretariat; and
- (g) to enhance accountability and transparency by the South African Police Service and Municipal Police Services in accordance with the principles of the Constitution."

2.3.1.2.2

Regulation 5(i) 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.



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



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



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.

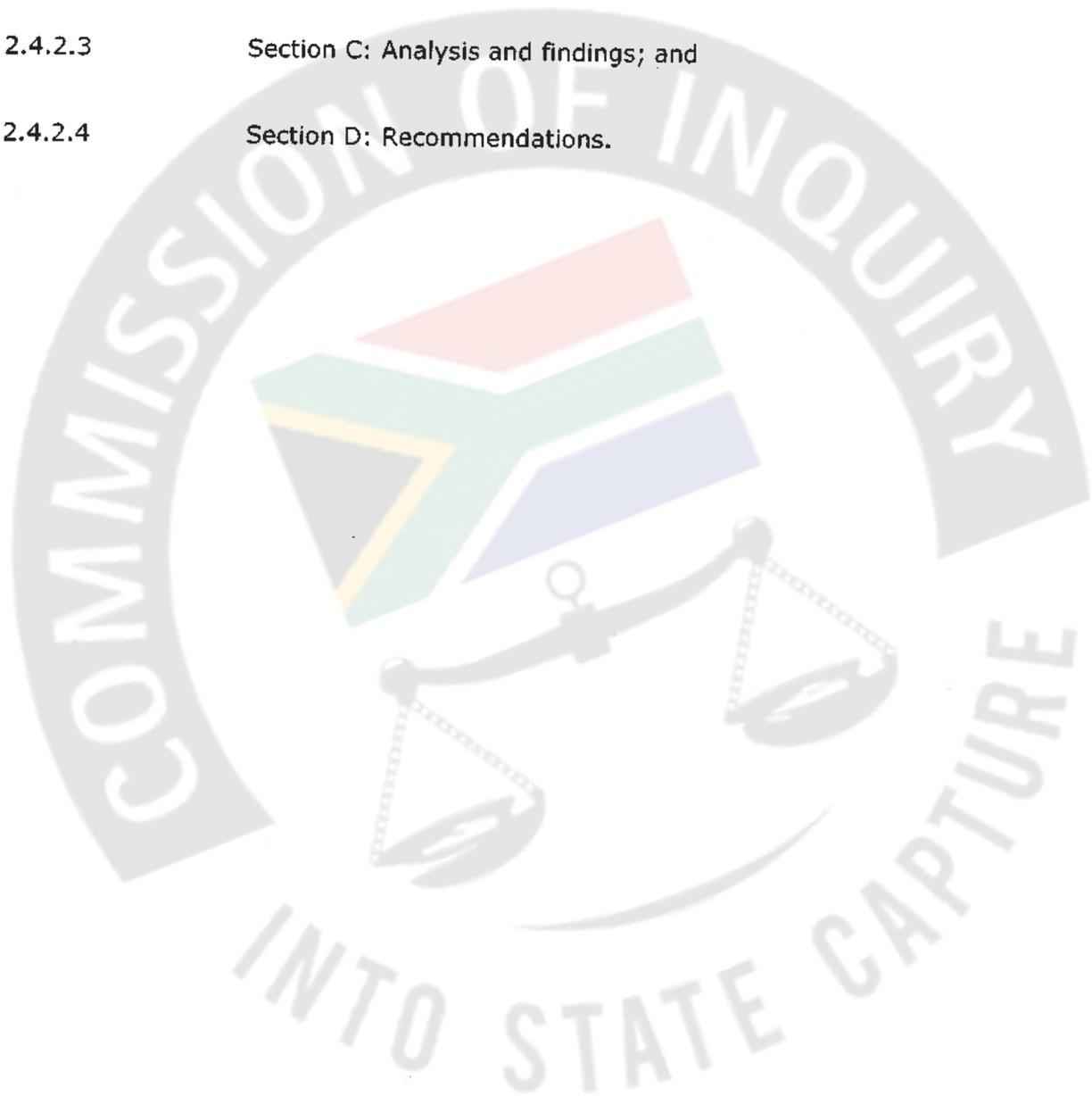
2.4.2 For ease of reference, we have divided the report into separate sections as follows-

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.





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 Sibiyá. 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, Sibiyi, 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, Sibiyi, Verster and Maluleke who had all refused to provide these warning statements.
- 3.1.25 Moukangwe corroborated Khuba's testimony that Dramat, Sibiyi and Maluleke had refused to provide warning statements when they approached them pursuant to the advice of Mosing and Moeletsi:



- 3.1.25.1.1 Dramat told them that he wants to involve his attorney and would only give a statement after discussing same with his attorney:
- 3.1.25.1.2 Sibiya requested that he be sent questions and would thereafter respond to such questions.
- 3.1.25.1.3 Maluleke refused and advised them that he will answer all the questions in Court. Vester, who in their view was quite knowledgeable on the operation, was also refusing to provide them with a statement.
- 3.1.26 According to Moukangwe this was the only outstanding information in the First Report and that in their view, nothing further could be done to obtain this information. As such, the First Report was not contemplated to be subject to any further amendment or revision.
- 3.1.27 Moukangwe went on to say that the report on 22 January 2014 was final as they could not force anyone to make statements or give evidence.
- 3.1.28 Moukangwe informed us that he does not know anything about the Second Report and was not involved in the drafting of the said report.
- 3.1.29 Mosing corroborated Khuba and Moukangwe's evidence in relation to the involvement of his office in the investigation into Rendition. Mosing explained that the Preliminary Report was prepared on 22 October 2013, compiled by Khuba and Moukangwe and was presented to Mosing and Moeletsi for consideration. This was a draft report. Mosing and Moeletsi advised Khuba and Moukangwe to conduct further investigations.
- 3.1.30 On 12 November 2013 Mosing addressed an NPA internal memorandum to Nxasana and Jiba updating them on the status of the investigation conducted by IPID. Mosing attached the Preliminary Report to this memorandum. In this memorandum Mosing, *inter alia*, summarised the evidence gathered at that stage and stressed the need for further investigation to be conducted in relation to certain aspects of the investigation as per paragraph 5.6 of the Preliminary Report.



- 3.1.31 We are not able to confirm as to whether or not Nxasana had ever received a copy of the internal memorandum mentioned at 3.1.30 as he has failed to respond to our requests to meet.
- 3.1.32 Paragraph 4 of Mosing's memorandum specifies the outstanding investigations required at that stage to finalise the report. This includes-
- 3.1.32.1 the reports of analysis of cell phone records;
- 3.1.32.2 the report on analysis of vehicle tracking information of the members involved during the operations and;
- 3.1.32.3 the statements from Dramat, Sibiya and Maluleke.
- 3.1.33 Khuba and Moukangwe continued with their investigation and requested warning statements from the above individuals, all of which refused to provide warning statements. The investigators thereafter obtained the analysis of cell phone records and finalised their report.
- 3.1.34 On 22 January 2014 Khuba met with Mosing and Moeletsi to submit the report as a final report. According to Mosing, Khuba and Moukangwe felt that they had now completed their work and that it was up to Nxasana to make a decision on the merits of the case.
- 3.1.35 Mosing advised Khuba to include his (Khuba's) statement as the investigator in order to explain how he conducted the investigation. This was the only outstanding statement in the report of 22 January 2014. Mosing further advised us that two days after 22 January 2014, Khuba included his statement into the report and subsequently signed same. Khuba did not change the date of the report to signal the exact date that the report was signed. The First Report was complete and submitted to Mosing for further action.
- 3.1.36 On 13 February 2014, Mosing addressed an internal memorandum to Jiba and Chauke, indicating that the investigations have been finalised and that the report from IPID has been submitted for the purposes of considering the merits of the case. The First Report was attached to this



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 Sibiya and in conjunction with his discussions with Sesoko, it was decided that it would not be possible to prove that Sibiya 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.



- 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.



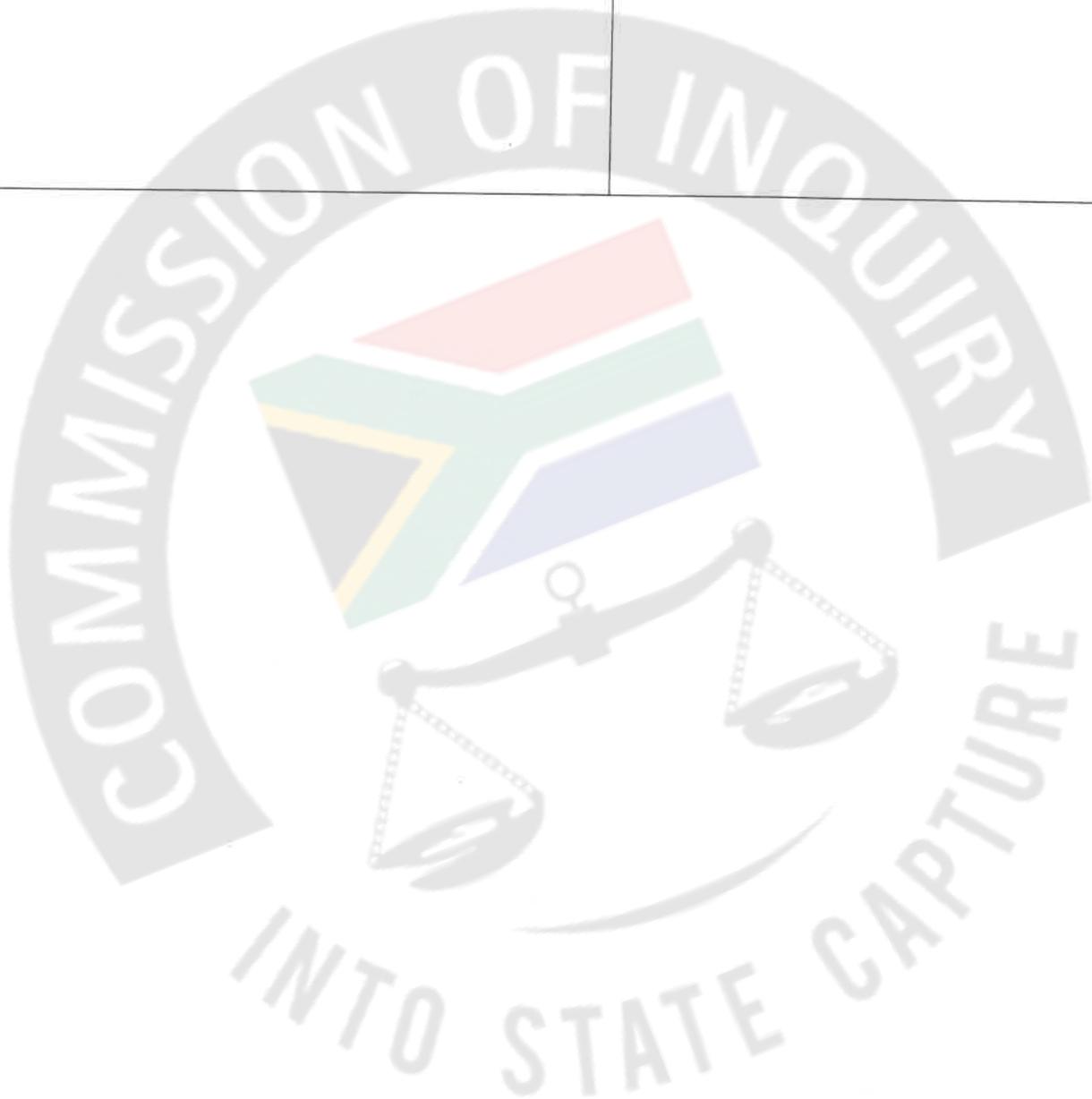


4 SECTION B: DELETION OF EVIDENCE FROM THE FIRST REPORT

IPID REPORT 1	IPID REPORT 2
<p data-bbox="177 652 858 748">Page 9 The statement of Ndanduleni Richard Madilonga</p> <p data-bbox="167 900 858 989">The statement of Madilonga states as follows in the relevant paragraphs</p> <p data-bbox="167 1001 858 1374">: <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="167 1483 858 2210"><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="884 659 1543 748">Page 9: statement of Richard Ndanduleni Madilonga</p> <p data-bbox="884 760 1543 850">The following paragraphs are contained in this report in terms of Madilonga's statement:</p> <p data-bbox="884 900 1543 1230"><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="884 1242 1543 1331">(The paragraph that follows the above preceding paragraph has been deleted)</p> <p data-bbox="884 1343 1543 1765"><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="884 1825 1543 1957">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.



<p>Page 21 para 5.3 Emails by Captain Malufeke:</p>	<p>Page 21 para 5.3</p>
<p>The quoted email states the following :</p> <p><i>"He sent emails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. <u>The emails were sent to the PA of Dramat, Phumla, Zimbabwean Police and members of Crime intelligence</u>".</i></p>	<p>The same paragraph in this report does not mention all the individuals to which the emails were sent to, it reads:</p> <p><i>He sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. <u>He sent email to Zimbabwean police trying to find out how they travelled back home and that he is still tracing the remaining suspects...</u>"</i></p>
<p>Page 22 Letter to Stakeholders dated 20/08/2012:</p>	<p>Page 21: Letter to stakeholders</p>
<p>The said letter states thus:</p> <p>"Letter to stakeholders dated 20/08/2012: <i>The letter was generated the same day indicating that in August 2010 <u>General Sibiya and General Dramat</u> went to Zimbabwe to discuss matters of cooperation on cross border crimes. <u>General Sibiya</u> was appointed as the coordinator on the cooperation issue between two countries. Other letters about the arrest of Zimbabwean national in connection with the murder of Zimbabwean police refers to the cooperation agreed during the same meeting.</i></p>	<p>In this report, the names of the people involved in the cooperation with Zimbabwean Police are no longer mentioned; The letter reads thus in this report :</p> <p>"Letter to stakeholders dated 20/08/2012: <i>The letter was generated the same day indicating the trip to Zimbabwe to discuss matters of cooperation on cross border crimes."</i></p>



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>Cell phone Records of Maluleke are analysed in the following manner :</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 Captain "Cowboy" Maluleke (08277295181 <i>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.</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>



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>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>This report contains the cellular phone records of the above employees:</p> <p><i>" The record confirms that they were at the scene even though the allegation of theft is not corroborated"</i></p>
<p>Statement by Khuba explaining his findings, the relevant deleted paragraph in the second report is as follows</p> <p><i>" On 28/01/2013 he was called by the former Executive Director who gave him the following documents stating that she received them from the Secretary of Police, report on Illegal Renditions dated 25/06/2012 accompanied by Warrants of Detention (BI-1725) for the following Dumisani Witness Ndeya, Shepard Chuma, Nelson Ndlovu and three Notification of the Deportation of an Illegal Foreigner (DNA-1689) for Nelson Ndlovu, Shepherd Chums and t1.4aghwawe Sibanda. The documents are file in the docket as per A36. An enlarged copy of death</i></p>	



<p>certificate was made from a copy of Sunday Times Newspaper he received from Brigadier Zangwa dated 23/10/2011 titled " journey to death in an unmarked car' and is filed as per A35.</p>	
<p>Khuba's findings on Dramat Page 29.</p>	<p>Khuba's findings on Dramat</p>
<p>Analysis and Findings of Dramat's cell-phone records is recorded by Khuba as such:</p> <p>"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>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>



<p><i>between Zimbabwean Police and General Dramat which took place on 05/11/2010 coincide with the date of the 4th of November 2010 which according to cell phone records, General Dramat was called at 20h56 by Lt Col Madilonga seeking permission to allow Zimbabwean Police to enter into the country. Since the Zimbabwean Police where at Bel Bridge between 20h00 and 21h00, it is logical that they arrived in Gauteng late at night, leaving them with the, opportunity to have the meeting with General Dramat in the morning of the 5th of November 2010 as stated in the Success Report."</i></p>	
<p>• Committed Government Resources into the Operation Khuba makes the following finding :</p> <p><i>"Evaluation of the above findings: Despite the fact that General Dramat as an Accounting Officer did not sign any claim of Captain Maluleke, delegating responsibility to Major General Sibiya to assist the Zimbabwean Police in tracing • wanted suspects invariably commit government resources into an unlawful operation that amount to a criminal offense</i></p>	<p>• Committed Government Resources into the Operation</p> <p>Nothing is said of this aspect</p>
<p>Congratulating the officers for the arrest of John Nyoni . Khuba makes the following finding in this regard:</p> <p><i>"Evaluation of the above findings: Words of appreciation from General Dramat show both interest in the arrest of the Zimbabwean Nationals and his knowledge of the operation. if the operation was lawful he would not have</i></p>	<p>•Congratulating the officers for the arrest of John Nyoni.</p> <p>Nothing is said about this issue</p>



<p>warned them not to tell anyone about it".</p>	
<p>He received communication regarding success reports and photos of the operation through his personal assistant Phumla</p> <p><i>"According to the information retrieved from the seized laptop, Captain Maluleke sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails 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>
<p>• He was kept informed of the developments in the operations that led to the arrest of wanted Zimbabwean Nationals.</p> <p><i>• "The cell phone records of General Sibiya shows 30 SMS sent to General Drama! at various milestones of the operation. He also received an SMS from Captain Maluleke shortly after the arrest of Zimbabwean Nationals. He never responded to any of the SMS which may suggest that they were only informing him of the progress".</i></p> <p><i>•</i></p>	
<p>Report to parliament in response to the allegation:</p> <p><i>"A copy of the letter sent by Zimbabwean authority to Col Ntentseni 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>	



<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>	
<p>Recommendations</p>	<p>Recommendations</p>
<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.



5.1.1.9 In our opinion, and for the reasons discussed above, the additional information which according to Khuba necessitated the submission of the Second Report, was not sufficient or material and therefore did not require a change in the outcome of the report.

5.1.1.10 In light of the above, Khuba's alleged reasons for publishing the Second Report do not seem to be completely truthful.

5.1.2 Discrepancies between the two reports

5.1.2.1 The following material discrepancies are noted between the first and Second Reports-

5.1.2.1.1 Portions of the statements of individuals who implicate Dramat's involvement in the Rendition, which appear in the First Report, have been deleted in the Second Report;

5.1.2.1.2 the summary of evidence relating to the cell phone records of individuals has been altered to leave out information of evidentiary value;

5.1.2.1.3 the analysis and findings of the Second Report have been altered and truncated to no longer evaluate the evidence against Dramat which alteration coincides with the deletion of information implicating Dramat, in the individual statements; and

5.1.2.1.4 the recommendation in the Second Report has changed drastically, from recommending the prosecution of Dramat, Sibiya, Maluleke, Radebe, Nkosi and Makoe in the First Report, to no longer recommending the prosecution of the aforesaid individuals other than Maluleke.

5.1.2.2 The discrepancies listed above, and specifically the removal of pertinent evidence, is not justified in any way and appears to be effected in order to justify the conclusion that Dramat should not be prosecuted for his involvement in the Rendition.



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.



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?**



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



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 Mgwanya, 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 officer 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.



- 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



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



REFER TO
EXHIBIT Y 7

**SUPPLEMENTARY AFFIDAVIT
& ANNEXURES
OF
ROBERT MCBRIDE**

A large, faint watermark of the Commission of Inquiry into State Capture logo is visible in the background, centered behind the text.

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

**ANSWERING AFFIDAVIT IN RESPONSE TO THE SUPPLEMENTARY AFFIDAVIT
OF MR ROBERT JOHN MCBRIDE**

I, the undersigned,

SANDILE JULY

do hereby state under oath that:

- 1 I am an adult male attorney of the High Court of South Africa, of full legal capacity. I practise as an attorney and director at Werksmans Attorneys Incorporated ("*Werksmans*").
- 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. In certain instances, although I may not have personal knowledge of what I say, such facts are corroborated by objective evidence from the documents that are not disputed and could not be disputed, thus making it unnecessary to call anybody to corroborate them.
- 3 I have read the supplementary statement deposed to by Mr Robert John McBride ("*McBride*") and I will respond to the contents of same later in this affidavit. Before I respond *ad seriatim* to McBride's statement, I understand

(based on what I have observed from the televised coverage of McBride's testimony) that there are four specific issues that the Chairperson of the inquiry has required me to address in this affidavit:

- 3.1 Firstly, whether Messrs McBride, Humbulani Innocent Khuba ("*Khuba*") and Mathews Sesoko ("*Sesoko*") (to whom I refer collectively as "*the trio*") were "*ever warned or cautioned of their rights to remain silent*".
- 3.2 Secondly, whether certain correspondence was deliberately not communicated to Mr McBride by Werksmans because the investigation was driven by ulterior motive on the part of Werksmans.
- 3.3 Thirdly, whether I had refused to testify in the criminal case against the aforesaid trio (in circumstances where I had recommended criminal charges against them).
- 3.4 Fourthly, whether the deletions effected by the trio on the first report were considered by me to be unlawful.

MY BACKGROUND

- 4 As indicated above, I am an admitted attorney with the following academic qualifications obtained from the University of Witwatersrand: B Proc, LLB, and a Higher Diploma in Tax Law. I further obtained a Diploma in Arbitration from the Arbitration Foundation of Southern Africa ("*AFSA*") accredited by the University of Pretoria.

5 I have been practising as an attorney since my admission in 1996. I specialise in the field of labour law. Part of my practice entails conducting investigations into employee misconduct, disciplinary hearings, CCMA arbitrations and conducting motion and trial proceedings at the Labour Court. I have also acted as a Judge on several occasions both in the Labour Court of South Africa and the High Court of South Africa. As a result of my academic qualifications and experience in law practice I consider myself qualified to make and provide legal opinion on matters concerning the law. As a lawyer, I am not a truther, I deal and rely on facts.

6 In my experience as an attorney and having represented a shared and diverse grouping of clients, there is one thing I will never exchange for fees, that is my integrity. The profession I serve demands that an attorney's integrity be beyond reproach. This is how I have practised law and it is the reason why I have been able to make a success of it in the process. I would imagine that this is one of the reasons my clients refer work to me.

7 I have deposed to this affidavit under oath and appreciate the value and my obligation of taking the prescribed oath. Chief amongst the values of taking the prescribed oath is not to mislead this Commission when testifying before it. I will uphold the oath throughout my testimony before the Commission.

THE STRUCTURE OF THIS AFFIDAVIT

8 I have read the supplementary affidavit deposed to by Mr McBride and respond to the contents of his affidavit below. I depose to this affidavit to advise the Commission of the facts at the time the Werksmans report (dated 24 April 2015) was compiled. In doing so, I address the following topics:

8.1 The appointment of Werksmans to investigate the conduct of certain members of the Independent Police Investigative Directorate ("IPID") and whether such appointment was improper.

8.2 Whether a report was submitted by Mr Khuba of IPID on 22 January 2014 and, if so, the status of that report, both factually and legally.

8.3 Allied to the aforesaid are the following additional issues:

8.3.1 Whether Mr Sesoko was at any stage Mr Khuba's supervisor at IPID.

8.3.2 Whether, as a matter of law, an IPID investigator has the power to sign an investigation report.

8.3.3 Whether, as a matter of law, the Executive Director of IPID is required to sign an investigation report prepared by an investigator.

8.3.4 Whether a second report was prepared by IPID and, if so, the status of that report.

8.3.5 Whether there was any justification for the amendment of the first report and the recommendation contained therein to create what became the second report with a different recommendation.

8.3.6 Whether the Minister acted improperly or interfered with the independence of IPID by requesting the case information regarding the Rendition investigation.

9 In addressing the above issues, the following legal instruments must be addressed:

9.1 The Independent Police Investigative Directorate Act, 1 of 2011 (*"the IPID Act"*);

9.2 The Regulations to the Act (*"the IPID Regulations"*);

9.3 The Civilian Secretariat for Police Service Act 2 of 2011 (*"the CSPS Act"*); and

9.4 The Independent Investigative Directorate Standard Operating Procedure 2013 – 2014 (*"the SOP"*).

10 I will focus on the following relevant sections in the IPID Act:

10.1 section 2 (objects of the Act);

10.2 section 4 (independence and impartiality);

- 10.3 sections 6 and 7 (appointment and responsibilities of the Executive Director);
- 10.4 section 8 (composition of national office);
- 10.5 section 15 (establishment of consultative forum);
- 10.6 section 16 (composition of forum);
- 10.7 section 17 (functions of forum);
- 10.8 section 20 (appointment of provincial heads);
- 10.9 section 21 (responsibilities of provincial head);
- 10.10 section 22 (appointment of investigators);
- 10.11 section 24 (functions and investigative powers);
- 10.12 section 26 (integrity measures); and
- 10.13 section 28 (types of matters to be investigated).
- 11 I will also focus on the following Regulations:
- 11.1 Regulation 2(5) (reporting of matters to be investigated to Directorate);
- 11.2 Regulation 4(4), (8) and (9) (investigation of deaths in police custody or as result of police action or omission or both);

- 11.3 Regulation 5(2)(c), (3)(g) and (3)(i) (investigation of criminal matters);
- 11.4 Regulation 7 (investigation of referred matters);
- 11.5 Regulation 15 (reporting to the Minister); and
- 11.6 Regulation 16 (General).

12 I will focus on the following relevant sections of the CSPA Act:

- 12.1 Section 3(e) to (f) (objects of Act);
- 12.2 Section 5(1)(h) (objects of Civilian Secretariat); and
- 12.3 Section 6(1)(e) to (j) (functions of Civilian Secretariat).

13 I will focus on the following relevant clauses in the SOP:

- 13.1 Clause 1;
- 13.2 Clause 4;
- 13.3 Clause 5 (from 5.1.1, up to and including 5.4.18);
- 13.4 Clause 6.2;
- 13.5 Clause 7.3; and
- 13.6 Clause 7.3.31.

14 Given that both the first and second report dealt with the rendition of the Zimbabwean Nationals, I would like to commence my affidavit by highlighting the meaning of the term "*rendition*" and South Africa's stance on the right to life. The word "*rendition*" is defined as follows:

"the practice of sending a foreign criminal or terrorist suspect covertly to be interrogated in a country with less rigorous regulations for the humane treatment of prisoners"

And:

"a government sponsored abduction and extra-judicial transfer of a person from one country to another with the purpose of circumventing the former country's laws on interrogation, detention and torture."

15 The United Nations considers the rendition of a citizen of another country to be a crime against humanity. Article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹ provides:

"Article 3

¹ Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1)

1. *No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.*

2. *For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."*

16 A copy of this international instrument will be made available at the hearing of this matter.

17 The European Court of Human Rights in 2014 condemned the Government of Poland for participating in a CIA rendition, ordering Poland to pay restitution to a man who had been illegally abducted. (*Husayn (Abuzubayah) v. Poland (Application No. 7511/13), dated 24 July 2014*). The Court held that Poland had cooperated in the preparation, abduction and execution of the CIA rendition and in the secret detention and interrogation operation within its territory. Further that Poland had failed in its duty under the European Convention of Human Rights to ensure that individuals within its territory were not subjected to torture, inhumane treatment or punishment. A copy of this judgment will be made available at the hearing of this matter.

18 In this affidavit I deal with the rendition of several Zimbabwean Nationals ("**the Rendition**"). When I do so, it is in the sense defined above and against the backdrop of the international instruments and jurisprudence set out above.

- 19 What is certain from the international instruments is that a rendition is a very serious violation of international law and human rights.
- 20 The Rendition involved the arrest in South Africa with the assistance of South African Police officials of Zimbabwean Nationals apparently in connection with the murder of a Zimbabwean Superintendent. Following their arrest, they were unlawfully transported to the border and handed over to Zimbabwe Police and subsequently murdered in Zimbabwe. In the Werksmans report a detailed summary of the Rendition is provided in paragraph 2.2.5. It describes the arrest of five Zimbabwean Nationals over three operations on 5 and 23 November 2010 and 11 January 2011, respectively. This remains a fair reflection of the Rendition.
- 21 South Africa is a constitutional democracy where the Constitution is the supreme law of the country. The right to life of everyone living in South Africa is sacrosanct and not subject to the limitation clause in the Constitution. This was confirmed by the apex court of the country, the Constitutional Court, in the matter of *S v Makwanyane* CCT3/94) [1995] ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; 1995 (2) SACR 1 (CC) and later in *Minister of Home Affairs and Others v Tsebe and Others, Minister of Justice and Constitutional Development and Another v Tsebe and Others* (CCT 110/11, CCT 126/11) [2012] ZACC 16; 2012 (5) SA 467 (CC); 2012 (10) BCLR 1017 (CC) (27 July 2012). The constitutional court explaining the importance and guarantee of the right to life in extradition cases, remarked as follows:

"[67] We as a nation have chosen to walk the path of the advancement of human rights. By adopting the Constitution, we committed ourselves not to do certain things. One of those things is that no matter who the person is and no matter what the crime is that he is alleged to have committed, we shall not in any way be party to his killing as a punishment and we will not hand such person over to another country where to do so will expose him to the real risk of the imposition and execution of the death penalty upon him. This path that we, as a country, have chosen for ourselves is not an easy one. Some of the consequences that may result from our choice are part of the price that we must be prepared to pay as a nation for the advancement of human rights and the creation of the kind of society and world that we may ultimately achieve if we abide by the constitutional values that now underpin our new society since the end of apartheid.

[68] If we as a society or the State hand somebody over to another State where he will face the real risk of the death penalty, we fail to protect, respect and promote the right to life, the right to human dignity and the right not to be subjected to cruel, inhuman or degrading treatment or punishment of that person, all of which are rights our Constitution confers on everyone. This Court's decision in Mohamed said that what the South African authorities did in that case was not consistent with the kind of society that we have committed ourselves to creating. It said in effect that we will not be party to the killing of any human being as a punishment – no matter who they are and no matter what they are alleged to have done."

- 22 Both judgments are reported, but I nevertheless attach copies marked “**SJ1**” and “**SJ2**”, respectively.
- 23 The principles set out above by the Constitutional Court were, in my view, completely undermined in the rendition of the Zimbabwean Nationals yet no one other than Captain Maluleke has been taken to task about their involvement in the rendition of Zimbabwean Nationals.

OBJECTIVE FACTS

- 24 The facts set out under the present heading were obtained from the Rendition Investigation Docket (which included the first and second report referred to above) and the interviews conducted by Werksmans with the following individuals.
- 24.1 Mr Khuba;
- 24.2 Colonel Botsotso Moukangwe (“**Col. Moukangwe**”);
- 24.3 Mr Glen Angus (“**Mr Angus**”);
- 24.4 Mr Sesoko;
- 24.5 Adv. Anthony Mosing (“**Adv. Mosing**”);
- 24.6 Advocate Sibongile Mzinyathi (“**Adv. Mzinyathi**”);

- 24.7 Advocate George Baloyi ("**Adv. Baloyi**");
- 24.8 Advocate Kehla Masenyani Andrew Chauke ("**Adv. Chauke**");
- 24.9 Mr McBride; and
- 24.10 Advocate Norngcobo Jiba ("**Adv. Jiba**").
- 25 Before Mr Khuba conducted any investigations into the illegal rendition of Zimbabwean Nationals, two investigations into the Rendition had already been undertaken by –
- 25.1 the Directorate for Priority Crimes Investigation ("**the DPCI**"); and
- 25.2 the Civilian Secretariat, as indicated in the statement of Ms Jennie Irish Qhobosheane. (A copy of the statement of Ms Irish-Qhobosheane is contained in the second report.)
- 26 The investigation conducted by the DPCI exonerated the members implicated in the Rendition.
- 27 It appears that the investigation conducted by Civilian Secretariat was never concluded, but was transferred to the Independent Police Investigative Directorate ("**IPID**") by the Civilian Secretary for Police. This was confirmed by Mr Khuba in two reports compiled by him. According to Mr Khuba (in an interview conducted with him by Werksmans) the docket handed to the IPID by Civilian Secretariat, had statements that had been taken by Col. Moukangwe and one Mr Khosa.

28 The Rendition case docket was handed to IPID by the Secretary for the Police Service appointed in terms of section 7(1) of the Civilian Secretariat for Police Service Act, 2 of 2011 ("**the CSPS Act**"), Ms Jennifer Irish-Qhobosheane.

29 In terms of the IPID Act and the CSPS Act there must be cooperation between IPID and the Civilian Secretariat due to the mandate of the respective bodies. I do not intend to burden this affidavit with the areas or issues that these bodies should co-operate on, those are adequately set out in the two Acts. Having said this, IPID is equally free to foster co-operation and conclude memoranda of agreement with other statutory bodies such as the National Prosecuting Authority ("**NPA**").

30 Due to the fact that the matter was referred to IPID by the Secretariat, it had to be investigated pursuant to the provisions of Regulation 7. (In the second report Mr Khuba stated that the investigation was handed over to IPID pursuant to section 28(1)(h) of the IPID Act. The corresponding provision in the IPID Regulations is Reg. 7.) Reg. 7 reads:

"7.

(1) *The investigation of matters referred to the Directorate as contemplated in section 28(1)(h) of the Act must be done in accordance with this regulation.*

(2) *The Executive Director or the relevant provincial head, as the case may be, must designate an investigator to investigate a matter contemplated in section 28(1) (h) of*

the Act which had been referred to the Directorate for investigation.

(3) *An investigator designated in terms of sub-regulation (2) must, as soon as is practicable, determine whether the referred matter relates to –*

(a) *a matter contemplated in regulation 4, in which case the provisions of that regulation apply with such changes as may be required by the context;*

(b) *a criminal matter, in which case the provisions of regulation 5 apply with such changes as may be required by the context, notwithstanding the fact that the criminal matter to be investigated may not be listed in sub-regulation (2) of that regulation; or*

(c) *a matter not dealt with in regulation 4 or 5, in which case the Executive Director or relevant provincial head, as the case may be, must give directions regarding the investigation, the period within which the investigation must be completed and the manner of disposal of the referred matter.*

(4) *An investigator designated to do an investigation in terms of this regulation must inform the person who referred the*

matter for investigation in writing of the progress made with the investigation at least once per calendar month."

31 During 2011/2012, Mr Khuba was designated by the then Executive Director of IPID, Mr Francois Beukman, as an investigator to investigate the Rendition case. The IPID Act came into operation on 1 April 2012. As such, Mr Khuba's designation to investigate was made before the IPID Act came into operation. Despite this, Mr Khuba conducted his investigation pursuant to the provisions of section 28(1)(f) and (h) of the IPID Act. Mr Khuba states this fact at paragraph 3, page 25 of his report dated 22 January 2014. At the time Mr Khuba was designated to investigate the Rendition case his substantive position was that of Director: Investigations. Mr Sesoko, on the other hand, at the time of Mr Khuba's designation, also occupied the position of Director: Investigations. It is important to emphasise that Mr Sesoko was under no circumstances or at any stage in his IPID career, Mr Khuba's boss or supervisor.

32 Once appointed to investigate the Rendition case, Mr Khuba assembled a team of investigators from Limpopo to assist him with the investigation. In conducting his investigation, Mr Khuba was assisted by Mr Sesoko, Col. Moukangwe and Advocates Mosing and Billy Moeletsi ("**Adv. Moeletsi**").

33 Two reports were produced pursuant to the IPID investigation, both signed by Mr Khuba and submitted to the NPA for a prosecutorial decision. The first report was dated 22 January 2014 and was signed and submitted by Mr Khuba to the NPA on or about 24 January 2014 for a prosecutorial decision. The second report was dated 18 March 2014 and was signed by Messrs Khuba, Sesoko,

and McBride. This report was submitted to the NPA in approximately April 2014. The first report, amongst others, recommended criminal prosecution against Generals Anwa Dramat ("**Dramat**") and Shadrack Sibiya ("**Sibiya**"). The second report did not recommend criminal prosecution against either Generals Dramat or Sibiya but recommended that only one person, being Maluleke be prosecuted for the operations.

34 The Minister of Police at the time, Mr Nathi Nhleko ("**the Minister**") was faced with glaring discrepancies between the reports emanating from the same institution and the same person. He suspected tampering with the reports. Consequently, on 23 February 2015, the Minister appointed Werksmans to conduct an investigation into the reports submitted by IPID in relation to the Rendition. The Minister prescribed the following terms of reference for the investigation:

**[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-General Dramat; Major-General Sibiya; and any other officers mentioned in the original report:

[5.4] *the circumstances under which the report and the docket handed in the NPA and what happened to docket whilst in the NPA possession;*

[6]...

[7] *I require your report within two weeks from the date of your appointment, an extension may however be granted at your request.* [Emphasis added]

35 I attach marked "SJ3" a copy of the letter of instruction.

36 I was the lead lawyer in the investigation. Soon after my appointment as lead investigator, I assembled a team of attorneys and a candidate attorney to assist in conducting the investigation. The investigation team was made up of the following professionals: Mr Sandile Tom (admitted attorney and associate at the time of the investigation), Ms Kerry Badal (admitted attorney and associate at the time of the investigation) and Mr Kwazi Buthelezi who was a candidate attorney, and me. I supervised the finalisation of the report that was subsequently submitted to the Minister. To ensure that the investigation was sound in analysis and free from bias, I enlisted the services of my fellow director at Werksmans, Mr Bradley Workman-Davies. His role was to independently assess whether the conclusions reached by the investigation team were rationally connected to the evidence.

37 The terms of reference are self-explanatory and I understood my mandate to be to independently assess the two IPID reports dated 22 January 2014 and 18

March 2014, respectively. In particular, I was required to consider why the authors of these reports came to different conclusions based on the same information and/or facts. In so doing, I was required to investigate, based on the available information, whether there was any misconduct or offence, and whether there was a *prima facie* criminal case against Generals Dramat and Sibiya, as mentioned in paragraph 5.3 of the terms of reference.

38 As previously stated, in conducting the investigation and compiling the Werksmans report, we had copies of and considered the Rendition investigation docket. It included the first and second reports. I attach marked "SJ4", a list of all the documents provided to Werksmans. The list of documents (annexure "SJ4" hereto) was referred to as Annexure A to the Werksmans report. Despite a diligent search, I could not find the actual Annexure A to the Werksmans report, I believe that same is in archives. What is marked "S4" is the word version of Annexure A. I will provide Annexure A as soon I have obtained it from archives. I will, later in this affidavit, refer to and attach copies of the first and second reports.

39 I have previously spelt out the names of the people we interviewed.

The first Report

40 The first report, dated 22 January 2014, was initially submitted by Mr Khuba to the NPA together with the docket and recommendations on 22 January 2014 pursuant to section 21(1)(d) of the Act read with Regulation 4(9) of the Regulations published in terms of the Act. This report was approximately 26 pages in total and submitted for the purposes of a prosecutorial decision by the

NPA. This report did not incorporate, the investigator's statement explaining the manner in which the investigation was conducted. I attach marked "SJ5" a copy of this report.

41 On 22 January 2014, Adv. Mosing advised Mr Khuba that in order to complete the investigation report, he was required, as the investigator designated in terms of the IPID Act, to include his statement explaining how he conducted his investigation. Mr Khuba, in accordance with this advice, duly prepared a statement and incorporated it into the report. Having done so, Mr Khuba signed the report and submitted it to the NPA on or about 24 January 2014. He did not amend the report to reflect the date on which his report was submitted to the NPA. Nothing, however, turns on this. This document, submitted on 24 January 2014, but dated 22 January 2014, became what we understand today to be the first report. I attach marked "SJ6" a copy of this report.

42 Mr Sesoko was involved in the preparation and the submission of the first report to the NPA. His involvement was not as Mr Khuba's supervisor but, according to Mr Khuba, as an advisor with a prosecutorial background. Mr Khuba received and took counsel from Mr Sesoko on the procedure of submitting an investigation report to the NPA.

43 Mr Sesoko alleges in paragraph 17 of his affidavit dated 20 November 2019 that he had not seen the first report. This is not true; as a fact he knew of the existence of the first report. I say this for the following reasons:

43.1 He was guiding Mr Khuba on the process to be followed when submitting the report to the NPA.

43.2 On 23 January 2014, Mr Khuba sent an email to Mr Sesoko attaching an unsigned and incomplete soft copy of a report; a day later, on 24 January 2014, Mr Khuba submitted the first report with his statement incorporated therein. Three things are noteworthy about the report sent by Mr Khuba to Mr Sesoko via email:

43.2.1 It recommended that no criminal charges be laid against General Sibiya.

43.2.2 It was not submitted to the NPA; and

43.2.3 It did not contain Mr Khuba's statement as an investigator.

43.3 During February 2014, Mr Sesoko, Mr Khuba and Colonel Moukangwe attended at the offices of the NPA demanding that warrants of arrests be issued against the Generals.

43.4 Mr Sesoko also confirmed his actual knowledge of the existence of the first report in paragraph 19 of his supplementary affidavit to the Commission by stating the following:

"Khuba had already sent me a report in January to facilitate handing over to the Secretary of Police; I do not recall giving McBride any report prior to the final report submitted to him for consideration and signature. I also do not recall Khuba asking me to pass a report on to McBride." [Emphasis added]

43.5 In his settlement agreement with the IPID to conclude his disciplinary hearing, Mr Khuba admitted that when he submitted the first report together with the docket to the NPA for decision, he was accompanied by Mr Sesoko. A copy of Mr Khuba's settlement agreement is attached marked "SJ7".

44 These events took place before Mr McBride joined IPID. Mr McBride joined IPID as its Executive Director on 3 March 2014.

45 Between January 2014 and 3 March 2014, there was no Executive Director at IPID, not even in an acting capacity. This, as I understand it, is what Messrs Khuba and Sesoko have stated of which Mr McBride is aware. Ms Koeki Mbeki, who was the Executive Director at the time, was no longer at IPID during this period. To the extent that there was a need to have reports "signed" or "approved" by Ms Mbeki, which I submit was not necessary, this, as a fact, could not happen; she was not physically there to do so.

46 It should be emphasised that Mr Khuba, Col. Moukangwe and Mr Sesoko sought arrest warrants in February 2014, after the first report (dated 22 January 2014) had been submitted to the NPA. At that stage a warning statement had not yet been obtained from either General Sibiya or Colonel Maluleka. Each of them had at that point been invited to make a statement but had refused to do so. Messrs Khuba and Sesoko and Col. Moukangwe could not have applied for arrest warrants unless and until a report had been submitted. It follows that, the fact that warning statements had not been received from General Sibiya and Colonel Maluleka was not considered by Messrs Khuba and Sesoko and

Col. Moukangwe to be relevant to the question of whether a report had been finalised. A final report as defined in the SOP had indeed been submitted.

47 I must add that a warning statement is not material evidence. Further it is not a requirement for a report or an investigation for that matter, to be final.

48 Furthermore, arrest warrants were sought with knowledge of the fact that an analysis of General Sibiya's cell phone records had already been done but were contradicted by the eye witnesses.

49 The submission of a docket together with a report with recommendations does not prevent an investigator, in this case Mr Khuba, from placing additional information on the docket which has already been submitted to the NPA. This is precisely what Mr Khuba purported to do on 28 February 2014, he obtained additional information (i.e. the warning statements from General Sibiya, who had previously refused to provide statements) that he wished to place in the docket that had already been submitted to the NPA for a prosecutorial decision. Mr Khuba requested or instructed Adv. Mosing to place these additional documents in the docket, and *not* to collect the docket as claimed by Messrs McBride and Sesoko, subsequently, by Mr Khuba.

The second report

50 Mr McBride joined IPID on 3 March 2014 and within two days of having done so requested an update on all the high profile cases that were being handled by IPID. Mr McBride met with Mr Khuba on 5 March 2014. It was evident from the discussions held between Messrs Khuba and McBride at this meeting, that

Mr McBride had considered the first report. Subsequently, Mr Khuba briefed Mr Sesoko on the matter. The following day, 6 March 2014, Mr Khuba met with Messrs McBride, Sesoko and Angus. Mr Angus alleged that Mr McBride requested him (Mr Angus) to review the manner in which the investigation was conducted to ensure that it had been conducted appropriately. Mr Angus, however, advised Mr 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 Mr McBride requested Mr Khuba to collect the docket from the NPA and to provide him with every document he (Mr Khuba) possessed regarding the Rendition investigation.

51 On 7 March 2014, Messrs Khuba and Angus visited Adv. Van Zyl at the offices of the Director of Public Prosecutions (*"the DPP"*). Adv. Van Zyl was in possession of the docket at the time. According to Adv. Van Zyl, they requested him to provide them with the docket and he did so. Messrs Khuba and Angus state that Adv. Van Zyl requested them to sign for the removal of the docket. Mr Khuba signed for the hand-over of the docket and Mr Angus affixed his signature to confirm that he had witnessed the docket being handed over. After removing and collecting the docket, they took it straight to Mr McBride and briefed him.

52 From approximately 7 March 2014, Messrs Khuba, Sesoko and McBride began working on what has been described as *"the second report"*. It is this report that was subsequently signed by the trio. I attach a copy of this report marked *"SJ8"*.

- 53 In an undated Office Note prepared by Adv. Chauke, he provides an account of movement of the docket from his office to IPID and to the office of the NDPP. A copy of this Office Note is attached marked "SJ9".
- 54 Each of the trio subsequently claimed that the second report was the official report. In truth, however, it was no more than a rehashed version of the first report with information that had implicated Generals Dramat and Sibiya deleted. No fresh analysis was undertaken by the trio to arrive at the conclusion they did. This was the nub of the conclusion we reached in the Werksmans report.
- 55 It should be emphasised that the Werksmans report was prepared in accordance with what was required by the Minister in his terms of reference. When our investigation was complete and the report compiled, we handed it over to the Minister on 24 April 2015. Werksmans recommended that the Minister institute disciplinary action against the trio, and further that they be criminally charged for defeating the ends of justice or administration of justice. I will deal with these recommendations later in this affidavit.

RESPONSE TO THE COMPLAINTS REGARDING THE REPORT

- 56 It is clear from the affidavits and statements submitted by Messrs McBride, Khuba and Sesoko that they take exception to virtually everything contained in the Werksmans report. There is a plethora of complaints raised by them about the report. This report was issued in April 2015. Notwithstanding this, none of them has so far challenged the report or sought to have it set aside on any of

the grounds advanced in their statements. I would have expected them to challenge the report at an appropriate forum and fully ventilate their complaints. Mr McBride would surely have appreciated that he had such remedy available to him in law. In fact, Mr McBride challenged his suspension all the way to the Constitutional Court. Yet, nowhere in that challenge did he seek to have the report reviewed and set aside.

57 Although the report was prepared by my office, it was adopted by the Minister as his own report and he sought to act upon it. When an application was brought against the Minister's decision, the only challenge focussed on the powers of the Minister, not the contents of the Werksmans report *per se*. As matters currently stand, the contents of the Werksmans report have never been challenged. As such, they remain final and binding. They can only be set aside by a court order.

58 I now turn to deal with the specific issues that I understand the chairperson of the Commission wishes me to deal with.

The alleged failure to caution the trio

59 I deny that the trio were given a misleading impression regarding the purpose of the interviews. I deny that Messrs McBride and Khuba ever enquired about the status of the interviews with Werksmans. I invite them to direct the Commission to the instances where they enquired about the status and nature of the Werksmans investigation. The only person who made such inquiry about

the 'status and nature' of the investigation was Mr Sesoko. He posed the following question at the beginning of his interview:

"MR SESOKO: Whether I am here as a suspect in a criminal investigation or a disciplinary investigation, because when I went through the terms of reference, the Minister says you must investigate whether there was misconduct or crime committed. So I need to establish what is my status.

MR TOM: Yes your status, Mr Sesoko, you are not a suspect in criminal proceedings or proceedings to be conducted, to be conducted either by the Minister or IPID for that matter. This investigation is to understand as what, why do we have these two reports which have conflicting information in a way or which have recommendations that are different."

60 I have referred to Mr Tom previously. He was part of the Werksmans team. I deny that he misled Mr Sesoko when he told him that he (Mr Sesoko) was not a suspect in a criminal or disciplinary investigation. As I will explain further in this affidavit, the Werksmans investigation was not a criminal investigation. Secondly by the time Mr Sesoko was interviewed Werksmans did not suspect him of any disciplinary misconduct. At the time of interviewing Mr Sesoko no one in the Werksmans investigation team knew whether he committed misconduct. At the time of the interview, there was no *prima facie* view held by Werksmans to the effect that Mr Sesoko committed misconduct. Mr Sesoko was just a person of interest given that he signed the second report.

61 The Werksmans investigation was not conducted by a police officer performing his functions in terms of section 35 of the Constitution or section 41 of the Criminal Procedure Act, No.51 of 1977, as amended. These pieces of legislation prescribe that any accused person who is arrested for allegedly committing an offence has a right (a) to remain silent and (b) to be informed promptly –

“(a) to remain silent;

(b) to be informed promptly –

(i) of the right to remain silent; and

(ii) of the consequences of not remaining silent.”

62 These rights accrue to persons arrested for allegedly having committing a crime. These rights must be read to them, in other words they “*are cautioned*” by a law enforcement officer performing functions in terms of the Constitution and the Criminal Procedure Act. The trio were not being arrested or threatened with arrest during the Werksmans investigation. Werksmans is a private law firm. It simply does not have powers of arrest. There was no obligation upon Werksmans to caution the trio of their alleged rights to “*remain silent*” and of the “*consequences of not remaining silent*”.

63 Although there was no obligation upon us to caution them, the trio was fully aware of and were advised of the nature of the Werksmans investigation from its inception: we had provided them with a copy of the terms of reference.

64 Furthermore, the trio was consistently advised and represented by the law firm Adams & Adams Attorneys ("*Adams & Adams*") around the time of the interviews with Werksmans. Although a representative of Adams & Adams did not attend any of the interviews held with the trio, from the facts below it is clear that they had received counsel from Adams & Adams and were aware of the nature and purpose of the investigation.

64.1 On 27 February 2014 my candidate attorney at the time, Mr Thandukwazi Buthelezi, addressed an email to Mr McBride requesting his permission to consult with Mr Khuba. The email was sent in my name, as such I refer to it as my email. Attached to my email were two documents: the Minister's terms of reference and a letter requesting his permission to consult with Mr Khuba. I attach marked "**SJ10**" and "**SJ10(i)**", respectively, copies of my email and my letter requesting permission from Mr McBride. The terms of reference have already been attached to this affidavit. Unbeknown to me at the time Mr McBride's email was not RMcBride@ipid.co.za (as indicated on my email and to which I addressed the email) but RMcBride@ipid.gov.za. For obvious reasons, I did not receive a response to this email.

64.2 I understand that Mr Buthelezi looked Mr McBride's email up from the IPID website and may have made a mistake when he put the address down. Mr Buthelezi and I did not receive anything to show that the email sent to the wrong email address had "*bounced back*" or was not delivered to the addressee.

64.3 On 2 March 2015 the same email was forwarded to Mr Sesoko under cover of a separate email, requesting him to grant Mr Khuba permission to consult with Werksmans for the purposes of the investigation. In the said email, I also attached the Minister's terms of reference and the request to consult with Mr Khuba. I also attached a copy of the almost identically worded letter I had addressed to Mr McBride (changed *mutatis mutandis* for Mr Sesoko's purpose) dated 27 February 2015. I attach hereto a copy of this email as annexure "SJ11" and "SJ12", respectively, copies of my email and the attached letter.

64.4 On 6 March 2015, I received a letter from Mr Jac Marais of Adams & Adams placing his firm on record and referring to my letter dated 27 February 2015. In his letter Mr Marais stated that Mr Khuba had not been granted permission to consult with Werksmans. I attach marked "SJ13" a copy of Mr Marais' letter. For the sake of completeness, I quote the content of this letter herein below.

- "1. *We refer to your letter dated 27 February 2015 which has been referred to us for reply to on behalf of the Independent Police Investigative Directorate ("IPID").*
2. *We shall procure instructions from IPID as soon as possible and furnish you with a substantive response to your letter shortly.*
3. *We confirm that, in the interim, Mr. Khuba has not been granted permission to consult with you. We furthermore*

request that you direct any further correspondence in relation to your investigation to the writer hereof.

Yours faithfully

- 64.5 This letter from Mr Marias does not distinguish between the letter of 27 February 2015 sent to Mr McBride and the almost identically worded letter of the same date sent to Mr Sesoko. Whatever the case, Adams & Adams had been provided with a copy of the letter. It is, with respect, unlikely that Adams & Adams would not have discussed the content of this letter with Mr McBride, as well. Mr Marais's letter of 6 March 2015 is thus confirmation that Messrs McBride, Sesoko and Khuba had in fact received my letter of 27 February 2015 and my email of 2 March 2015.
- 64.6 It follows from the aforesaid that as at 6 March 2015 the trio was aware of the nature of the investigation that Werksmans was appointed to conduct as they were not only in possession of the terms of reference but were also being advised by Adams & Adams.
- 64.7 From 6 March 2015 until 26 March 2015, my office communicated with the trio through Adams & Adams. I attach copies of correspondence exchanged between Werksmans and Adams & Adams during this period as annexure "SJ14".
- 64.8 Importantly, among this correspondence (annexure "SJ14"), is a letter from Adams & Adams received on 23 March 2015. I refer to pertinent

paragraphs of this letter below as it demonstrates my contention that the trio was aware of the purpose of the investigation:

- “1. *As previously indicated, we represent the Independent Police Investigative Directorate (“IPID”). Your correspondence below addressed to Mr. M. Sesoko has been referred to us for consideration and reply.*
2. *Our instructions are to facilitate IPID’s cooperation with your inquiry, as referred to in your letter under reply, including in respect of interviews with Mr. McBride, Mr. Sesoko and others. We request that you address all further correspondence to us.*
3. *With regard to the aforesaid we draw your attention to the judgement per Fabricius J in the matter of Independent Police Investigative Directorate and Robert McBride v Minister of Police and Minister of Public Service and Administration under case number 6588/2015.*
4. *Our client is confident that your inquiry will not lead to any adverse findings against our client in relation to the allegations contained in your Terms of Reference (or at all). We confirm that our client’s cooperation with your investigation is without prejudice to its rights in relation to the unlawfulness of the Minister’s powers referred to above and the pending litigation.*

5. We will consult with our client's Mr. Sesoko as soon as possible whereafter we will revert regarding suitable dates and times for an interview. To assist you with planning we confirm that our client's Mr. M. Sesoko has indicated he will probably be out of town tomorrow. We are, however, appreciative of the time pressures that you are under and will therefore endeavour to revert as soon as possible.

[Emphasis added]

64.9 The highlighted portions of this letter demonstrate not only that Mr McBride's allegation that we had given them a misleading impression of the purpose of the interview (as expressed in his supplementary affidavit) are false but reveals the lengths to which he is prepared to go to mislead the Commission.

64.10 On 26 March 2015, I received two telephone calls from Mr Marais. In the first telephone call, Mr Marais indicated to me that he was representing IPID and not individuals. Later that same day he telephoned me a second time to advise me that his mandate had been terminated by IPID.

64.11 On 31 March 2015, I received an email from Mr Marais informing me *inter alia* that his mandate had been terminated by IPID and that the contact person was a certain Mr Viceroy from IPID. I attach a copy of Mr Marais's email marked "SJ15". This email was clearly sent to me in error as it referred to a High Court application and the interaction between the

two firms had nothing to do with any High Court matter. I quote the content of this letter hereunder.

- "1. We refer to the above matter ("the Application") as well as your correspondence of 25 March 2015.*

- 2. Please be advised that the First Applicant, per Mr. Kgamanyane the Acting Head of IPID, has instructed us that it will not proceed with the aforesaid Application, and, we will, accordingly, shortly deliver:*
 - 2.1. a Notice of Withdrawal of Application by the First Applicant. Please note that the Second Applicant is proceeding with the Application; and*
 - 2.2. a Notice of Withdrawal of Attorneys of Record.*

- 3. Any further correspondence to the First Applicant in relation to the Application should, accordingly, be directed to Mr. Viceroy Maoka, Acting Head of Legal Services, at vmaoka@ipid.gov.za.*

- 4. Any correspondence in relation to the Application addressed to the Second Applicant should be directed to the writer hereof.*

With kind regards"

64.12 On 2 April 2015, I addressed a letter to Mr McBride at his email address of RMcBride@ipid.gov.za requesting to consult with him on 7 April 2015. I attach a copy of this letter together with the covering email as annexure "SJ16".

64.13 I addressed this email to Mr McBride directly (as opposed to addressing it to Adams & Adams) because I understood from the information received from Mr Marais that his mandate had been terminated. I later learned from media reports that Mr McBride had been placed on precautionary suspension by the Minister on 24 March 2015 and that Mr Israel Kgamanyane was appointed as the Acting Executive Director of the IPID. Unbeknown to me at that time Mr McBride did not have access to his work emails as a result of his suspension. I was unaware of these facts or details around Mr McBride's suspension conditions.

64.14 On 13 April 2015, still labouring under the impression that Mr McBride was deliberately not responding to my email, I addressed a letter to Mr Kgamanyane, advising him of my difficulty in securing an interview with Mr McBride and sought his intervention in the matter. I attach hereto a copy of the said letter and covering email as annexure "SJ17".

64.15 Between 13 and 15 April 2015, Mr Kgamanyane brought my letter of 13 April 2015 to Mr McBride's attention and the latter responded to him by way of a short message service ("SMS") stating the following:

"Hi there. You can pass on my cellphone number to Werksmans.

Thanks."

64.16 On 15 April 2015 I received an email from Mr Marais informing me that my letter of 13 April 2015 to Mr Kgamanyane was forwarded to Mr McBride for his response. Mr Marais recorded that my email of 2 April 2015 was sent to an email address that Mr McBride did not have access to and accused me of directing correspondence to Mr McBride directly instead of him (Mr Marais). I attach a copy of this letter marked "SJ18".

64.17 Mr Marais' suggestion that I had acted improperly in sending the email directly to Mr McBride was without foundation. It will be recalled that he had telephonically advised me that he did not act for any individuals but for IPID itself and, later, that IPID had terminated his mandate.

64.18 On 16 April 2015 I addressed a letter to Mr Marais recording my disagreement with his views expressed in his email of 15 April 2015. I reminded him of what he had telephonically advised me on 26 March 2015 and explained that had I been aware that he continued to act for Mr McBride I would have contacted him instead of his client. I attach hereto a copy of this letter together with the covering email to Mr Marais marked "SJ19" and "SJ20", respectively. What is noteworthy about this letter is that in paragraph 5 thereof, I recorded the following:

"[5] Instead of advising us that he is represented by you, he sent an SMS to Mr Gamanyane (sic) which was in turn forwarded to us, which reads as follows:

"Hi there. You can pass on my cellphone number to
Werksmans. Thanks."

64.19 I called Mr McBride on the 16 April 2015 about the meeting of the 17 April 2015 to his cellphone using my landline, his phone was unanswered and I left a voice message to him.

64.20 Mr McBride himself did not advise Mr Kgamanyane that he was represented by Adams & Adams. In my letter I invited Mr Marais to advise on whether the proposed interview with his client would proceed on 17 April 2015.

64.21 On the same day (16 April 2015) Mr Marais responded to my letter of the same date. He adopted a more conciliatory tone:

- *1. *We refer to the above matter and your email below.*
2. *We confirm that the consultation with our client on Friday, 17 April 2015 at 12:00 pm at your offices.*
3. *We request that any documentation in respect of which you will rely on for the interview with our client be made available to him in advance for consideration in order to make the interview more constructive.*
4. *We look forward to receiving your response."*

65 I attach a copy of this email marked as annexure "SJ21".

66 I do not recall providing Mr McBride with any documentation (other than the terms of reference) in advance. It was, to my mind, not necessary to do so because Mr McBride had a copy of the docket and the reports (which was all I had) and did not require any additional documents. We did, however, provide him with copies of the two reports (i.e. the first report and the final report) during the meeting and a copy of the transcript of the meeting afterwards.

67 On 17 April 2015 my team and I interviewed Mr McBride. I attach hereto a copy of the interview transcript as annexure "SJ22" for ease of reference. To my surprise Mr McBride arrived on his own for the interview, without his attorney, Mr Marais. As is apparent from the transcript, Mr McBride from the outset complained about not having received certain letters from my office. ["SJ22" page 2] I explained to him the exchange in correspondence between me and Mr Marais. I further expressed my surprise at not having Mr Marais as part of the interview process to represent him. Mr McBride explained why Mr Marais was not present. ["SJ22" page 4] For me, Mr Marais' absence in the interview did not make sense at all considering the tone of the earlier correspondences between us. I quote the relevant passages of the transcript:

"MR JULY: He came back to say today's meeting is proceeding. We also thought that you would be coming with him.

MR McBRIDE: No, I think initially, from the beginning, we had indicated that we do not require lawyers to be present. But since I am suspended, and they [Adams & Adams] are acting on my behalf, I obtained advice and guidance from them. The most important issue was you were not in

contact with me, either via the lawyer or anybody, because I was not receiving this stuff. For me I was happy that at least you could make contact and sort out the legal issues between the lawyers. That was the most important thing.

MR JULY: At least that has been sorted out now, Mr McBride. The issue is this, you started at IPID in March.” (Emphasis added) [See annexure “SJ22” at page 4, lines 10 to 25]

68 For the reasons set out above, I reject the impression created by Mr McBride that I deliberately sent letters to an email address he had no access to or that I maliciously addressed correspondence pertaining to him to persons other than him in order to circumvent him. It is apparent from my explanation above that I was not motivated by any malice at all.

69 In light of the above, I reiterate that Mr McBride came to the interview fully aware of the nature of the interview and the purpose of the interview. He had been aware since 2 March 2015 when the terms of the reference were first sent to Mr Sesoko and received by his attorneys, Adams & Adams.

70 At paragraph 19 of his supplementary affidavit Mr McBride goes so far as to state that they were given a misleading impression of the purpose of the interviews. This statement is not only an inaccurate account of the investigation process, but is not supported by the objective facts. Mr McBride received the terms of reference through his attorneys and Mr Sesoko and they were receiving counsel from Adams & Adams around the time of the interviews. Mr McBride has made no effort to explain what this “*misleading impression of the*

interviews" was, when regard is had to the terms of reference and the transcripts.

My alleged refusal to testify in a criminal case involving the trio

71 I emphasise that my report was addressed to the Minister. I expressly recorded therein that:

"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."* [Emphasis added]

72 It was always open to the Minister to either accept or reject the recommendations contained in the Werksmans report. As it so happened, the Minister not only accepted the recommendations, he implemented them. Mr McBride was charged with misconduct, as were Messrs Khuba and Sesoko. The disciplinary action taken against Mr McBride was an employment issue regulated by the employment contract, the Labour Relations Act No. 66 of 1995 as amended, and the Public Service Act, 1994. The Minister's power or otherwise to discipline McBride was clarified by the Constitutional Court in ***McBride v Minister of Police and Another*** 2016 (11) BCLR 1398 (CC) (6 September 2016). Insofar as Messrs Khuba and Sesoko are concerned, the Executive Director of IPID has the power to discipline them. In their case the

disciplinary action against them was taken by the then Acting Executive Head of IPID, Mr Kgamanyane.

73 The disciplinary hearing would have afforded Mr McBride an opportunity to challenge and disagree with the Werksmans report, but instead he chose to challenge the Minister's powers but not the report.

74 The Minister of Police had no power to criminally charge anybody and he certainly did not do so in this matter. The decision to charge the trio criminally was that of the NPA and was taken by that institution after having applied its mind to the matter. I elected not to testify at their criminal trial as my testimony would largely be regarded as hearsay, as I relied on what people told me during the interviews. I further elected not to testify as my report contains all my findings. Any testimony on my part would have been a mere regurgitation of my findings. For the record, I refused for the same reasons, when I was requested by the initiator in the disciplinary hearings of Messrs Khuba and Sesoko.

75 The Werksmans report is hearsay and it is trite that hearsay evidence is generally inadmissible at criminal proceedings. Hearsay evidence can only be admitted in the exceptions set out in section 3(1) of the Law of Evidence Amendment Act. This trite principle was echoed in *Exxaro Coal (Pty) Ltd v Chipana and Others* (JA161/17) [2019] ZALAC 52; [2019] 10 BLLR 991 (LAC) where the court remarked as follows regarding hearsay evidence emanating from investigations:

"[19] It is accepted that this section essentially means that if there is no agreement to receive hearsay evidence it is to be excluded unless the interests of justice requires its admission. Hearsay evidence that is not admitted in accordance with the provisions of this section is not evidence at all. This Court held: "Section 3(1) of the Act has ushered our approach to the admissibility of hearsay evidence into a refreshing and practical era. We have broken away from the assertion-orientated and rigid rule-and-exception approach of the past. Courts may receive hearsay evidence if the interests of justice require it to be admitted". This section still retains the "caution" concerning the receiving of hearsay evidence, but changed the rules about when it is to be received and when not.

[23] In addition to referring to precautions to be taken by criminal trial courts in applying the hearsay provisions of LEAA, the Supreme Court of Appeal in *S v Ndhlovu and Others* referred to safeguards to ensure respect for an accused's fundamental right to a fair trial. Cameron JA pointed out that safeguards, including the following, were important: "First, a presiding judicial officer is generally under a duty to prevent a witness heedlessly giving vent to hearsay evidence. More specifically under the Act, "it is the duty of a trial judge to keep inadmissible evidence out, [and] not to listen passively as the record is turned into a papery sump of "evidence".' Second, the Act cannot be applied against an unrepresented accused to whom the significance of its provisions have not been explained..."

76 As I have indicated elsewhere in this affidavit, the trio disagree sharply with the Werksmans report, which is based on interviews with several individuals, including them. They would never have consented to the admission of the Werksmans report as it made adverse findings against them.

77 The Werksmans investigation was not a criminal investigation performed by police officers or law enforcement officers. I seriously doubt whether absent of consent, the Werksmans report would have been admitted in criminal proceedings. In any event the persons who participated in the investigation and gave evidence upon which the Werksmans report is based were all available at the time.

78 The fact that the report recommended a criminal investigation did not transform the status of the report into a criminal investigation. In my own experience, employers routinely refer the outcome of disciplinary enquiries and internal investigations for criminal investigation. This does not mean that the disciplinary enquiry has been turned into a criminal enquiry.

Whether the deletions were unlawful?

79 As a prelude to my response to the question posed by the chairperson of the Commission regarding whether the deletions effected on the first report by the trio were unlawful, I set out the recommendation made by Werksmans regarding criminal liability of the trio herein below.

"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.

[Emphasis added]

80 IPID is established in terms of section 3 of the Act. The objects of IPID are set out in section 2 of the IPID Act. They are, *inter alia* –

“(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;...

[Emphasis added]

81 It is important to note from the above provisions of the IPID Act that IPID is an institution established to give effect to section 206(6) of the Constitution; as such, IPID performs a constitutionally mandated function. This constitutional

function is performed in the manner set out in the IPID Act. One of the functions of IPID is to refer matters of a criminal nature investigated by it to the NPA or Provincial Prosecutions Authority for further action. These matters are referred to the prosecutions authority by the submission of a docket, together with recommendations that are contained in an investigation report. Each of these procedures is designed to give effect to section 206(6) of the Constitution.

82 With this understanding of the framework applicable to IPID, it follows that its reports must be beyond reproach, objective and free from dishonesty on the part of those who prepare reports to be submitted and referred to the NPA. Although the prosecutions authority is not bound by the recommendations made by IPID in its reports, such reports are a useful tool in helping the NPA in making a prosecutorial decision. Therefore, it is important that the NPA is not misdirected or misled by IPID in its reports or recommendations. The recommendations by IPID are not some insignificant recommendations which can be rejected by the NPA without consideration. They are made for a reason by an institution performing a very important constitutional function, i.e. to keep police action in check.

83 Against this background, the question that arises is what is to happen when members of IPID, led by Mr McBride, delete crucial information from a report submitted to the NPA for a prosecutorial decision and later claim that the very report submitted for prosecutorial decision was not final. A secondary question, allied to the first, is how one classifies the conduct of senior members of IPID who instead of conducting an investigation to produce the so-called second report, as they claim to have done, merely deleted information implicating

Generals Dramat and Sibiya in crimes from the first report and substituted the recommendation contained in the first report to produce the second report.

84 The answer to these questions is that the conduct of the trio, viewed objectively, involved gross dishonesty and deceit and amounted to defeating the ends of justice or obstructing the administration of justice. The trio knew and was fully aware that IPID reports and recommendations were not insignificant. They matter. The deletions were effected in order to suit their ultimate recommendations, viz. that no criminal charges should be levelled against General Dramat and Sibiya. This was done with the objective of misleading the NPA.

85 The deletions were both unlawful and constituted misconduct:

85.1 Mr McBride knew that IPID had finalised its report and submitted it to the NPA for decision. Yet, an instruction was given to retrieve the docket. This constitutes interference with the independent functioning of the NPA in breach of section 179 of the Constitution, which guarantees the independence of the NPA.

85.2 The amendment of the report was on its own unlawful. Investigators of IPID must conduct their work independently. They cannot take sides in an investigation, but must consider the facts objectively.

85.3 This also constitutes gross misconduct since IPID is established specifically to investigate the police. It is axiomatic that IPID must be independent of the police. It has been to police the police.

85.4 To date not a single one of the trio has admitted to the deletion of the information nor provided justifiable reasons for doing so.

86 These are the considerations that influenced Werksmans' recommendation that the trio be charged criminally for defeating or obstructing the ends of justice.

87 I would like to emphasize that Werksmans' role ended when it issued the report to the Minister. Furthermore, Werksmans never made recommendations to the NPA for the prosecution of the trio and was not part of the decision taken by the NPA to prosecute the trio.

Misrepresentation of the Werksmans Report

88 I listened to Mr McBride's testimony before the commission on 12 April 2019, there is statement he made that is untrue and warrants a response. Mr McBride claimed that there was a disclaimer in the Werksmans report "saying that it is not to be used in litigation. So ultimately what was the purpose of the report if it could not be used in litigation". There is no such disclaimer in the Werksmans report. What was in fact stated in the Werksmans' report was the following:

"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 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 estates."

89 This is a limitation of liability and not a disclaimer. It also does not state that it cannot be used for litigation.

90 The allegation by Mr McBride is untrue and demonstrates his desperation to portray Werksmans in a bad light and unnecessarily vilify it.

91 Mr McBride's supplementary affidavit deals extensively with his powers as the then Executive Director of IPID and he seeks to demonstrate how he seemingly acted within the confines of the IPID Act when the second report was produced. In light of this, I deem it prudent to first deal with the legislative framework applicable to IPID before I respond to the averments contained in the supplementary affidavit.

THE LEGISLATIVE FRAMEWORK GOVERNING IPID

The IPID Act

92 I have already discussed some of the objects of the IPID Act above. The Directorate functions independently of the South African Police Service. Each organ of state must assist the Directorate to maintain its impartiality and to perform its functions effectively.²

93 The Executive Director of IPID is appointed in terms of section 6 of the Act. The Minister must nominate a suitably qualified person for appointment to the office of Executive Director to head the Directorate in accordance with a procedure to be determined by the Minister.³

94 The relevant Parliamentary Committee must, within a period of 30 parliamentary working days of the nomination in terms of subsection (1), confirm or reject such nomination.⁴

95 In the event of an appointment being confirmed, the successful candidate is appointed to the office of Executive Director subject to the laws governing the public service with effect from a date agreed upon by such person and the Minister; and such appointment is for a term of five years, which is renewable for one additional term only.⁵

² Section 4 of the Act.

³ Section 6(1).

⁴ Section 6(2).

⁵ Section 6(3)(a)-(b).

96 The Minister is enjoined by section 6 to of the IPID Act, remove the Executive Director from office on account of, misconduct; ill health; or inability to perform the duties of that office effectively.⁶

97 The roles and responsibilities of a director are set out in section 7 of the IPID Act. The relevant aspects of section 7 read:

"(1) The Executive Director is the accounting officer of the Directorate and must ensure that –

(a) Proper records of all financial transactions, assets and liabilities of the Directorate are kept.

...

(4) The Executive Director must refer criminal offences revealed as a result of an investigation, to the National Prosecuting Authority for criminal prosecution and notify the Minister of such referral.

(5) The National Prosecuting Authority must notify the Executive Director of its intention to prosecute, whereafter the Executive Director must notify the Minister thereof and provide a copy to the Secretary.

⁶ Section 6(6)(a)-(c).

(6) *The Executive Director must ensure that complaints regarding disciplinary matters are referred to the National Commissioner and where appropriate, to the relevant Provincial Commissioner.*

(7) ...

(8) *All recommendations which are not of a criminal or disciplinary nature must be referred to the Minister and provide a copy thereof to the Secretary.*

(9) *The Executive Director may upon receipt of a complaint, cause to investigate any offence allegedly committed by any member of the South African Police Service or Municipal Police Services, and may, where appropriate, refer such investigation to the National or Provincial Commissioner concerned.*

...

(12) *The Executive Director must at any time when requested to do so by the Minister of Parliament, report on the activities of the Directorate to the Minister or Parliament.*

98 Section 8 deals with the composition of the National Office and lists the departments or units which should be part of the national office. Section 15 provides for the establishment of a Consultative forum and section 16 provides for the composition of the consultative forum. The consultative forum consists

of the Executive Director and Secretary and any person invited by the Executive Director or the Secretary to a meeting of the forum.

99 The functions of the forum are set out in section 17 and are as follows-

*"(a) facilitate closer co-operation between the Secretary and the Executive Director; and (b) discuss, amongst other, issues relating to trends, recommendations and implementation of such recommendations."*⁷

100 The responsibilities of a provincial head are set out in section 21 of the Act and the provincial head's responsibilities are as follows –

- "(a) the appointment and performance management of staff at provincial level;*
- (b) to facilitate the investigation of cases and perform any other function incidental to any such investigations;*
- (c) to control and monitor active cases;*
- (d) to refer matters investigated by the provincial office under this Act to the National or relevant provincial prosecuting authority for criminal prosecution;*

⁷ Section 17(a)-(b).

- (e) *to report to the Executive Director on matters investigated;*
- (f) *to refer disciplinary matters to the Provincial Commissioner;*
- (g) *to facilitate co-operation between the provincial head and provincial police secretariat;*
- (h) *to report to the Executive Director on recommendations and finalisation of cases;*
- (i) ...;
- (o) *to manage the provincial office."*

101 Section 22 of the IPID Act deals with the appointment of investigators. In terms of section 22(1) the Executive Director, in consultation with the relevant provincial head, must appoint a fit and proper person as an investigator of the Directorate, subject to subsections (2), (3) and (4).

102 In terms of subsection (4), the security screening investigation contemplated in subsection (3), must be done in conjunction with the National Intelligence Agency, as referred to in section 3 of the Intelligence Services Act No. 65 of 2002.

103 Section 24 deals with the functions and investigative powers of an investigator.

103.1 In terms of subsection (1) –

“an investigator may, subject to the control and direction of the Executive Director or relevant provincial head, exercise such powers and perform such duties as are conferred or imposed upon him or her by or under this Act or any other law, and must obey all lawful directions which he or she may perform from time to time receive from a person having authority to give such directions under this Act.”⁸

103.2 An investigator has the powers provided for in the CPA, which are bestowed upon a peace officer or police official relating to: the investigation of offences; the entry and search of premises; the seizure and disposal of articles; arrest; execution of warrants; and the attendance of an accused person in court.⁹

104 The Minister may prescribe measures for integrity testing of members of the Directorate, which may include random entrapment, testing for the abuse of alcohol or drugs, or the use of a polygraph or similar instrument to ascertain, confirm or examine in a scientific manner the truthfulness of statement made by a person.¹⁰ The necessary samples required for any test referred to in subsection (1) may be taken, but any sample taken from the body of a member may only be taken by a registered medical practitioner or a registered nurse.¹¹

The Minister shall prescribe measures to ensure the confidentiality of

⁸ Section 24(1).

⁹ Section 24(2)(a)-(g).

¹⁰ Section 26(1).

¹¹ Section 26(2).

information obtained through integrity testing, if such measures are prescribed in terms of subsection (1).¹²

105 Section 28 lists the type of matters to be investigated by the Directorate. The Directorate must investigate the following–

“(1) The Directorate must investigate –

- (a) any deaths in police custody;*
- (b) deaths as a result of police actions;*
- (c) any complaint relating to the discharge of an official firearm by any police officer;*
- (d) rape by a police officer, whether the police officer is on or off duty;*
- (e) rape of any person while that person is in police custody;*
- (f) any complaint of torture or assault against a police officer in the execution of his or her duties;*
- (g) corruption matters within the police initiated by the Executive Director on his or her own, or after the receipt of a complaint from a member of the public, or referred to the*

¹² Section 26(3).

Directorate by the Minister, an MEC or the Secretary, as the case may be; and

- (h) *any other matter referred to it as a result of a decision by the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case may be, in the prescribed manner.*

- (2) *The Directorate may investigate matters relating to systemic corruption involving the police.”*

The CSPS Act

106 The objects of this CSPS Act are set out in section 3. They are *inter alia* to:

- (e) *provide for the establishment, composition and functions of the senior management forum;*
- (f) *provide for co-operation with the Independent Police Investigative Directorate and the South African Police Service”*

107 Section 5 deals with objects of Civilian Secretariat and provides that the objects of the Civilian Secretariat.

“The objects of the Civilian Secretariat are to –

- (a) *exercise civilian oversight over the police service;*

- (b) *give strategic advice to the Minister in respect of developing and implementing policies;*
- (c) *provide administrative support services to the Minister to ensure South Africa's engagement with relevant international obligations;*
- (d) *liaise and communicate with stakeholders;*
- (e) *implement a partnership strategy to mobilise roleplayers and stakeholders to strengthen service delivery by the police service to ensure the safety and security of communities;*
- (f) *implement, promote and align the operations of the Civilian Secretariat in the national and provincial spheres of government;*
- (g) *co-ordinate the functions and powers of the Civilian Secretariat in the national and provincial spheres of government;*
- (h) *promote co-operation between the Civilian Secretariat, the police service and the Directorate; and*
- (i) *provide guidance to community police fora and associated structures and facilitate their proper functioning."*

108 The functions of the Civilian Secretariat are set out in section 6(1). To achieve its objects, the Civilian Secretariat must:

"(a)...;

(e) *consider such recommendations, suggestions and requests concerning police and policing matters as it may receive from any source;*

(f)...

(g) *enter into either memoranda of understanding or agreements or both, in consultation with the Minister, with civilian oversight groups and other parties and engage such groups and parties to strengthen co-operation between the various roleplayers;*

(h) *advise and support the Minister in the exercise of his or her powers and the performance of his or her functions;*

(i) *provide the Minister with regular reports with regard to—*

(i) *the performance of the police service; and*

(ii) *implementation of and compliance by the police service with policy directives issued or instructions made by the Minister;..*

Was the appointment of Werksmans to investigate the conduct of IPID employees improper?

109 There was nothing improper in the Minister's appointment of Werksmans to investigate whether there was any misconduct committed by the senior employees of IPID. The Minister was empowered in terms of the section 6(6)

of the IPID Act to remove the Executive Director of the IPID on account of misconduct. This provision does not authorise the Minister to act arbitrarily or capriciously. The powers of the Minister are constrained by the requirements of legality, reasonableness and procedural fairness which are contained in the Constitution and other applicable legislation. Alive to his responsibilities not to act unfairly and arbitrarily, the Minister appointed Werksmans to conduct an investigation in relation to what appeared to be serious misconduct on the part of senior employees. The Minister was empowered to appoint Werksmans to conduct the investigation.

110 I am advised that during the High Court proceedings where Mr McBride sought to challenge the suspension and disciplinary proceedings instituted against him, he withdrew his claims to the effect that his suspension by the Minister on grounds of misconduct, was motivated by ulterior motives on the part of the Minister.

Was there a report submitted by Mr Khuba of the IPID on 22 January 2014? If so, what was the legal status of that report? Was Sesoko ever Khuba's supervisor at IPID?

111 I have dealt with the circumstances in which IPID began investigating the Rendition matter and how the investigation came to be handed to Mr Khuba. I have also dealt with the nature of Mr Sesoko's involvement in the investigation and the nature of his relationship *vis-à-vis* Mr Khuba.

112 I am advised by Ms Mbeki that under the predecessor to IPID, the Independent Complaints Directorate, both Messrs Khuba and Sesoko were provincial heads. Mr Khuba was provincial head for Limpopo Province and Mr Sesoko for the North West. When the IPID was established, these positions were at a level of chief director. Both Messrs Khuba and Sesoko could not be automatically placed into these chief director positions because they were senior positions and in terms of the Public Service Act, 1994, the positions had to be advertised. I am further advised that the positions were advertised and the two applied but did not meet the requirements. As such, they remained acting in these positions. The provincial head positions that Messrs Sesoko and Khuba occupied prior to the establishment of the IPID, were graded at Director level.

113 For these reasons Messrs Khuba and Sesoko could not be automatically promoted to being chief directors at the IPID. They could only occupy their positions in acting capacities respectively until the positions were filled, with Mr Sesoko as Acting Chief Director: Investigations at IPID's national office and Mr Khuba as Acting Provincial Head for Limpopo. It follows that Mr Sesoko was never at any stage Mr Khuba's supervisor. Even as Head of Investigations he was not a supervisor of the Chief Director: Investigation in terms of the Act, Regulations and SOP. The ultimate supervisor of all investigators, in terms of the SOP, is the Director: Investigations and the Director: Investigations administratively reports to the Provincial Head. Having said that, in the context of investigations, the provincial head is not a supervisor of the Director Investigations.

114 Mr Khuba himself insisted during two interviews held with Werksmans that Mr Sesoko was not his supervisor or senior at the IPID. In the interview held with Mr Khuba on 26 March 2015, he said the following:

"I was worried, and I then phoned ADVOCATE MOSING, 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."

115 I attach a copy of the transcript to the interview with Mr Khuba marked "SJ23". The above extract appears on page 22, at lines 10 to 16.

116 Mr Khuba again emphasized that Mr Sesoko was not his supervisor in his interview with Werksmans on 13 April 2015. I attached marked "SJ24" a copy of that transcript. He said the following:

"I want to tell you that a report that has a recommendation can be regarded as a final report on the basis that there is nothing else you need to do. You need to understand the procedure which I outlined previously, to say when you compile a report with recommendations it has to be assessed by the senior person, who signs it. I was in the predicament where firstly the Acting Head - SESOKO was a senior, but he was still at the same rank as I was. He was acting in that position, but I was also acting, so there was not much difference. We were all Acting Chief Directors anyway." ["SJ24" page 12 line 1 to 14]

117 These statements by Mr Khuba make it clear that Mr Sesoko was not his supervisor.

118 I have also explained above that upon being handed the docket to investigate the Rendition matter, Mr Khuba assembled a team to assist with the investigation. Among the members of the team were Advocates Mosing and Moeletsi, both of whom were from the Special Projects Division of the NPA. They had been requested by the then Minister of Justice and Constitutional Development, Mr Jeff Radebe, to provide guidance to the investigation team. In a memorandum dated 12 November 2013 addressed to Mr Mxolisi Nxasana and Adv. Nomgcobo Jiba, Adv. Mosing explained their appointment (at page 2):

"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 time of writing this memorandum...Adv. B Moeletsi and writer were responsible for providing the guidance to the investigators."

119 A copy of this memorandum is attached hereto marked "SJ25".

- 120 On or about 22 October 2013, Mr Khuba sent a draft report to the NPA, for the attention of Adv. Mosing. I attach marked “SJ36” a copy of this report. In paragraph 5.6 of the draft report he made it clear that there were certain “*outstanding matters*”. He identified the outstanding matters and made it clear that these needed to be dealt with before the investigation could be considered complete.
- 121 Adv. Mosing considered the draft report and advised Mr Khuba that it was necessary to complete the further investigations. The further investigations proposed included an analysis of cell phone records, vehicle-tracking data and statements from Generals Dramat and Sibiya and Col. Maluleka. This was confirmed by Adv. Mosing in an internal memorandum addressed to Mr Nxasana and Adv. Jiba, dated 12 November 2013.
- 122 Mr Khuba went on to finalise his report. Before submitting his report, he had asked for the warning statements of Gen. Sibiya, but it was not furnished to him. He then compiled his final report on 22 January 2014. This was the first report. It made final recommendations to the NPA. Nor did it contain a similar reference to “*outstanding matter*” as was contained in paragraph 5.6 of the 22 October 2013 report.
- 123 Warning statements had previously been requested in 2013 from General Sibiya and Leonie Vester¹³ but they had declined to provide such warning statements.

¹³ SJ23 page 35 to page 37

124 Mr Khuba submitted a report to the NPA together with the docket and recommendations on 22 January 2014 pursuant to section 21(1)(d) of the Act read with Regulation 4(9)(c) of the Regulations published in terms of the Act. The report was approximately 26 pages in total and submitted for the purposes of a prosecutorial decision by the NPA. The report did not, however, incorporate, the investigator's statement regarding the manner in which the investigation was conducted. Accordingly, when the report was submitted on 22 January 2014, Adv. Mosing advised Mr Khuba that in order to complete the investigation, it was necessary that he, as investigator appointed in terms of the IPID Act to conduct the investigation, incorporate his statement explaining how he conducted his investigation. As such, Adv. Mosing inscribed the word "draft" on that report. Mr Khuba accepted the advice and duly prepared and incorporated his statement into the report. Having done so, Mr Khuba signed the report and submitted it to the NPA on or about 24 January 2014. He did not update the report to reflect the actual date on which his report was submitted to the NPA. This then became what we understand today as the first report. During the interview with Werksmans on 17 April 2015 Adv. Mosing stated the following:

"MOSING: And I know his statement is supposed to be in that thing, in the one we gave. Now I remember. That's why on this copy that I have, I wrote "draft", because it lacked his statement. Once he did that - and like I said, in not making a copy I didn't anticipate something like this happening. Because we thought in good faith KHUBA would stand by that investigation and wouldn't be made to change it. In other words the original report that he signed - although he had signed this one and I

wrote "draft" on it - we said: This one is incomplete and you need to summarise your statement. I think maybe if you look at the docket, when was his statement commissioned? It was commissioned more or less at the same time, because it was the last thing he also did. Because he said although he had a draft of what he had done, we said: Do an investigating officer's statement, so to speak, explaining, because in this case he really needed to explain how this case unfolded, because it would help anyone reading the docket to understand what was going on. They could be easily confused, because there is a version here which we have to disprove. Now I remember. I think that's why we didn't even have this. You see, he didn't even change the date, he kept the date. It took him a day or two basically to finalise that. I was a bit worried as to that one."

125 I attach a copy of the transcript of the interview with Adv. Mosing marked "SJ26". The extract above appears at page 58 and line 16 to line 21 of page 59.

126 Contrary to what has been claimed by Mr McBride, it is apparent that Mr Khuba submitted a report with recommendations and a docket to the NPA. To add, this is in line with the SOP which states that a report with recommendations is final.

127 Furthermore, the first report included Dramat's warning statement (which is dealt with at page 29, paragraph 1 of the report). Mr Khuba identified Gen. Dramat's statement as A94 of the docket. As such, it is not true that Gen.

Dramat's warning statement was outstanding when the first report was submitted to the NPA.

128 In any event, the suggestion by Mr McBride that a report is incomplete if it does not contain a warning statement, is, with respect, not only incorrect but is to the knowledge of the trio untrue. For instance, the second report does not have Col. Maluleka's statement, yet, despite this, its authors (the trio) regarded that report as final. In terms of the SOP, there are only two types of investigation reports namely, an interim and a final investigative report. An interim investigative report does not have or make recommendations to the NPA, whereas a final investigative report does.

Was an analysis of General Sibiya's cellphone records outstanding?

129 Neither General Sibiya's cell phone records nor the analysis thereof was outstanding at the time of the submission of the first report on or about 24 January 2014. Mr Khuba, Col Moukangwe and Adv Mosing were in possession of the cell phone records of Gen. Sibiya and the analysis thereof. The analysis of Gen. Sibiya's cell phone records showed that he was not at the crime scene (which was in Diepsloot, where suspects were assaulted), but was apparently in a different location (In the area of Pretoria).

130 During an interview with Werksmans on 26 March 2015, Mr Khuba stated the following in relation to an analysis of Gen. Sibiya's cell phone records:

"MR KHUBA: So we did everything; we did an investigation, but we were let down by the 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. 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 MOSING said to me - and that was after I had done the report - the report with which COLONEL MOUKANGWE was also in agreement, this is the report, signed. ["SJ23" page 34 line 24 to page 35 line 13]

- 131 From Mr Khuba's version he was in possession of an expert analysis of Gen. Sibiya's evidence at the time he submitted his first report. He may not have been happy with the expert analysis given that there were eyewitnesses who, under oath, had stated that Gen. Sibiya was at the crime scene. It should thus be emphasised that the expert analysis was not new evidence, it was merely a typed version of the handwritten analysis that had previously provided. (The handwritten report was never provided to Werksmans but was referred to by Adv. Mosing in his memorandum of 13 February 2014.)
- 132 In paragraph 5.5 of the first report Mr Khuba dealt with an analysis of Gen. Sibiya's cell phone records and explained what was discovered after those records were analysed. That analysis showed that Gen. Sibiya had been kept updated on the progress of the three operations that formed part of the rendition of the Zimbabwean Nationals.

133 Furthermore, at page 32 of the first report, Mr Khuba incorporated the analysis he received from the expert regarding Sibiya's cell phone records. Mr Khuba stated:

"There is evidence and witnesses corroborate each other that General Sibiya was both at the scene and planning venue. The meeting held between the IPID and General Dramat on 2013/03/07 confirmed that General Sibiya was appointed to be the Head of TOMS which he created to trace wanted suspects. The telephone records of both Captain Maluleke and Major General Sibiya show interaction between them at various milestones of the operation. Following suggest the involvement of General Sibiya;

...

Witness stated that he was seen during the operation that took place on 22/11/2010 which led to the arrest of Pritchard Chuma

...

In other operations cellphone record of Warrant Officer Makoe, Captain Maluleke and Col Neethling clearly show continuous contacts with General Sibiya during and shortly after the operation. Col Neethling also stated that he should have reported progress to General Sibiya during the operation. However the cellphone records of General Sibiya does (sic) not place him at the scenes and planning venues as claimed by witnesses. It is also clear that some of the witness. It is also clear that

some of the witness claim to have heard that General Sibiya was in the car rather than seeing him personally.

The meeting held in Zimbabwe wherein General Sibiya was appointed as 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." [Emphasis added]

134 In the memorandum prepared by Adv. Mosing on 13 February 2014 annexed to Mr McBride's affidavit as RMB.W.8, Adv. Mosing confirms that they (i.e. Mr Khuba, Col. Moukangwe and Adv. Mosing) were in possession of a hand written expert report analysing Gen. Sibiya's cell phone records. At paragraph 4 of his memorandum, Adv. Mosing records:

"4. SUMMARY 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

Wierdaburg police officers

Police officials based at Beit Bridge border post

Cellphone records

AVL of DPCI members vehicles

Success reports of the DPCI

Itinerary and travelling claims of Maluleke

Handwriting expert reports... [Emphasis added]

135 Adv. Mosing's reference to "*Handwriting expert reports*" is to the handwritten expert report of the analysis of Gen. Sibiya's cell phone records. It is the same report Mr Khuba referred to in his interview held with us on 26 March 2015.

136 In his interview with Werksmans on 30 March 2015, Col. Moukangwe confirmed that when the first report was submitted to the NPA they were in possession of and knew about the analysis of Gen. Sibiya's cell phone records, that the

analysis placed Gen. Sibiya in Pretoria and that they (Col. Moukangwe and Mr Khuba) had questioned the eye witnesses on this issue before submitting the report. Col. Moukangwe vehemently disputed that the said analysis constituted new evidence. A copy of the transcript of the interview conducted with him is attached marked "SJ27". The following appears on page 7 line 16 to page 8 line 12 of the transcript:

"COLONEL MOUKANGWE: In that one maybe he forgot something, because we knew before that GENERAL SIBIYA's cellphone shows he was in PRETORIA, but the people who were operating with him said he is not using one cellphone. So it might happen that the official cellphones were at home, and maybe he used the other one, which is just recorded here on the statement. That is according to what they said. But we knew about the information before, because we questioned them: How can you say SIBIYA was involved, the cellphone shows that ...

MR JULY: And how did you know about this information that SIBIYA's cellphones were in SUNNYSIDE?

COLONEL MOUKANGWE: Because of the detailed billing that we did. We did a detailed billing on the two cellphone numbers that we were given, to show where the cellphones were at that time. They showed that he was in PRETORIA at the time they mentioned in their statements.

COLONEL MOUKANGWE: After the discussion with the prosecutors, they made a suggestion whether we should do the mappings. Cellphone

mapping is where an analysis will show us that this was done at this, and make some points in a chart form. That's what we were requested to do."

137 In his memorandum of 13 February 2014 to Advocates Jiba and Chauke, Advocate Mosing confirmed at paragraph 6.3 that the cell phone evidence did not provide corroboration that General Sibiya was present during the operations. He stated that this could be more closely considered after an expert witness had been procured to analyse the cell phone data.

138 In our interview with Adv. Baloyi and Adv. Mzinyathi on 17 April 2015, Advocate Baloyi explained how the issue of General Sibiya's cell phone records would be dealt with:

"MR BALOYI: Actually you recall that the operation was on two occasions, and on both occasions there are witnesses who say - there are some contradictions, especially with TOMS. Some say no, he was there on the first day, some say they are not sure. But the eye witnesses are clear that he came out of his BMW, and they asked him, I think, where to detain them, or something to that effect.

MR MZINYATHI: Yes.

MR BALOYI: I mean the evidence is clear there. Then on the second operation his name is also mentioned. We felt even if the cellphone records place him elsewhere, we have real evidence. At a later stage, during trial, we will get a cellphone analyst who will probably give an

explanation. I mean, it could be that someone else had his cellphone.

That is explainable."

139 I attach a copy of the transcript as annexure "SJ28". The above extract appears at page 43, line 21 to page 44, line 14 of the transcript

140 Adv. Baloyi further stated (at page 37, lines 17 to 23 of the transcript):

"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."

141 It is apparent from the aforesaid that there was no outstanding evidence at the time the first report was submitted. If anything could be said to have been outstanding, it was an alternative analysis or interpretation of the cell phone records. To add, if there was anything outstanding this would have been recorded and reflected in the first report. The investigation was a completed investigation as defined in the SOP.

142 In our interview with Mr Khuba on 13 April 2015 he, in response to a question raised by me, explained the status of a report with recommendations and what happens when "new evidence" emerges:

"MR JULY: In other words, what ANGUS says, is that what you believed to be the factual situation at the time when you signed the report, even

if it changes later on, that report remains the final report. If things have to change you will then have to deal with it, and how do you deal with those issues that have cropped up?

MR KHUBA: What you are talking about I don't think is an issue of only departmental procedure. It's an issue of common sense, that once you have made a recommendation you have done your investigation. If new evidence surfaces to rebut that, then you are able to advance: Now I have this and that and that. ["SJ24" page 13 line 9 to 21]

143 Therefore, based on Mr Khuba's own version the emergence of "new information" would not render the report submitted to the NPA interim or draft; it remains a final report. The submission of a docket together with a report with recommendations would not prevent an investigator, in this case Mr Khuba, from later placing additional information in that docket. This is precisely what Mr Khuba purported to do on 28 February 2014, he sought to file additional information (warning statements from the Generals who had earlier refused) he had obtained into the docket that had already been submitted to the NPA for a prosecutorial decision. Mr Khuba requested to file these additional documents in the docket, and *not* to collect the docket as claimed by Mr McBride and now also by Mr Khuba.

144 The Commission has been repeatedly told that the alleged analysis of Gen. Sibiya's cell phone records was exculpatory. I disagree with this assertion. The cell phone records only related to Gen. Sibiya's presence at the scene where suspects were assaulted and tortured. Notably in the first report Mr Khuba

never recommended that Gen. Sibiya be criminally charged for assault and torture. Instead, the first report recommended criminal charges for kidnapping and defeating the ends of justice because Gen. Sibiya was aware of the activities carried out by the TOMS, had assembled the team and the team had reported to him. The cell phone records proved that smses on the stages of the operation were sent to Gen. Sibiya and he, in turn, forwarded these smses to Gen. Dramat. who never responded to them.

Was an expert analysis of Colonel Ndanduleni Madilonga's ("Col. Madilonga") statement outstanding?

145 It has also been claimed that an expert analysis of Col. Madilonga's statement was also outstanding when the first report was submitted. This is not true. During the interview with Werksmans on 26 March 2015, Mr Khuba told us that Col. Madilonga's statement was taken to an expert for analysis in September 2013. Col. Madilonga's statement was consistent with the cell phone evidence obtained through section 205 of the Criminal Procedure Act, as amended.

"MR KHUBA: It was done around September - I think McBRIDE started last year, in 2014. In September 2013 I sent a statement analysis to an expert.

I took his [Col. Madilonga's] 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. ["SJ22" page 38 line 23 to page 39 line 16].

146 Therefore, the analysis of Col. Madilonga statement was not outstanding when the first report was submitted to the NPA.

The legal status of the report

147 The SOP of 2013, defines a completed investigation to mean:

"an investigation which involves a comprehensive effort to interview the complainant, the victim, witnesses and suspect SAPS/MPS member, the identification, location and acquiring of relevant physical evidence and upon which the conclusion is based on evidence obtained, excluding technical reports ..."

148 A Final Case Investigative Report is defined in the SOP to mean:

"an investigative report which documents the entire investigation and contains the conclusion, summary of affidavits and technical reports, written recommendations to SAPS/DPP with regard to the actions of the SAP/MPS member"

149 The investigation was complete when the first report was compiled and that report was final as contemplated in the above provisions of the SOP. From a literal reading of the definition, there is no requirement to the effect that in order for an investigation report to be final, it must have warning statements.

150 During his testimony, Mr McBride confirmed that the investigation in the Rendition matter was about the death of persons as a result of police action. Therefore, the relevant section governing the investigation was section 28(1)(a) and (b) of the IPID Act.

151 As indicated above, the Rendition investigation was referred to IPID by the Secretariat. This was done pursuant to section 28(1)(h) of the IPID Act, which deals with matters referred to the IPID by the Secretariat. The Rendition investigation also concerned deaths as a result of police action in envisaged in section 28(1)(a) and (b). In addition to that the matter was referred to the IPID by the Secretariat are investigated in terms of Regulation 7 of the IPID Regulations.

152 In terms of Reg. 7(2) the Executive Director or the relevant provincial head, as the case may be, must designate an investigator to investigate a matter contemplated in section 28(1)(h) of the IPID Act which had been referred to the

Directorate for investigation. In this instance the investigator appointed was Mr Khuba.

153 Reg. 7(3) provides that an investigator designated in terms of sub-regulation (2) must as soon as is practicable, determine whether the referred matter relates to (a) a matter contemplated in regulation 4, in which case the provisions of that regulation apply with such changes as may be required by the context; or (b) a criminal matter, in which case the provisions of regulation 5 apply with such changes as may be required by the context.

154 In my view and indeed as the facts suggest, Mr Khuba's investigation was into the death of people as a result of police action or omission, as well as torture of suspects in police custody. Death of people as a result of police action is regulated by regulation 4 and torture of suspects by police falls under regulation 5. I deal with the investigator's obligations stemming from these two regulations below.

155 Reg. 4(8) provides that in the event of a late notification of a death as a result of police action or omission or both, the investigator must, within a reasonable period, which may not exceed 30 days of his or her designation as investigator:

"(e) submit a report containing recommendations to the Executive Director or relevant provincial head."

156 Reg. 4(9) in turn provides that for purposes of sub-regulation (8), the investigator must do the following:

- "(a) *peruse the police docket;*
- (b) *take the police docket over for further investigation;*
- (c) *finalise and submit the police docket to the relevant Director of Public Prosecutions together with recommendations relating to further actions by the National Prosecuting Authority; and*
- (d) *submit a report on the investigation containing recommendations to the Executive Director or relevant provincial head."*

157 When regard is had to the above provisions of Reg. 4, there is no doubt that Mr Khuba complied with the IPID Act and regulations as an Investigator by submitting the first report to the NPA for a prosecutorial decision. The only thing Mr Khuba still needed to do in terms of the regulations after submitting his report to the NPA was to notify the Executive Director and the provincial head. This could not be accomplished as there was no Executive Director at the IPID during the period on which the first report was submitted. Furthermore, and in any event, Mr Khuba was the acting provincial head for Limpopo at the time. As such, even though he could notionally prepare a report, he could not submit it to himself. I will expand on this submission after having dealt with Reg. 5 below.

158 Messrs McBride and Sesoko, curiously, claim that Mr Khuba failed to comply with his obligations as set out in Reg. 5(3)(i). I discuss the salient provisions of Reg. 5 herein. Reg. 5(2) provides that an Executive Director or the relevant

provincial head as the case may be must designate an *investigator* to *investigate* a complaint.

159 Sub-regulation 5(3)(i) provides that an investigator designated in terms of sub-regulation (2) must as soon as is practicable but within 24 hours of designation collect 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 measures to be taken against a member of the SAPS or the Municipal Police Service or the criminal prosecution of such member.

160 Mr McBride claimed that the first report was improperly submitted to the NPA by Mr Khuba because prior to its submission to the NPA, it had not been submitted to the Executive Director at IPID for approval. He relied on Reg. 5(3)(i) for this contention. McBride's reliance on this regulation is misplaced. Regulation 5(3)(i), properly interpreted, relates to notifying the Executive Director of the report. The submission of the report to the Executive Director is not for the purposes of him signing or approving the report prepared by the Investigator. On a plain reading of the text of Reg. 5(3)(1), there are no signing or approval powers conferred upon the Executive Director when he is furnished with an Investigator's report with recommendations. As such, even if the investigation conducted by Mr Khuba solely related to the crimes listed in Reg. 5, the Executive Director or provincial head still did not have powers to approve or sign the investigation report submitted by the Investigator.

161 In fact, on an holistic reading of the IPID Act, the IPID Regulations and the SOP, no power to approve and sign are conferred upon the Executive Director. The Executive Director may be empowered in terms of section 7(4) to refer criminal offences revealed as a result of an investigation to the NPA, but this does not mean that he is empowered to approve or reject an investigation report prepared by an Investigator. Nor does it mean that the Executive Director is empowered to sign off on investigations conducted by investigators designated in terms of the IPID Act and the IPID Regulations. This was conceded by Mr McBride in his interview with Werksmans on 17 April 2015.

"McBRIDE: Look, the specifics of what was discussed in a meeting more than a year ago, where no minutes were taken – I think it would not be safe to rely on who said what and in which context. The key issue for me, is normally such a report, the way I understand the law, would not come to me. It would go from the provinces. But because it concerned two provinces this one had to come to me, and it was driven by National. So that's the issue. Normally I wouldn't even have the report, because reports and dockets move in every day to the NPA, they don't come past me. ["SJ22" page 10, lines 10 to 24]

162 It would be curious to know what happened to Mr McBride's understanding regarding reports not going to the NPA through his office but through provincial offices. I do not agree that the report had to be submitted and signed by the Executive Director because it concerned two provinces.

163 Even if section 7(4) empowers the Executive Director to approve and sign a report prepared by an Investigator (which is not correct), it should be recalled that Mr Khuba signed the first report, both as an Investigator and as a provincial head, in terms of his obligations under section 21(1)(d). In terms of section 21(1)(d) a provincial head is equally empowered to refer matters investigated by the provincial office to the NPA for criminal prosecution. Consequently, there was no room for contending that Mr Khuba acted improperly in signing and submitting the first report contrary to the law. It is obvious from the above that he acted in terms of the law. This first report submitted by Mr Khuba made final and definitive recommendations to the NPA for further action.

164 If it was the intention of the legislature that the Executive Director must sign, it would have said so.

165 The trio knew that between January 2014 and 3 March 2014 there was no Executive Director at IPID, not even in an acting capacity. Ms Koeki Mbeki was no longer at the IPID during this time. To the extent that there was a need to have reports "*signed*" or "*approved*" by Ms Mbeki (which I submit was none, this could not happen as she was not there.

166 During his testimony before the commission on 11 April 2019, Mr McBride misled the commission when he claimed that he was empowered to "*sign off*" the report for submission to the NPA in terms of Reg. 4(3)(i) of the IPID Regulations and that he acted pursuant to this regulation when he signed the second report. For the sake of completeness, I repeat Mr McBride's testimony before the Commission:

"ADV PAUL JOSEPH PRETORIUS SC: If you just deal with that please.

MR ROBERT JOHN MCBRIDE: Thank you Chair and it reads as follows:

'After collecting all evidence statements and technical or expert reports, if applicable, submit a report on the investigation of the death 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 Services or criminal prosecution of such member, to the Executive Director or the relevant provincial head, as the case may be.'

ADV PAUL JOSEPH PRETORIUS SC: Now this specifically deals with deaths, but in relation to other matters investigated by IPID do similar provisions apply?

MR ROBERT JOHN MCBRIDE: Absolutely.

ADV PAUL JOSEPH PRETORIUS SC: So if an investigator conducts an investigation what is the reporting line and brief?

MR ROBERT JOHN MCBRIDE: It is to the – if it is within a province and it is initiated in a province or delegated to a province to deal with it would be to the Provincial Head who then signs it off for submission to the NPA. If it is initiated at National of certain circumstances covers more than one

Province it would come to the Executive Director ultimately signed off for submission to the National Prosecution Authority."

167 Although I am in agreement with Mr McBride that the Rendition investigation involved the death of people as a result of police action, I dispute his contention that Reg. 4(3)(i) was applicable in the Rendition investigation.

168 Reg. 4(3) provides that an investigator designated by the Executive Director must "*as soon as is practicable, but within 24 hours of designation*" *inter alia* –

"(i) after collecting all evidence, statements and technical or expert reports, if applicable, submit a report on the investigation of the death 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 Services or criminal prosecution of such member, to the Executive Director or the relevant provincial head, as the case may be."

169 Even if Reg. 4(3)(i) were found to be applicable, it does not confer powers to the Executive Director to sign and approve a report.

170 The regulatory provisions applicable to the Rendition investigation were Reg. 4(8) and (9), which deal with the "*late notification of a death*". Some of the Zimbabwean Nationals were murdered a year before Khuba commenced his investigation. This is why the matter was to be dealt with pursuant to Reg. 4(8) and (9). As such, it was misleading or incorrect for Mr McBride to tell the

Commission that the provisions of Reg. 4(3)(i) applied to the Rendition investigation, as this investigation was conducted well after the crimes investigated by Mr Khuba had been committed. The crimes were committed between October 2010 and January 2011 and Mr Khuba was only designated to investigate during October 2012.

171 Consequently, it cannot be correct to suggest that Reg. 4(3)(i) applied to the Rendition investigation. Mr Khuba did not act under Reg. 4(3)(i) but pursuant to the provisions of Reg. 4(8) and (9) and was empowered to sign and submit the first report as an investigator and Provincial Head.

172 Mr McBride's contention that the report had to be submitted to him because it concerned two provinces is not supported by the IPID Act, IPID Regulations or the SOP. To date, Mr McBride has not produced evidence to support his contention in that regard.

173 IPID adopted a SOP for the year 2013/2014. This SOP continued to operate beyond the year 2014. For the sake of convenience, I attach a copy of the SOP marked "SJ29". The stated purpose of the SOP was to establish policy and methods by which cases should be received, registered, processed and disposed of.¹⁴ The SOP applies to all notifications and/or cases lodged with the IPID or initiated by the IPID against members of the SAPS/MPS by any person

¹⁴ Clause 1 page 4 of SOP.

or organisation, alleging that a member committed an act or an omission which constitutes an offence and/or misconduct.¹⁵

174 Clause 5.1 of the SOP dealt with the duties of the Executive Director. The Executive Director, in addition to the duties and responsibilities referred to in section 7 of the IPID Act and those referred to in the IPID Regulations, was obliged to:

174.1 Ensure that there were systems in place for the lodging, receiving, processing, recording and disposal of cases against members;¹⁶

174.2 Provide for the development and enforcement of policies to enable an environment that is conducive to lodge a case and receive cases reported;¹⁷

174.3 Ensure compliance with the provisions of the IPID Firearm Control Standard Operating Procedure.¹⁸

175 The powers of a Provincial Head were set out in clause 5.3 of the SOP. Of importance in the present context are the provisions of clause 5.3.6, which provides that a Provincial Head must- "*Complete/Close cases on the Case Management System (CMS)*".

¹⁵ Clause 4 of the IPID SOP page 11.

¹⁶ Clause 5.1.1 *ibid.*

¹⁷ Clause 5.1.2 *ibid.*

¹⁸ Clause 5.1.3 *ibid.*

176 Clause 5.4 of the SOP dealt with the powers and responsibilities of a Director Investigations. He or she was obliged, in addition any duties imposed under section 24 of the IPID Act and the IPID Regulations, to –

176.1 Supervise the investigation conducted.¹⁹

176.2 Ensure that the Case Intake Committee (CIC) met daily to evaluate cases.²⁰

176.3 Ensure that case were investigated and completed in terms of the strategic objectives.²¹

176.4 Review investigation reports, assess its quality, raise queries, if any endorse recommendations to the SAPS and DPP and sign off on the recommendations.²²

176.5 Evaluate a decision by the SAPS / DPP and decide on further action to be taken.²³

176.6 Approve / disapprove completion of an investigation.²⁴

176.7 Approve / disapprove closure of the file for archiving.²⁵

¹⁹ Clause 5.4.1 of IPID SOP page 13.

²⁰ Clause 5.4.2 ibid.

²¹ Clause 5.4.4 ibid.

²² Clause 5.4.6 ibid.

²³ Clause 5.4.7 ibid.

²⁴ Clause 5.4.8 ibid.

²⁵ Clause 5.4.9 ibid.

- 176.8 If he or she was acting in the position of Director Investigators, attach a copy of the letter appointing him or her in the acting position when closing or completing an investigation (except where the investigation was undertaken by the acting appointee himself or herself).²⁶
- 176.9 Immediately upon being notified by the Case Worker of a high profile case, conviction or arrest, notify the Provincial Head, the National Spokesperson, the Programme Manager Investigation and the Executive Director of such case, conviction or arrest.²⁷
- 176.10 Ensure that the province conduct file audits on a quarterly basis and compile a Report which is separate from Monthly Report.²⁸
- 177 Given that the investigation conducted by Mr Khuba involved the death of people as a result of police action or omission or both, the provisions of section 28(1)(a) and (b) of the IPID Act applied to the investigation. Clause 6.2 of the SOP prescribes a step-by-step process to be followed investigating such cases. It provides *inter alia*:
- 177.1 On step "13" a report is prepared and the supervisor reviews the report and then sends it to the Director Investigations / Provincial Head. If it's an interim Case Investigative Report, continue to step 14 and if a final Case Investigative Report, continue to step 17.

²⁶ Clause 5.4.10 *ibid.*

²⁷ Clause 5.4.14 *ibid.*

²⁸ Clause 5.4.18 *ibid.*

- 177.2 On step "14" the Director Investigations / Provincial Head reviews the interim Case Investigative Report and endorses recommendations or raises queries. If the recommendations are endorsed, the completion Register must be utilised and the CMS be updated.
- 177.3 On step "15" the Case Worker obtains the outstanding reports and attends to queries if any.
- 177.4 On step "16" the Case Worker prepares the Final Case Investigative Report to the DPP / SAPS and forwards the report to his or her immediate supervisor and the completion register is updated.
- 177.5 On step "17" the Supervisor reviews the report for quality assurance, the Director Investigations / Provincial Head reviews / approves the DPP / SAPS report and utilises the Recommendation, Decision, Conviction and Acquittal Register.
- 178 Clause 7.3 of the SOP deals with the case management of an investigation of a case in terms of section 28(1)(a) and (b) read with Regulations 4 and 8. I will not burden this affidavit with the detail of clause 7.3. Suffice to state that clause 7.3.30 provides that a Case Worker "*refers a Recommendation Report to the Supervisor for review and recommendation of completion or closure.*"
- 179 Clause 7.3.31 provides that the Case Worker refers [the report] to the Director Investigations / Provincial Head for completion and / or closure. If a case is completed / closed, the Director Investigations / Provincial Head should still be informed as per Reg. 4(3)(i).

180 Having outlined the above clauses of the SOP, it is apparent that the Executive Director's responsibilities are limited to what is in clause 5.1 of the SOP. This means that the Executive Director of IPID does not:

180.1 have the power to approve or review any report prepared by a functionary of the IPID;

180.2 play a role in the opening and closing of investigations at IPID;

180.3 enjoy any signing powers in respect of reports prepared by Case Workers, Directors of Investigation, Deputy Directors and, for that matter, any employee of the IPID.

181 Simply put, Mr McBride, as the Executive Director, had no power or authority to conduct an investigation or to sign and approve an investigation report.

182 Mr Khuba, on the other hand, whose substantive position at the time of submitting the first report was that of Director: Investigations, not only enjoyed the power to sign his report in terms of the IPID Act and Reg. 4(9)(c) to (d), he was empowered in terms of the above provisions of the SOP to sign his investigation report, refer it to SAPS / DPP and authorise closure of the file. Mr Sesoko, with respect, had no role to play in the Rendition Investigation let alone the power to sign and approve investigation reports. In the grand scheme of things, it really does not matter whether Mr Khuba signed his report as Director: Investigations or Provincial Head as he was empowered to sign the report in any of the two capacities, as he had no supervisor.

Was there a second report prepared by the IPID? If so, what was the status of the second report? Were Messrs McBride and Sesoko aware of the first report when the so called second and 'only report of the IPID' was prepared? Is there any justification for the amendment of the first report?

183 Mr Sesoko claims that he had no knowledge of the existence of the first report. This is not true. I will demonstrate that he was fully aware of it and was involved in its preparation and submission to the NPA.

184 I do not know in what capacity Mr Sesoko was apparently "advising" Mr Khuba nor why it was necessary for him to do so given that two NPA prosecutors, Advocates Mosing and Moeletsi were advising Mr Khuba. Be that as it may, Mr Khuba received and took counsel from Mr Sesoko regarding the procedure for submitting an investigation report to the NPA. Importantly, at no stage did Mr Sesoko say to Mr Khuba that he (Mr Sesoko) or the Executive Director had to sign the first report.

185 Mr Khuba confirmed to Werksmans during an interview held on 13 April 2015 that during December of 2013 he sought advice from Mr Sesoko regarding how to submit the report to the NPA.

"MR JULY: Let's say you never gave him a copy, but he was aware - because he said somewhere in December you sought his advice as to how to submit the report to the NPA.

MR KHUBA: Yes." ["SJ24" page 2 line 5 to 9]

186 Mr Khuba further confirmed that Mr Sesoko was fully aware of the existence of the report at line 10 to 20 of the same transcript.

"MR JULY: So he was aware of the report.

MR KHUBA: Yes.

MR JULY: But he may not have seen the report. You also testified that because he was your senior, sort of, although the Acting Executive Director gave you specific instructions not to involve him, you did inform him about the report.

MR KHUBA: Yes. yes.

MR JULY: So he knew about the existence of the report.

MR KHUBA: Yes."

187 During the same interview Mr Khuba further confirmed that during February 2014 he, Mr Sesoko and Col. Moukangwe attended at the NPA's offices and demanded that arrest warrants be issued against the suspects implicated in the first report, because, so he said, the NPA was taking its time in making a decision to prosecute.²⁹

²⁹ Ibid page 1 line 21.

"MR JULY: We are going to record this. I was saying to you that when we interviewed MR MOUKANGWE, he said you, him and SESOKO went to the NPA.

MR KHUBA: Yes.

MR JULY: And the reason you went to the NPA is you wanted a warrant of arrest.

MR KHUBA: Yes.

MR JULY: He said it was taking time and you guys wanted to find out why.

MR KHUBA: Yes." ["SJ24" page 1 line 16 to 24]

188 Col. Moukangwe also confirmed that Mr Sesoko was aware of the first report. In our interview with him, Col. Moukangwe stated:

"I won't be able to say it was submitted, but we went to the National Director of Public Prosecutions, because we were given two advocates to work with us on this issue. I was there with MR KHUBA and MR SESOKO. MR SESOKO is a legal person, he was a former prosecutor in BENONI. We went there, and when we were there the report was already drafted. That is what I can say with certainty, because when we were there the prosecutors who were dealing with us on this issue, knew about it, and had a copy of the report." ["SJ27", page 5]

189 After I asked Col. Moukangwe whether the report submitted to the NPA was preliminary, incomplete or final, he said the following about the involvement of Mr Sesoko:

"It was a final [report], because we wanted warrants there, really, that's why we took our legal person, MR SESOKO. We were worried about why it seemed they were dragging their feet in giving us warrants of arrest for these people, because the people never wanted to cooperate."

["SJ27" page 15]

190 I refer to these extracts from the transcripts to show that Mr Sesoko has not been honest with the Commission or Werksmans when he claimed to have had no knowledge of the existence of the first report. This clearly was not true in light of Mr Khuba's version that he was aware of its existence. Both Mr Khuba and Col. Moukangwe confirmed that he was with them when they requested the NPA to act upon the recommendations contained in the first report.

191 Furthermore, on 23 January 2014 Mr Khuba sent an email to Mr Sesoko attaching an unsigned electronic copy of the report. This supports the conclusion that Mr Sesoko was at all material times aware of the existence of the first report. As already indicated, Mr Sesoko confirmed under oath to having been provided the actual first report in January 2014 to facilitate handing it over to the Secretary of Police. This all transpired before Mr McBride joined IPID as its Executive Director.

192 I now turn to deal how the so-called second report came about and Mr McBride's knowledge of the existence of the first report.

193 I have already explained above that after Mr McBride joined IPID he requested an update on all high profile cases being handled by IPID. In a meeting with Mr Khuba on 5 March 2014 it was evident to Mr Khuba that Mr McBride had already seen the first report. I have also explained that on 6 March 2014 Mr Khuba met with Messrs McBride, Sesoko and Angus.

194 Werksmans interviewed Mr Angus on 31 March 2015. I attach marked "SJ30" a transcript of that interview. Mr Angus informed us that Mr McBride requested him to review the manner in which the investigation was conducted to ensure that it had been conducted appropriately. According to Mr Angus he advised Mr McBride that he did not believe that it was appropriate for him to get involved at that stage of the investigation.

"MR ANGUS: At that stage the issue for me was, yes, McBRIDE wanted me to see if these people had done everything correctly, or are they doing the things correctly, if I understood him correctly." ["SJ30" page 10 line 22 to 25]

And later:

"MR ANGUS: My view then was: What am I going to be doing now, I've got a thousand other things to be doing, and I don't think I should be carrying on and getting involved here. After that we left, and I asked him to drop me at the hotel, where my car was - in actual fact the rental car." ["SJ30" page 11 line 10 to 16]

195 I have also explained that Mr McBride instructed Mr Khuba to collect the docket from the NPA and to provide him with every document he (Mr Khuba) possessed regarding the Rendition investigation. Messrs Khuba and Angus attended at the offices of the DPP to meet with Adv. Van Zyl SC who was in possession of the docket at the time. Mr Khuba and Angus collected the docket from Advocate Van Zyl and signed for it, Mr Khuba as confirmation that he had received the docket and Mr Angus as confirmation that he had witnessed him doing so.

196 During his testimony before the Commission on 11 April 2019 Mr McBride knowingly gave false evidence to the effect that the first report was not in the docket collected by Mr Khuba and Angus on 7 March 2015. Upon being asked whether the first report was part of the docket collected by Mr Khuba and Angus, Mr McBride responded as follows:

"CHAIRPERSON: What had happened to the first report?"

MR ROBERT JOHN MCBRIDE: I'm not sure of it but at some stage soon after that it then, towards the end of December 2014 it then surfaces in the media.

CHAIRPERSON: The first report?

MR ROBERT JOHN MCBRIDE: Yes so when – my understanding is when Khuba retrieved the docket he did not have that preliminary report with him, just the docket because that what's carrying the evidence and the original evidence...

CHAIRPERSON: Yes but you say – you are not sure or are you sure whether Mr Khuba had retrieved, from the NPA what we have been

referring to as the first report and I don't [know] if that's accurate, whether it was a report, you don't know or you do know that he retrieved it?

MR ROBERT JOHN MCBRIDE: Chair my understanding is that he didn't.

CHAIRPERSON: he did not?" [page 107 of the transcript]

197 This version is contradicted by what Mr Khuba said during his interview with Werksmans on 23 April 2015. Mr Khuba explained that after taking possession of the docket he and Angus took it directly to Mr McBride. The docket they had collected had the first report in it. A copy of the transcript of that interview is attached hereto marked "SJ31". In that interview Mr Khuba told us the following:

"MR KHUBA: Yes, those statements and whatever was not 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 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 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 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..."

["SJ31", page 13 lines 5 to 24]

198 Mr Khuba also explained:

"MR KHUBA: He gave me 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...

MR KHUBA: Yes. When we briefed him, I never opened my mouth. It was ANGUS who was talking." ["SJ31" page 14, lines 10 to 17]

199 At page 22 of the transcript of the interview held with Mr Khuba on 23 April 2015 he explained what was in the docket he had collected from the NPA's offices.

"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 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. 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 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 that part, I do not know. But my common sense is that they [Sesoko and McBride] would have removed it [the first report], because they wouldn't send it [the first report] with it [the docket]." ["SJ31" page 22, lines 3 to 23]

200 Mr Khuba's version that the first report was part of section B of the docket collected on 7 March 2014 from Adv. Adv Van Zyl is further supported by an internal memorandum from Adv. Mosing to Adv. Chauke dated 14 February 2014. I attached a copy of same marked "SJ32". The memorandum reads as follows:

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

1x A- section of docket

1x B-section of docket

1x forensic report of retrieved computer document and emails

1x AVL analysis

2x Cell phone data of various cell phones

1x Copies of Wierbrug case dockets.

2. I trust you find the above in order..."

- 201 When Mr Khuba and Angus collected the docket containing the information referred to in paragraph 1 of the memorandum, Adv. Van Zyl requested that they both sign for its removal and collection, which they did as appearing from "SJ32", which he kept.
- 202 When regard is had to the evidence of Mr Khuba and "SJ32", the inescapable conclusion is that Mr McBride knowingly gave false testimony before the Commission because the very docket collected was brought straight him and it had the first report.
- 203 From about 7 March 2014 onwards, Messrs Khuba, Sesoko and McBride began working on what became known as the second report. As previously stated, the second report was not a new report. It was the first report, altered to reflect a different recommendation and with pertinent portions of the first report deleted or amended to support the new recommendation.
- 204 Mr McBride was aware of the existence of the first report as matter of fact. Although during his interview with Werksmans on 17 April 2015, Mr McBride denied any knowledge of the first report, Mr Khuba contradicted this during his interview with Werksmans on 13 April 2015. At page 7 line 14 to 22 of the transcript Mr Khuba stated the following.

"MR KHUBA: Let me tell you that the report which I had given to him, which I emailed - I don't know whether he read it or did not read it - is the report that I sent the NPA. I had already updated it, but I don't think I updated the recommendation, it was just to add those statements that

had just arrived. Because there were things that I received after the report had already been sent."

205 Mr Khuba further stated at page 14 line 15 to page 15 line 2:

"MR KHUBA: My understanding, from my view, when I sat with SESOKO I started to see it in another light, and I was very firm with my view. But SESOKO with his prosecutorial background said: Mr Khuba, you can't take it this way. You need to know that when McBRIDE arrived and read the report, we did a new report, he had an option to say: Guys, let's leave the prosecutors (indistinct). He had an option. And he also exercised the other option to say: You will go and work on this report to reflect the content. That's why when this document was sent I was never part of it."

206 Mr Khuba finally told Werksmans in the interview of 23 April 2015, that during a briefing session on 6 March 2014 between himself, Messrs McBride, Sesoko and Angus, Mr McBride asked him questions pertaining to his investigation from a position of knowledge and had a document in front of him. At page 5 line 22 to page 6 line 24, Mr Khuba said the following:

"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, 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

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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."

207 In addition to the foregoing, Mr Sesoko also confirmed during his interview with Werksmans on 1 April 2015, that he provided Mr McBride a hard copy of the first report which had been emailed to him by Mr Khuba. A copy of the transcript is attached marked "SJ33" and Mr Sesoko states the following at page 7 line 18 to page 8 line 9:

"MS BADAL: Okay, Mr Khuba says he provided you with a copy of the report to provide to Mr McBride in order to brief him on high profile matters.

MR SESOKO: Yes, I am saying the briefing on the rendition happened before between Mr Khuba and Mr McBride.

MR SESOKO: To provide to Mr McBride, was provided to Mr McBride, so there was...

MS BADAL: Or you provided him a copy?

MR SESOKO: Printed it out and provided it to him, ja."

208 This piece of detail provided by Mr Sesoko further supports the reasonable conclusion that Mr McBride was aware of the existence of the first report as a hard copy thereof had been provided to him and he read it extensively.

209 Mr McBride's knowledge of the first report is further evidenced by what he said in his founding affidavit in his High Court application against IPID (*McBride v Minister of Police and Another* (06588/2015) [2015] ZAGPPHC 830; [2016] 1 All SA 811 (GP); 2016 (4) BCLR 539 (GP) (4 December 2015), wherein he claimed that he regarded the first report as being "preliminary draft" and therefore subject to changes. He could not have regarded it as preliminary if he was not aware of its existence in the first place. I attach hereto marked "SJ34" a copy of Mr McBride's founding affidavit. The relevant portion appears at page 9 para.24.1 of the affidavit. Below I catalogue additional paragraphs in Mr McBride's High Court application to demonstrate that he was not only fully aware of the first report but had considered it and the docket extensively. At page 10 (paragraph 24.2) of his affidavit, Mr McBride stated:

"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)".

209.1 At page 22 (paragraph 51.2) of his affidavit, Mr McBride stated:

"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".

209.2 This contradicts Mr 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.

209.3 On page 23 (at paragraph 51.3) of his affidavit, Mr McBride stated:

"The preliminary draft of the IPID Investigation Report of 22 January 2014 – disingenuously referred to by the Minister as the "Original Report"- contained and was based only on the evidence and findings available to Mr Khuba at the time. The preliminary draft of the Investigation Report was exactly that: a preliminary and draft report prepared by Mr Khuba based on the evidence available to him at the time."

209.4 On page 23 (at paragraph 51.5) of his affidavit, Mr McBride stated:

"The preliminary draft of the IPID Investigation Report was also still subject to consideration and review by Sesoko and myself. Notably, the preliminary report did not have regard to warning statements

subsequently obtained from Dramat and Sibiya, or , to the evidence which emerged after the date of the Preliminary Report”.

210 It is obvious from the aforesaid passages extracted from his High Court application that Mr McBride’s allegations stated under oath conflict with what he said to Werksmans and this Commission regarding his knowledge of the first report.

211 Mr McBride also alleged in his founding affidavit in the High Court application that he actually considered and reviewed this so-called “preliminary” report prior to concluding and signing the second report. This is not, however, what he told Werksmans. In his interview with Werksmans, Mr McBride alleged that he only made spelling and grammatical changes to the second report and thereafter appended his signature to the corrected version. [“SJ22” page 11, lines 1 to 14]

212 In Werksmans’ interview with Khuba on 13 April 2015, Mr Khuba confirmed that Mr McBride had read the first report extensively. Mr Khuba’s statement to this effect appears at page 8 line 21 to page 9 line 24 of the transcript (annexure “SJ24” of that interview:

“MR JULY: And you know there is a reason why you would not have deleted the information. For instance, what was said by the people – for you to change it, you would have a reason, and you would put that reason in your report. So that information was removed. But if it was not you and it was not SESOKO, we have not yet been able to talk to MR

McBRIDE, although we wrote him an email to come and talk to us, who then would have deleted that information?

KHUBA: That is a very difficult question. But I need to say as the investigating officer I was over-trusting with the report. Because when SESOKO asked for the report, I never withheld the report, I emailed it to him. When we were working on the report I used his computer. Whether he showed McBRIDE - but I remember McBRIDE, if there is one person who read that report extensively it was McBRIDE. He read it extensively. Then the progress which I was doing on the report itself, I was only adding stuff. He was sitting next to me. I was adding things, I was doing things, but whether that part was cut out by him or by me, I will not say, but I don't remember removing it.

MR JULY: Deleting?

KHUBA: no, no, no..."

213 Mr Khuba's version corroborates what Mr McBride stated under oath in his High Court application and provides further support to the fact that Mr McBride was fully aware of the existence of the first report. I respectfully submit that Mr McBride simply did not like the conclusions and recommendations contained in the first report.

214 This so called second and official IPID report was no more than a version of the first report with information implicating Dramat and Sibiya deliberately deleted. No analysis was undertaken by the trio to arrive at the conclusion they arrived

at. As stated elsewhere in the affidavit in terms of the SOP, neither Mr McBride nor Mr Sesoko enjoy approval and signing powers in respect of IPID reports prepared by Investigators. Nor do they enjoy any powers to close investigation files.

215 During our interview with Mr Khuba on 23 April 2015 I asked him why Messrs McBride and Sesoko had to sign the so called second report. He stated that he did not know.

"MR JULY: ... 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 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." ["SJ31" page 1 line 20 to page 2 line 18]

216 I submit that Mr Khuba did not know why Messrs McBride and Sesoko signed the report because there is no such rule, law or requirement at IPID that the Executive Director or Head of Investigations must sign investigation reports. Simply put, Messrs McBride and Sesoko acted *ultra vires* the Act, Regulations and the SOP.

Was there any justification for the amendment of the first report?

217 At the outset of the present discussion, I state that there was absolutely no justification for the changing of the first report. The changes were effected by deleting passages that they considered to be crucial information from the first report in order to arrive at conclusion desired by McBride. The Commission has not been advised of any justification for the changing of the first report other than the warning statements of Gen. Sibiya, Col. Maluleke and Ms Irish-Qhobosheane, and the analysis of Col. Madilonga's statement. The warning statements provided no probative value to the actual recommendations made in the second report. The expert report containing the cell phone analysis was not outstanding and Col. Madilonga's statement had already been analysed.

218 As stated elsewhere in this affidavit, Gen. Dramat's warning statement was not outstanding. Gen. Sibiya denied any knowledge of the Rendition and all allegations put to him. Captain Maluleke, on the other hand, exercised his right to remain silent. Ms Irish-Qhobosheane explained how the matter was referred to the IPID by the Secretariat. None of this information had any bearing on the recommendations made in either the first or second report. I still do not

understand how this information could lead to the deletion of material information contained in the first report.

219 We dealt with the deletions effected to the second report in the Werksmans report (paragraph 4, pages 34 to 41). In that section of the report, we compared the information in the first report with that contained in the second report. We tabulated those difference, with the left column itemising the information from the first report and the right column the information from the second report. The differences identified were the following:

219.1 First, on page 9 of the first report, Mr Khuba extracted the following evidence of Col. Madilonga from his statement:

"He [Col. Madilonga] 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"

219.2 This entire paragraph was removed from the second report.

219.3 Second, at page 21, paragraph 5.2 of the first report Mr Khuba referred to a "Success Report" dated 4 February 2011 addressed to Generals Dramat, Hlatshwayo and Toko. In the first report Mr Khuba then stated:

"The report [i.e. the Success 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."

219.4 The second report also referred to the Success Report on page 20 thereof. The above statement had however been deleted in its entirety.

219.5 Third, in paragraph 5.3, page 21 of the first report, Mr Khuba dealt with certain emails seized from the laptop of Cap. Maluleke. The first report said the following regarding these emails:

"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. 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."

219.6 The second report included the first sentence quote above followed immediately by the third; the underlined portion (the second sentence) had been removed.

219.7 Fourth, on page 22 of the first report Mr Khuba dealt with a letter dated 20 August 2012 addressed to stakeholders. He said the following regarding this letter:

"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."

219.8 This letter was dealt with in the second report, but any reference to Generals Dramat and Sibiya were deleted. The same sentence in the second report read as follows:

"The letter was generated the same day indicating the trip to Zimbabwe to discuss matters of cooperation on cross border crimes."

219.9 Fifth, on page 22 of the first report Mr Khuba dealt with documents relating to the case of a Mr Bongani Moyo, one of the Zimbabwe Nationals who had been illegally deported to Zimbabwe. The first report stated:

"In a letter routed to General Dramat he [Capt. Maluleke] stated that he went to Zimbabwe and conducted an operation with Zimbabwean police at Moyo's home village on 11/05/2011."

219.10 The second report contained this sentence but had removed the fact that the letter had been routed to Gen. Dramat; it excluded the underlined portion. The same sentence in the second report read:

"In a letter he [Capt. Maluleke] states that he went to Zimbabwe and conducted an operation with Zimbabwean police at Moyo's home village on 11/05/2011."

219.11 Sixth, the first report dealt at pages 23 and 24 with certain evidence that had been obtained pursuant to section 205 of the Criminal Procedure Act, 51 of 1977. Among these were the cell phone records of Gen. Sibiya, Capt. Maluleke, Col. Neethling and Col. Madilonga. It contained an analysis of each of these individuals' cell phone records.

219.12 The second report dealt with the cell phone records of each of the aforesaid individuals and Gen. Dramat as well. But it dealt with their records in a different manner to the first report. It analysed each person's cell phone records in a tabular form with two columns, a left column under the heading "*Reason for 205 application*" and the right column under the heading "*Findings*".

219.13 The first report stated that Gen. Sibiya communicated with the officers who had conducted the operation and sent more than 20 text messages

to Gen. Dramat during these operations. It contained an analysis of the cell phone records of each of the different witnesses referred to above.

219.14 As regards the cell phone records of Gen. Sibiya, the first report stated:

“Cell phone record of Major General Sibiya (072-xxx-xxxx): 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 (082-xxx-xxxx). However Major General Dramat never responded to the SMS. The same automated SMS[s] were sent to Lt General Lebeya at 082-xxx-xxxx. These SMS[s] were sent at various milestone of the operation as deduced from witnesses’ statements and documentary proofs.” [I have removed the cell phone numbers of the different witnesses, but the full cell phone numbers appear in the Werksmans report.]

219.15 The second report deal with Gen. Sibiya’s cell phone records by stating under the heading “*Findings*” that “*Major General Sibiya was never at the crime scenes or planning area as alleged by members of Crime Intelligence.*”

219.16 The first report did not contain an analysis of Gen. Dramat’s cell phone records.

219.17 The second report under the heading “*Findings*” said the following regarding Gen. Dramat’s cell phone records:

"The entire cell phone record of Lt General Dramat does [not] 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."

219.18 The first report dealt with the cell phone records of Capt. Maluleke by stating:

"Cell phone records of Captain "Cowboy" Maluleke (082-xxx-xxxx)

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 Masina. The information is also corroborated by Colonel Madilonga. [In the Werksmans report we referred to this paragraph but did not refer to the underlined portion.]

- 219.19 The second report under the heading "*Findings*" states "*There is a prima facie case against Captain Maluleke.*"
- 219.20 As regards the cell phone records of Col Neethling, the first report stated:

"*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 to Major General Sibiya.*"
- 219.21 None of this appeared in the second report.
- 219.22 The first report stated the following as regards the cell phone records of Col. Madilonga:

"*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 (sic) the Zimbabwean police the first time. His cell phone records his interaction with Captain Maluleke in line with his statement.*"
- 219.23 The second statement, under the heading "*Findings*" recorded only that "*Their interaction confirms the version of Madilonga.*" It does not contain the aforesaid paragraph in the first report.
- 219.24 The second report referred to the cell phone records of Capt. Nkosi, Warrant Officer Makoe and Constable Radebe and under the heading

"Findings" stated "The record confirms that they were at the scene even though the allegation of theft is not corroborated."

219.25 The first report made no reference to the cell phone records of Capt. Nkosi, Warrant Officer Makoe or Const. Radebe.

219.26 Seventh, the first report included a statement by Mr Khuba to the following effect:

"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 Chuma and Maghwawe Sibanda. The documents are file[d] in the docket as per A36. An enlarged copy of death 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."

219.27 On page 29 of the first report Mr Khuba presented an analysis of the evidence and his findings. He concluded that there was *"enough evidence that shows that General Dramat did not only know about the operation that led to renditions of Zimbabwean Nationals but sanctioned it"*. Mr Khuba then itemised, over the next few pages, seven respects in which the evidence supported this:

219.27.1 The Zimbabwe 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. On page 30 of the first report Mr Khuba analysed the evidence to support this and stated:

"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."

219.27.2 He held a meeting on 5 November 2010 with Zimbabwean Police planning the operation. After analysing the evidence to support this, the first report concluded:

"Evaluation of the above findings: The success report signed by Leonie Verster was traced to Lt Col Maluleka'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 05/11/2020 coincide[d] 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 (sic) at Beit Bridge between 20h00 and 21h00, it is logical that they arrived in Gauteng late at night, leaving them with the opportunity to have the meeting with General Dramat in the morning of the 5th of November 2010 as stated in the Success Report."

219.27.3 He committed government resources into the operation. After analysis the evidence to support this, the first report concluded:

"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 offence."

219.27.4 He congratulated officers for arresting Johnson Nyoni and advised them to keep it a secret. After analysing the evidence to support this, the first report concluded:

"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 warned them not to tell anyone about it."

219.27.5 **"He received communication regarding successes and photos of the operation through his Personal Assistant Phumla:** *According to the information retrieved from the seized laptop, Captain Maluleke send emails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails where [sic] sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence."*

219.27.6 **"He was kept informed of the developments in the operations that led to the arrest of wanted Zimbabwean Nationals.** *The cell phone records of General Sibiya shows 30 SMS sent to General Dramat! at various milestones of the operation. He also received an SMS from Captain Maluleke shortly after the arrest of Zimbabwean Nationals. He never responded to any of the SMS which may suggest that they were only informing him of the progress."*

219.27.7 **"Report to parliament in response to the allegation:** *A copy of the letter sent by Zimbabwean authority to Col Ntentseni 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 18 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."

219.28 These aspects were not dealt with in the second report. Instead, under a separate paragraph headed "FINDINGS", the second report stated that:

"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."

219.29 Eighth, the first report dealt with the evidence implicating Gen. Sibiya in the following manner:

"There is evidence and witnesses corroborate each other that General Sibiya was both at the scene and planning venue. The meeting held between IPID and General Dramat on 2013/03/07 confirmed that General Sibiya was appointed to be the Head of TOMS which he created to trace wanted suspects. The telephone records of both Captain Maluleke and Major General Sibiya show interaction between them at various milestones of the operation. Following suggest the involvement of General Sibiya:

- *Witness stated that he was seen during the operation that took place on 22/11/2010 which led to the arrest of Prichard Chuma*
- *In other operations 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.*
- *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."*

219.30 None of this information was dealt with in the second report.

219.31 In the first report the following recommendation is made:

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

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

219.32 The second report, however, makes the following recommendation:

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

220 When the two reports are considered, it is clear that there was a crude attempt to exclude all references to Generals Sibiya and Dramat. Mr McBride participated in this exercise.

221 There was thus no legal or factual justification for the creation of the second report at all. As explained above instead of adding the so-called "new

information" Messrs McBide, Khuba and Sesoko, deleted information from a report submitted to the NPA for prosecutorial decision.

Interference with a report prepared by an investigator

222 Investigators of IPID must conduct their work independently. This includes independence from their seniors, like Mr McBride. Mr McBride's involvement in the Rendition investigation was highly irregular and constitutes interference with work of the investigator.

223 Mr McBride's unjustified interference with Mr Khuba's investigation report and the sense of fear he instilled in Mr Khuba is apparent from Mr Khuba's sense of relief or "*happiness*" with the fact that Mr McBride was happy with the "*work*" done on the second report. This was explained by Mr Khuba in an interview with Werksmans on 23 April 2015 where at page 18 line 2 to page 19 line 6, he stated the following:

"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 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 not going to sit behind the computer."

224 By influencing Mr Khuba to make changes to his report which he (Mr McBride) was happy with, Mr McBride interfered with the independent functioning of investigators of IPID. This constitutes gross misconduct and infringes the provisions of the IPID Act read with IPID Regulations, which seeks to exclusively make investigations the responsibility of the Director Investigations. Also, it is clear that Mr McBride's true agenda was to protect members of the police. This is also gross misconduct since IPID is established specifically to investigate the police. It is axiomatic that IPID must be independent of the police, who it is created to police.

225 I say Mr McBride instilled fear in Mr Khuba, because Mr Khuba told me during an off-the-record discussion that he was very scared of Mr McBride owing to the latter's struggle credentials. Mr Khuba went as far as suggesting that he

was doubtful whether Mr McBride was suitable for the position. Mr Khuba shared this with me on 26 March 2015, in the presence of Messrs Tom and Buthelezi and Ms Kerry Badal. I attach hereto marked "SJ35" a confirmatory affidavit by Mr Tom confirm this. The confirmatory affidavit for Mr Buthelezi and Ms Badal will be provided later.

Whether the Minister acted improperly or interfered with the independence of IPID when he requested the case information regarding the Rendition investigation

226 Regulation 15 deals with the reporting that has to be undertaken by the Executive Director. In terms of Reg. 15(2) the Executive Director must submit a report which must include an overview of –

226.1 The administration of the Directorate relating to its overall management and organisation;³⁰

226.2 The processing, monitoring and investigation of complaints lodged with the Directorate in terms of section 28(1) of the IPID Act;³¹

226.3 The management of information and research conducted during the financial year under review; and³²

³⁰ Regulation 15(a).

³¹ Regulation 15(b).

³² Regulation 15(c).

226.4 Statistics of cases with by the Directorate on both national and provincial level, including information on the number of cases carried over to the next financial year.³³

226.5 Despite sub-regulation (1), the Executive Director must, in accordance with section 7(12) of the IPID Act, at any time when requested to do so by the Minister and Parliament, report on the activities of the Directorate.³⁴

227 The Minister was legally empowered to demand accountability from Mr McBride in relation to the manner in which the IPID handled the Rendition investigation. Faced with parliamentary questions on the illegal rendition and media reports that there had been an investigation report that made recommendations to the effect that senior members of DPCI had to be criminally charged, the Minister was entitled to demand answers in terms of the above Reg. 15. The Minister was further entitled, in terms of section 6(6) of the IPID Act, to investigate serious acts of misconduct allegedly committed by McBride as an employee of IPID. The Minister's demand for information pertaining the Rendition investigation does not transform his conduct to interference with the independence of the IPID.

³³ Regulation 15(d).

³⁴ Regulation 15(3).

228 Furthermore, it is abundantly clear from Reg. 15(3) that the Minister can at any time request to be updated by the Executive Director on the activities of IPID. The Executive Director *must* comply with such a request from the Minister.

229 The Rendition investigation was prompted by the murder of Zimbabwean crime suspects arrested by South African Police handed to Zimbabwe police and murdered at that country. I now turn to deal with the allegations contained in Mr McBride's affidavit herein below.

230 **Ad paragraphs 1 to 5**

Except to deny that the evidence contained in Mr McBride's affidavit is both true and correct, the rest of the paragraphs are noted.

231 **Ad paragraphs 6 to 8**

231.1 I disagree with the allegations contained in Mr McBride's supplementary affidavit. Most of what he says is merely a repetition of what was stated by him in his replying affidavit dated 19 June 2015 in the High Court application under case number 6588/15.

231.2 In the paragraphs that follow I deal fully with the contents of Mr McBride's supplementary affidavit. I emphasise that everything contained in his supplementary affidavit and in his testimony before this Commission which is inconsistent with what I say in this affidavit is denied.

232 Ad paragraph 9

The contents of this paragraph are noted.

233 Ad paragraph 10 to 11

233.1 I deny that:

233.1.1 Werksmans was improperly appointed to investigate IPID on acts of misconduct committed by any employee employed by IPID.

233.1.2 The Werksmans investigation impugned or interfered with the independence of IPID.

233.2 The terms of reference given to Werksmans by the Minister are self-explanatory. Messrs McBride, Khuba and Sesoko were all employees of IPID and therefore subject to the Minister's discipline.

233.3 At the time the Minister appointed Werksmans to conduct the investigation he enjoyed powers to discipline and remove an Executive Director from office on account of misconduct, ill-health or inability to perform the duties of that office.³⁵ Where misconduct was alleged to have been committed, the Minister could only exercise such powers after having conducted an investigation into whether misconduct had indeed been committed. There was, with respect, nothing improper in the

³⁵ Section 6(6) of the IPID Act.

Minister appointing Werksmans to conduct an investigation prior to exercising his powers in terms section 6(6) of the IPID Act.

233.4 Mr McBride surely appreciates that the Minister's powers to discipline and suspend the Executive Director existed and were in force prior to the Constitutional Court's decision (2016 (11) BCLR 1398 (CC)). It is therefore quite unhelpful for him to make the allegations he does when at the time the Minister decided to discipline them he did, as a factual state of the law, have the power to do so.

233.5 As a matter of law, the position of Executive Director is accountable to the Minister of Police, as the political executive. Such accountability does not undermine IPID's independence at all. This view was confirmed by the Constitutional Court in **McBride [2016 (11) BCLR 1398 (CC)]** where the court made the following remarks:

'[27] This must be seen against section 7(7) of the IPID Act which requires the Executive Director to submit a summary of disciplinary matters to the Minister. In addition, section 32 requires the Executive Director to prepare and submit an annual report in the form prescribed by the Minister within five months of the end of the financial year to the Minister. Evidently, this is intended to ensure that the Executive Director accounts to the Minister about the activities within IPID. This is probably because the

Minister, as the political head of the police, bears political responsibility for the police.

[28] *But does this on its own undermine IPID's independence to a point where it offends section 206(6) of the Constitution? No. The fact that IPID is required by both the Constitution and the IPID Act to be independent does not mean that it cannot be held accountable. Like all other organs of state, IPID must be accountable for its actions. To be insulated from undue political interference or control does not mean that IPID should be insulated from political accountability. Accountability is one of the important values enshrined in our Constitution – a basic tenet for good governance. Hence the requirement that it must submit reports about its activities to the Minister who in turn will place them before Parliament.* [Emphasis added]

233.6 I submit that it is apparent from the above passage that the independence of IPID does not mean that it is not accountable. The Executive Director as a matter of law is accountable to the Minister of Police. Insisting on accountability does not equate to interference.

234 **Ad paragraphs 12 to 14**

234.1 The Minister will come and explain or shed light on the issue raised by Mr McBride in these paragraphs.

234.2 Suffice to say that at the time of Mr McBride's suspension, the Minister was empowered by the IPID Act to not only suspend but also discipline the Executive Director in his capacity as an employee of IPID. The Constitutional Court declared certain provisions of the IPID Act and the IPID Regulations to be unconstitutional and invalid. That does not alter that those provisions existed as a matter of fact.

234.3 the suggestion by Mr McBride in paragraph 14 that the Werksmans investigation was a criminal investigation is wrong. It was not. The nature of the investigation was adequately set out in the terms of reference. The fact that recommendations were made in the report that McBride be charged criminally does not render the investigation undertaken by Werksmans a criminal investigation. Werksmans, a law firm in private practice, does not have such powers to conduct a criminal investigation.

234.4 As I have indicated elsewhere in this affidavit, the Werksmans report made recommendations to the Minister, and not the NPA. The Minister could either accept or reject the said recommendations. Even the NPA, which subsequently charged Mr McBride, could only have done so upon satisfying itself that Mr McBride had a criminal case to answer to.

235 **Ad paragraph 15**

For the reasons set out elsewhere in this affidavit, I deny that the Minister's involvement was unlawful.

236 Ad paragraph 16

236.1 It should be emphasised that the decision of the NPA to withdraw the charges against Generals Dramat and Sibiya had nothing do with our investigation. Our investigation was to establish whether looking at the two reports prepared by IPID and the docket, a *prima facie* case of criminal liability existed against the Generals. In our view such case existed. This is the same view taken by the NPA when the Generals were originally charged. It was always open to the NPA to exercise its prosecutorial discretion at any stage of the case even after the Generals had been charged.

236.2 I should further emphasize that the decision to charge or prosecute the Generals was made by the NPA. Advocates George Baloyi and Sibongile Mzinyathi on 13 March 2015 made a recommendation that the Generals be charged criminally. They explained, however, that the reason for making a "recommendation" instead of a "decision" was because the case fell outside their jurisdiction.

"MR JULY: 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

place on that. That's the summary of the letter, but there are other issues contained in that. ["SJ28" page 2 line 18 to page 3 line 3]

236.3 The recommendation was made before the Werksmans report had even finalised. Importantly, the NPA took its decision to charge Generals Dramat and Sibiya criminally after the so called second report having been provided to it. In other words, the NPA arrived at a different conclusion to the recommendation that had been expressed in the second report.

237 **Ad paragraph 17**

I have no personal knowledge of the discussions between Messrs McBride, Sesoko and Nxasana and am accordingly not in a position to admit or deny these allegations.

238 **Ad paragraph 18**

238.1 I have no knowledge of the "*purpose*" for which the Werksmans report was used. Werksmans provided the report to the Minister in accordance with its mandate.

238.2 The 'purpose' for which the Werksmans investigation was commissioned has no effect on the facts that informed the findings expressed in the Werksmans report, and the facts are:

238.2.1 Prior to the operations which led to the Rendition of Zimbabwean nationals, during August 2010, Generals Dramat and Sibiya met

with the Zimbabwean Police officers in Zimbabwe and entered into a bilateral agreement;

238.2.2 On 5 November 2010, preceding the operations, a meeting was held in Pretoria between General Dramat, Sibiya and the Zimbabwean police.

238.2.3 On 5, 23 November 2010 and January 2011 operations were undertaken to arrest the citizens of Zimbabwe in connection with the murder of a Police Superintendent in Zimbabwe.

238.2.4 The Zimbabwean police officers were part of the operations;

238.2.5 The South African government and Zimbabwe have no extradition agreement;

238.2.6 Zimbabwean nationals were arrested and handed over to Zimbabwean police officers;

238.2.7 The deportation of the Zimbabwean nationals was unlawful and irregular;

238.2.8 Four (4) Zimbabwean citizens were killed and a number of them were tortured during the operations;

238.3 It is for these reasons that Werksmans made its recommendations, it does not matter for what 'purpose' the investigation was sought and the purpose for which the report was used.

239 Ad paragraph 19

239.1 The recording of the interviews was indeed done by Werksmans, but the transcript was not compiled by it. The transcript was given to a professional transcription company for transcription of the recording of the interview.

239.2 The transcribed record and the actual recordings of the interviews was then sent to Adams & Adams.

239.3 It should be emphasised that the recording of Mr Sesoko's interview was not made available to him by us. This is because during the interview with him he had used his own Dictaphone machine to record the interview. The consequence was that there were two machines recording the same interview, his and ours. It subsequently transpired that Sesoko had removed Werksmans' machine (the two machines were identical). We realised what had happened after Sesoko attached a transcript of the interview, if my memory serves me correctly, in a High Court application.

240 Ad paragraph 20

240.1 I have already pointed out that Mr McBride complains of the manner in which I assessed or construed the evidence. I disagree that Werksmans misconstrued the evidence provided during the interviews.

240.2 In any event, one would have expected Mr McBride to have taken the Werksmans report on review so that his challenges could be properly assessed and adjudicated upon.

240.3 It is clear from the provisions of the IPID Act that IPID reports are a legislative requirement. A report by an investigator is prescribed by the IPID Act and IPID Regulations, it is not just something or a document that is produced at the discretion of the investigator. It is a peremptory requirement. I still maintain that Messrs McBride, Khuba and Sesoko, in deleting certain information from the first report, did so with the intention to exonerate Generals Dramat and Sibiya from criminal prosecution. In so doing, their conduct was aimed at defeating the ends of justice. Mr McBride should know that this is a criminal offence.

241 Ad paragraph 21

241.1 I respectfully submit that Mr McBride has been deliberately selective in attaching extracts of the interviews to his supplementary affidavit.

241.2 I will demonstrate later in this affidavit that there are additional passages in the transcript of Mr McBride's interview which should properly have been disclosed.

242 **Ad paragraph 22**

242.1 I disagree with Mr McBride's claim that the first report was not a "*final report*". It was.

242.2 I deny that there was any evidence of a material nature that still had to be included in the report of 22 January 2014.

242.3 On 30 March 2015, Werksmans interviewed Colonel Moukangwe. In this interview he informed Werksmans that before the first report was submitted to the NPA he and Khuba had requested warning statements from Generals Dramat, Sibiya and Colonel Maluleke and they all refused to give statements. This was Col. Moukangwe's response to my question whether they had requested warning statements from Generals Dramat and Sibiya prior to submitting the first report.

"COLONEL MOUKANGWE: In the report in which I was involved I never saw them, but in the report in which I was involved there were no warning statements of GENERAL SIBIYA, GENERAL DRAMAT or COLONEL MALULEKE. As I said before, they didn't want to give a statement. GENERAL SIBIYA wanted questions to be sent to him, GENERAL DRAMAT said he was still going to speak to his lawyer, and COLONEL MALULEKE refused. And

they didn't speak directly with me, he's the one who spoke to me, but I was with him when he spoke to them. So the issue of how they now decided to bring statements - maybe it was just after I was a far distance from the investigation.

MR JULY: Do you remember if you asked for those statements from them before you finalised the report ...

COLONEL MOUKANGWE: Yes, we did.

MR JULY: ... which is dated 22 January?

COLONEL MOUKANGWE: We did. I even went to the office of GENERAL DRAMAT with MR KHUBA... ["SJ27" page 9]

242.4 I asked Col. Moukangwe about the allegedly outstanding cell records of General Sibiya. He said the following:

"COLONEL MOUKANGWE: In that one maybe he forgot something, because we knew before that GENERAL SIBIYA's cellphone shows he was in PRETORIA, but the people who were operating with him said he is not using one cellphone. So it might happen that the official cellphones were at home, and maybe he used the other one, which is just recorded here on the statement. That is according to what they said. But we knew about the information before, because we questioned them: How can you say SIBIYA was involved, the cellphone shows that ...

MR JULY: And how did you know about this information that SIBIYA's cellphones were in SUNNYSIDE?

COLONEL MOUKANGWE: Because of the detailed billing that we did. We did a detailed billing on the two cellphone numbers that we were given, to show where the cellphones were at that time. They showed that he was in PRETORIA at the time they mentioned in their statements. [At pages 7 to 8 of the transcript, annexure "SJ27"]

242.5 And further:

"COLONEL MOUKANGWE: After the discussion with the prosecutors, they made a suggestion whether we should do the mappings. Cellphone mapping is where an analysis will show us that this was done at this, and make some points in a chart form. That's what we were requested to do.

MR JULY: But that was for the purposes of leading evidence?

COLONEL MOUKANGWE: For the purpose of leading evidence, it was not for the purpose of the report. It was for the purpose of leading evidence, and it would be easier for the prosecutors to pinpoint and show on a chart. [At page 31 of the transcript, annexure "SJ27"]

242.6 Col. Moukangwe also gave his view about the status of the report dated 22 January 2014:

"MR JULY: This was the final report?"

COLONEL MOUKANGWE: That I know about. It was the final one.

MR JULY: You say you were involved in the actual drafting?"

COLONEL MOUKANGWE: Yes.

MR JULY: Meaning that you ..." [At page 3 of the transcript, annexure "SJ27"]

242.7 Elsewhere during the interview Col. Moukangwe stated:

"I won't be able to say it was submitted, but we went to the National Director of Public Prosecutions, because we were given two advocates to work with us on this issue. I was there with MR KHUBA and MR SESOKO. MR SESOKO is a legal person, he was a former prosecutor in BENONI. We went there, and when we were there the report was already drafted. That is what I can say with certainty, because when we were there the prosecutors who were dealing with us on this issue, knew about it, and had a copy of the report." [At page 5 of the transcript, annexure "SJ29"]

242.8 When I asked Col. Moukangwe whether the report submitted to the NPA was preliminary, incomplete or final, he stated:

"It was a final, because we wanted warrants there, really, that's why we took our legal person, MR SESOKO. We were worried about why it seemed they were dragging their feet in giving us warrants of arrest for these people, because the people never wanted to cooperate." [At page 5 of the transcript, annexure "SJ27"]

242.9 Werksmans interviewed Mr Khuba on 13 April 2015. During that interview Mr Khuba confirmed that he, Col. Moukangwe and Mr Sesoko attended at the NPA to request arrest warrants to be issued against the Generals. ["SJ24" pages 1 line 16 to 25]

"MR JULY: We are going to record this. I was saying to you that when we interviewed MR MOUKANGWE, he said you, him and SESOKO went to the NPA.

MR KHUBA: Yes.

MR JULY: And the reason you went to the NPA is you wanted a warrant of arrest.

MR KHUBA: Yes.

MR JULY: He said it was taking time and you guys wanted to find out why.

MR KHUBA: Yes."

242.10 Despite his recent claims that Werksmans did not conduct a balanced assessment of the evidence, in the interview Mr Khuba confirmed that the report dated 22 January 2014 was a final report.

"Mr Khuba: I want to tell you that a report that has a recommendation can be regarded as a final report on the basis that there is nothing else you need to do." [At page 12 of the transcript of his interview (annexure "SJ24")]

242.11 Khuba went on to state the following:

"MR KHUBA: What you are talking about I don't think is an issue of only departmental procedure. It's an issue of common sense, that once you have made a recommendation you have done your investigation. If new evidence surfaces to rebut that, then you are able to advance: Now I have this and that and that. But you need to understand that when I was requested to submit the report, which I had already updated." [Page 13 of the transcript, annexure "SJ24"]

242.12 Nowhere in the first report does Mr Khuba state that there was any outstanding information to be collected or investigated, whereas he had done so in his draft report of 22 October 2013.

242.13 Moreover, and in any event, the IPID SOP of 2013 / 2014, defines a completed investigation to mean:

"an investigation which involves a comprehensive effort to interview the complainant, the victim, witnesses and suspect SAPS/MPS member, the identification, location and acquiring of relevant physical evidence and upon which the conclusion is based on evidence obtained, excluding technical reports".

[Emphasis added]

242.14 It is clear from the IPID SOP that outstanding technical reports, if any, do not render an investigation report incomplete.

243 Adv. Mosing also confirmed during his interview with Werksmans that the report dated 22 January 2014 was a final report as the investigation into the matter was concluded. Advocate Mosing stated:

"ADVOCATE MOSING: Yes, they recommend. But I'm saying our role in the matter we made clear to them, that this report is not given to me so that I can make a decision, we would submit it to the relevant DPP office, who would take it, and we were merely guiding that investigation and assisting them. As I said, we had continuous discussions with the investigating team, so at no stage did he disagree really as to what was happening. I think there was a lot of pressure as well to terminate the investigation, to move over to arrest. We basically had to say: Make your investigation complete first, make sure you've got all the evidence, which at

least indicates a prima facie case so that a prosecutor can take it forward and at least is assured of getting a conviction. But really there wasn't any pressure from anybody to say: Arrest this person and arrest that person, in a sense. But I'm saying of course this matter happened some time ago already, and there was some delay in really getting to the nitty-gritty, to the truth of the whole event, until we started making progress. It was just to make sure: Finish your investigation so that there is nothing extra to go and get. So by the time he then wrote the final report, which we then had agreed in terms of who would be charged, and so on - as I said, where we had agreed, and we mentioned names as well, as was mentioned in this report dated 22 January 2014. Based on this report, which we understood to be the final report, with the investigation being final as far as we were concerned, the matter was now ready to be submitted to a prosecutor to make a decision on whether to prosecute anyone or not. BILLY MOELETSI and myself drafted a memorandum to the Deputy National Director of Public Prosecutions, ADVOCATE JIVA, attaching – let me just get that report, first of all. [Page 23 line 19 to page 25 line 10 of "SJ26"]

- 243.1 In any event, I find it strange that Mr McBride is able to express an opinion on the status of a report he claimed in his interview with Werksmans never to have seen. In fact, Mr McBride even insisted that I should not ask him any questions about a report he had not seen. (Pages 23 to 25 of annexure "SJ22"). If he is to be believed, Mr McBride had no

personal knowledge of the 22 January 2014 report. This appears to be , however, at paragraph 22, he seems to be commenting from a position of knowledge and authority.

244 Ad paragraph 22.3 to 25

244.1 The contents of this paragraph are denied.

244.2 Mr Khuba as an investigator designated in terms of the IPID Act was empowered by Regulation 4(9)(c) of the IPID Regulations to submit the report to the NPA. Mr McBride testified before the commission that the Rendition investigation also pertained to murder of Zimbabwean nationals as a result of police action or omission or both. That was correct. An investigation of this kind falls under Regulation 4(8) and (9).

244.3 It is a matter of public record that a death certificate in respect of one of the Zimbabwean nationals was in the public domain through a story published by the *Sunday Times* newspaper.

244.4 Even if Regulation 5 did apply to this type of case (which it did not), I disagree that the first report was not properly completed in accordance with Regulation 5(3)(1). This contention is misleading. The first report was submitted by Mr Khuba who during that period was the acting Provincial Head of IPID. He was empowered by Regulation 5(3)(1) to submit the report to the NPA.

- 244.5 Mr McBride's reliance on section 7(4) of the IPID Act ignores the fact that the Provincial Head also had powers in terms of section 21(d) to refer matters investigated by his office to the NPA or the relevant provincial prosecuting authority. Section 7(4) does not divest the Provincial Head of those powers. Regulation 5(3)(i) can be equally read with section 21(d).
- 244.6 It bears mentioning that the Executive Director has a general responsibility to refer all matters investigated by IPID to the Minister. This includes provincial investigations.
- 244.7 I should also mention that, according to my investigation and discussions with Ms Koeki Mbeki and my interview with Mr Khuba, at the time the first report was submitted to the NPA, there was no Executive Director at IPID because Ms Mbeki had taken employment elsewhere. I had several informal discussions with Ms Mbeki; according to her even if she had still been in the employ of IPID at the time, her role would have been limited to submitting the report to the Minister without any alteration. Her only contribution would have been to prepare a covering letter as part of her reporting and accountability responsibilities. She stated that investigators ought to conduct their investigations independently and free from interference, even from seniors.
- 244.8 There is no merit in the contention that Mr Khuba was not entitled to sign off on investigation reports in respect of crimes committed in other provinces. Mr Khuba was appointed as an investigator in the Rendition

investigation. This covered all aspects of the Rendition matter, it was not confined to crimes committed in the province in which he was stationed. Who, after all, was to sign off on the report, if not him? My stance is informed by the provisions of section 22 of the IPID Act read with Regulation 4(9)(c) of the IPID Regulations. Khuba, as investigator, was empowered to submit the investigation report with his recommendations to the NPA and after having done so, submit the same investigation report with recommendations to the Executive Director or Provincial Head. Nowhere in the regulation is the Executive Director or Provincial Head for that matter, granted signing or approval powers of an investigation report produced by an investigator. In this case Mr Khuba was the Acting Provincial Head and there was a vacuum in the national office as Ms Mbeki had taken up employment elsewhere. In these circumstances, it could never be suggested that Mr Khuba acted improperly in submitting the report.

245 Ad paragraphs 26 to 28

245.1 The reliance on the SOP is misplaced. The provisions relied upon by McBride relate to internal case management arrangements at IPID relating to the completion of case files. This is an internal IPID arrangement, it certainly does not have the force of rendering a report,

properly submitted to the NPA pursuant to the IPID Act and IPID Regulations, incomplete.

245.2 I disagree with the contention that Khuba was not supposed to sign the report alone. I have already mentioned elsewhere in this affidavit that there was no Executive Director at IPID at the time the first report was submitted to the NPA. Secondly, Sesoko was not Khuba's supervisor they were of equal rank at IPID. Mr Khuba informed us to this effect during our interview of 26 March and 13 April 2015. In this regard, I refer to the following extracted from the transcript of the interview on 26 March 2015:

"I was worried, and I then phoned ADVOCATE MOSING, 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." ["SJ23" page 22 lines 10 to 16]

245.3 Khuba further emphasized that Sesoko was not his supervisor during his interview with Werksmans on 13 April 2015 when he said the following:

"I want to tell you that a report that has a recommendation can be regarded as a final report on the basis that there is nothing else you need to do. You need to understand the procedure which I outlined previously, to say when you compile a report with recommendations it has to be assessed by the senior person,

who signs it. I was in the predicament where firstly the Acting Head - SESOKO was a senior, but he was still at the same rank as I was. He was acting in that position, but I was also acting, so there was not much difference. We were all Acting Chief Directors anyway." [Page 12, line 1 to 14 of the transcript of the interview, annexure "SJ24"]

245.4 Mr McBride was not in the employ of IPID during the period when the first report was submitted, he has no personal knowledge of whether internal processes were followed or not. I am advised that Mr Khuba was consulting with Mr Sesoko and Ms Mbeki during 2013 regarding certain aspects of his investigation. Ms Mbeki informed me that Mr Khuba kept her up to date on his investigation during 2013. This is confirmed by Mr Khuba in his confirmatory affidavit to Mr McBride's replying affidavit in the High Court application, wherein he states the following at page 5:

"6.8 *I was instructed by Mbeki to report directly to her in this matter and keep her abreast of the progress in the investigation through regular report. I sent weekly progress reports on the investigation to Mbeki, and also periodically sent her copies of working draft of the investigation report.*"

245.5 As such, it is factually incorrect for Mr McBride to claim that internal processes were not followed, in circumstances where he was not even in the employ of IPID during the period when the first report was drafted and submitted.

245.6 It is perhaps important to mention at this stage that, Mr Khuba was appointed as an investigator of the Rendition pursuant to the provisions of section 22 of the IPID Act. The process contemplated in that section demands that an investigator must receive a security clearance in the manner prescribed by the Minister of Police. Even though this was not the reason Mr Khuba signed the investigation report alone, I was advised by Ms Mbeki that Mr Sesoko was not and could not be appointed as an IPID investigator during his tenure at IPID because he had a criminal record, which IPID was in the process of assisting him to have expunged.

246 **Ad paragraph 29 and 30**

246.1 The contents of these paragraphs are denied.

246.2 The provisions relied upon by McBride in paragraph [29] relate to internal case management arrangements at IPID relating to the *completion of case files*. That section of the SOP does not even deal with submission of an investigative report to the NPA.

246.3 In any event the SOP is an internal IPID arrangement, it certainly does not have the force of rendering a report, properly submitted to the NPA pursuant to the Act and Regulations, incomplete.

246.4 In the very procedure discussed by McBride at paragraph [29] of his affidavit, there is no reference to the Executive Director having approval or signing powers in relation to '*completion of files*'. McBride has no role whatsoever to play in the completion of files at the IPID. That function is

performed by the Director of Investigations and the Provincial Head. Khuba had the authority to approve the completion of files as a Director of Investigations as well as the Acting Provincial Head.

246.5 I disagree with the contention that Khuba was not supposed to sign the report alone. I have already mentioned elsewhere in this affidavit that there was no Executive Director at IPID at the time the first report was submitted to the NPA. Secondly, Sesoko was not Khuba's supervisor they were of equal rank at IPID. Khuba informed us to this effect during our interview of 13 April 2015. ["SJ24" at page 12 line 10] It is perhaps important to mention at this stage that Khuba was designated as an investigator of the Rendition pursuant to the provisions of section 22 of the Act. The process delineated detailed and demands that an investigator must receive a security clearance in the manner prescribed by the Minister of Police. Even though this was not the reason Khuba signed the investigation report alone, I was advised by Ms Mbeki that Sesoko was not and could not be appointed as an IPID investigator during her stint at the IPID. The reason for this was that Sesoko had a criminal record, which IPID was in the process of assisting him to get expunged.

246.6 In fact, during his interview with Werksmans on 23 April 2015, Khuba stated that he did know why McBride and Sesoko had to sign the second report because this did not happen in the past. ["SJ31" page 1 line 20 to page 2 line 18], I refer to the following extracted from the transcript of the interview on 23 April 2015:

"MR JULY: 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 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." ["SJ31", page 1 line 20 to page 2 line 18]

246.7 I submit that they could not sign because they were neither investigators in the case nor where they authorised in terms of the SOP.

247 Ad paragraphs 31 to 32.3

247.1 In my interview with Adv. Mosing (referred to by Mr McBride at paragraph 31 of his affidavit), he explained why he wrote the word “*draft*” on the report submitted to him by Mr Khuba on 22 January 2014: the report did not have Mr Khuba’s statement explaining the manner in which he conducted the investigation and for this reason he inscribed the word “*draft*” in on it in manuscript. Adv. Mosing advised Mr Khuba to prepare and include his statement in the report. This was done and Mr Khuba submitted his report on or about 24 January 2014 together with his statement and signed it. A copy of the interview with Adv. Mosing is attached to Mr McBride’s affidavit as annexure RMD.W.5 the pertinent pages are pages 58 and 59.

247.2 I cannot respond to Mr McBride’s allegation that Mr Khuba was pressurised into signing the first report. Only Mr Khuba and Adv. Mosing can do so. Mr Khuba was a senior member of IPID and the lead investigator in the Rendition investigation. I do not understand why he would bow to “*pressure*” from professionals who were assisting him in conducting his investigation as the lead investigator.

247.3 According to Mr McBride the so-called “*material*” evidence that was outstanding was the expert analysis of General Sibiya’s cellphone records and warning statements from Generals Dramat and Mr Sibiya. This is obviously not true in light of what I have already stated elsewhere in this affidavit. I emphasize that Mr Khuba, Adv. Mosing and Col.

Moukangwe were in possession an analysis of General Sibiya's cellphone records at the time the first report was submitted to the NPA. In terms of that analysis it was established that the General Sibiya's cellphone was (which was located in Pretoria) was not in the vicinity of the crime. I have already explained the purpose of obtaining an expert analysis of cellphone records previously. That is why the first report did not make any reference to outstanding information. This is because there was none, General Sibiya's cellphone records had already been analysed. No warning statements were outstanding at the time the first report was submitted. They had been requested and had been refused. In any event a warning statement serves no more than to demonstrate that a suspect to the criminal investigation had been warned.

247.4 Furthermore, nowhere in the first report does Khuba say that there was outstanding information still to be collected or investigated, whereas he had done so in his draft report of 22 October 2013.

248 **Ad paragraphs 32.4 to 32.7**

248.1 Although this email was never brought to our attention during the interviews, it demonstrates that Mr Sesoko was fully aware of the existence of the first report. If what is contained in this email is true, an unsigned report was sent to Mr Sesoko on that date recommending something different from what had been marked "draft" by Adv. Mosing, then Mr Khuba must have been seriously confused. I say so for the following reasons:

- 248.1.1 I have carefully read the unsigned report and note that it does not have Mr Khuba's statement. This is entirely consistent with Adv. Mosing's version.
- 248.1.2 Mr Khuba subsequently incorporated his statement. At the same time, recommended that General Sibiya be charged. It was the report containing this recommendation that was then submitted to the NPA, not the unsigned and "incomplete" draft allegedly shared with Mr Sesoko.
- 248.1.3 If it is true that Mr Khuba sent a report to Mr Sesoko on 23 January 2014 in which he recommended that General Sibiya should not be charged, he clearly, with the assistance of Mr Sesoko, changed his mind when he incorporated his statement.
- 248.2 While I agree with Mr McBride's statement that Adv. Mosing reconsidered the evidence and made recommendations, as explained in RMB.W.8, I should clarify that Adv. Mosing made his recommendation because he believed that the available evidence does not establish a crime beyond reasonable doubt on the part of General Sibiya. The basis of his recommendation was not because there was outstanding *expert* analysis, it was because the available cellphone records placed General Sibiya in Pretoria and not at the scene of the crime. It is disingenuous on the part of the Mr McBride to claim that there was outstanding evidence relation to General Sibiya's cellphone records. This, according to Col. Moukangwe and Adv. Mosing, was not the case.

248.3 The content of paragraph 2 of RMB.W.8 bears repetition.

"2. BACKGROUND

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

248.4 Adv. Mosing's understanding of the status of the investigation (i.e. whether it was finalised or not) was consistent with the IPID's SOP as referred to above.

249 **Ad paragraphs 33 and 34**

I have no knowledge of the allegations contained in these paragraph and can neither admit nor deny them.

250 **Ad paragraphs 35 to 35.2**

250.1 At page 25 of the first report Mr Khuba states that he assembled a team comprising Messrs Kenneth Ratshitali, L Maphetho, N Mulaudzi and T Mashaphu, all of whom were investigators from the Limpopo Provincial Office. He stated (at paragraph 3 at page 25) that, he "*took over the case for further investigation in terms of section 206(6) of the Constitution*".

Mr Khuba personally took all the statements that formed part of his

investigation and did not include the very team of Limpopo investigators he had assembled. This, he explained, was to ensure that he gathers and interrogates the facts himself.

250.2 I do not agree with Mr McBride's contention that the involvement of Crime Intelligence Gathering ("CIG") had undermined the independence of IPID. I further do not believe that the involvement of CIG, in particular Col. Moukangwe in the investigation compromised the integrity of the investigation. It is common cause that prior to Mr Khuba conducting any investigations into the Rendition, there were two investigations into the Rendition that had already been undertaken by:

250.2.1 the DPCI; and

250.2.2 by the Civilian Secretariat.

250.3 It is common knowledge that the Rendition docket was handed to IPID by the Secretary for the Police Service appointed in terms of section 7(1) of the CSPA, Ms Jennifer Irish-Qhobosheana. The Rendition docket contained statement prepared and obtained by Col. Moukangwe. In terms of the Act and CSPA there must be cooperation between IPID and the Civilian Secretariat due to the mandate of these bodies. I do not intend to burden this affidavit with the areas or issues on which these bodies are required to co-operate; they are adequately set out in the IPID Act and CSPA Act.

- 250.4 Having said that, IPID is equally free to foster co-operation and conclude memoranda of agreement with other statutory bodies such as the NPA.
- 250.5 Section 15 of the IPID Act establishes a consultative forum comprising the Executive Director and the Secretary.³⁶ In terms of section 16(2) the Executive Director or Secretary, in consultation with one another, may invite any person not mentioned in subsection (1) to a meeting of the forum. My understanding of these provisions is that anyone including a member of CIG may be invited to the meetings between the Executive Director and the Secretary. Of course if the said person will assist the forum in achieving its objectives as set out in section 17 of the IPID Act.
- 250.6 Mr McBride has not been able to demonstrate to the Commission how or in what way Colonel Moukangwe's involvement in the investigation compromised the integrity of the investigation or the independence of IPID. All he has done is to attack CIG and claim improper interference without a shred of evidence. The very so called second report he signed is a product of information obtained with the assistance of CIG.
- 250.7 The involvement and role of Col. Moukangwe in the investigation was explained by Mr Khuba during an interview with Werksmans on 26 March 2015. Mr Khuba explained how supportive Col. Moukangwe was during the investigation.

³⁶ Section 16 of the Act.

"KHUBA: 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 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 precisely. He also gave me the names of two advocates. One is ADVOCATE MOSING, the other is ADVOCATE BILLY MOELETSI. I was also provided with these advocates' contact numbers - their cell numbers. I did contact them, but 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 on the entire evidence available, as well as the information that MOUKANGWE knew at that time." [Pages 3 to 4 of the transcript, annexure

"SJ23"]

250.8

And later:

"Apart from that, I then started to map out the way in which I was going to oppose the case. 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 Rendition case. There was no cooperation from anyone."

[Page 5 of the transcript, annexure "SJ23"]

250.9 In light of the above statements made by Khuba, it cannot be true that the involvement of CIG undermined the independence of the IPID.

251 **Ad paragraph 35.3**

251.1 I deny the allegations contained in this paragraph.

251.2 Mr McBride has given contradictory accounts regarding the circumstances in which the two reports came into existence. In the founding affidavit to his high court application, he claimed that he regarded the first report as being "*preliminary draft*" and therefore subject to changes.

251.3 At page 10 (paragraph 24.2) of his affidavit, Mr McBride stated 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)".

251.4 At page 22 (paragraph 51.2) of his affidavit, Mr McBride stated:

"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".

252 On page 23, at paragraph 51.5 of his affidavit (annexure "SJ31"), Mr McBride stated that:

"The preliminary draft of the IPID Investigation Report was also still subject to consideration and review by Sesoko and myself".

252.1 Yet, from the transcript of his interview with Werksmans, he claimed he never knew of the January 2014 report at all.

"MR JULY: The one which was submitted by KHUBA on 22 January.

MR McBRIDE: The one that has KHUBA's signature on it?

MR JULY: Yes.

MR McBRIDE: I had never seen that report until this hullabaloo started here.

MR JULY: In the same breath then ...

MR McBRIDE: No, I had never seen that report. ["SJ22" page 21
line 22 to 25 and page 22 line 1 to 3]

252.2 As can be distilled from the above passages of the founding affidavit, it is apparent that Mr McBride misled Werksmans regarding his knowledge of the first report. He continues to do in his testimony before the commission.

252.3 Although there were progress reports submitted to the NPA from time to time, with the last progress being submitted on or about on 22 October 2013, the first report was not a progress report. To suggest it was being untruthful to the commission as this is contradicted by Mr Khuba, Col. Moukangwe and Adv. Mosing who were involved in the preparation and submission of the first report. I attach a copy of the 22 October 2013 report as annexure "SJ36". This in my view is amounts to a progress report.

252.4 In paragraph 5.6 of the report of 22 October 2013 Mr Khuba made it clear that there were "*outstanding matters*", which he clearly identified as such. Adv. Mosing considered the draft report and advised Mr Khuba that there was a need to conduct further investigation on the case, which included obtaining an expert analysis of their cell phones, vehicle tracking information and warning statements of Generals Dramat and Sibiya and Col. Maluleka. This was confirmed in an internal memorandum prepared by Adv. Mosing and addressed to Advocates Nxasana and Jiba dated 12 November 2013. Mr Nxasana was, at the

time, the National Director of Public Prosecutions. Ms Jiba was the Deputy National Director of Public Prosecutions. I have not been able to determine whether or not there was a response to this memorandum of Adv. Mosing.

252.5 Mr Khuba subsequently finalised his report before submitting it. The finalised report later became what is referred therein as the first report. This was a final report. Importantly, it excluded the reference in paragraph 5.6 of the earlier report to any "*outstanding matters*".

252.6 There was no preliminary report submitted by Mr Khuba to the NPA, either with the assistance of Mr Sesoko or on his own and, as explained above, Mr McBride is fully aware of this. To add, Mr McBride's careless use of concepts, under oath, such as the first report being a 'preliminary draft' is calculated to mislead. The first report submitted by Mr Khuba to the NPA is far from being a preliminary report within the SOP.

252.7 The lies of Messrs Khuba, Sesoko and McBride are further exposed by the fact that in February 2014, before Mr McBride joined IPID, Messrs Khuba and Sesoko attended at the NPA demanding that warrants of arrest be issued against Generals Dramat and Sibiya and sought to understand why the NPA was dragging its feet in the matter. Mr Sesosk also confirmed during his interview with Werksmans that he provided Mr McBride a hard copy of the first report. I find it hard to believe that Mr McBride was not informed or advised of this given his later instruction to Messrs Khuba and Angus to collect the docket from the NPA offices.

253 Ad paragraph 35.4

253.1 I disagree with McBride's contention that Sesoko was Khuba's "case supervisor". In his interviews with Werksmans on 26 March and 13 April 2015 respectively, Mr Khuba informed us that Mr Sesoko was not his supervisor and that they in fact occupied the same rank within IPID. [Page 12, line 10 of the transcript, annexure "SJ23" (26/03/2015) or "SJ24" if it is 13/04/2015 page 12 line 1 to 14.]

253.2 Mr Sesoko's alleged prosecutorial background did not make him Mr Khuba's supervisor. I am advised that Ms Mbeki will come and testify before this Commission that she never instructed Mr Khuba not to work with Mr Sesoko in the investigation. She will state that she in fact advised Mr Khuba to work with Mr Sesoko, but that he (Mr Sesoko) was not to be at the forefront of the investigation as he had a criminal record, which she believed might compromise the investigation. She wanted Mr Khuba to use Mr Sesoko only as a sounding board. This notwithstanding, I reiterate that according to the Werksmans investigation, Mr Sesoko was never excluded from the investigation.

254 Ad paragraph 35.5

254.1 I do not have personal knowledge of what was discussed in the meeting between Messrs Khuba, McBride and Sesoko. However, what I do know is that Mr McBride instructed Messrs Khuba and Angus to attend at the NPA and collect the docket. The docket was thus collected from the NPA at the behest and on the instruction of Mr McBride. Mr Angus indicated

in his interview with Werksmans on 31 March 2015 that Mr McBride instructed him to check whether Mr Khuba had conducted the investigation correctly. ("SJ20" page 12)

254.2 It is, with respect, inconceivable that Mr Angus, who had nothing to do with the Rendition investigation, would of his own accord (and without any instruction from Mr McBride) collect the docket from the NPA.

255 Ad paragraphs 36 to 37

255.1 The information note sent to the Minister was patently misleading as a final report (the first report) with recommendations had already been submitted to the NPA together with the docket Mr McBride had instructed Messrs Khuba and Angus to collect from the NPA. The entire narrative now spread by Messrs McBride, Khuba and Sesoko that they were not sure whether the first report was part of the docket they collected, is false. Mr McBride knows that an IPID investigator would not submit dockets without a report containing recommendations to the NPA. Contrary to what Mr McBride wants the commission to believe, he knew at the time and knows today that the docket went hand in hand with the report with recommendations. I reiterate that this is a legislative requirement.

255.2 During our interview with Mr Khuba on 13 April 2015 he mentioned that if there was one person who read the first report, it was McBride, who had a number of questions. Mr Khuba stated the following:

"That is a very difficult question. But I need to say as the investigating officer I was over-trusting with the report. Because when SESOKO asked for the report, I never withheld the report, I emailed it to him. When we were working on the report I used his computer. Whether he showed McBRIDE - but I remember McBRIDE, if there is one person who read that report extensively it was McBRIDE. He read it extensively. Then the progress which I was doing on the report itself, I was only adding stuff. He was sitting next to me. I was adding things, I was doing things, but whether that part was cut out by him or by me, I will not say, but I don't remember removing it." [Page 9 of the transcript, annexure "SJ24"]

255.3 It was the view of Werksmans that Mr McBride knew of the report dated 22 January 2014 submitted to the NPA and did not like the recommendations made by Mr Khuba. He then sought the informal views of professionals, such as Mr Angus, on whether Mr Khuba had conducted the investigation correctly. This is the only reason McBride decided to have the report "re-done".

256 **Ad paragraphs 38.1 to 38.3**

256.1 I deny that Mr McBride was unaware of the existence of the first report when he participated in the drafting of the second report.

256.2 I note the contents of paragraph 38.1 to 38.2.

256.3 I deny that Mr McBride was not advised of the fact that the first report had been submitted to the NPA. Mr McBride knew that the report was submitted to the NPA as he instructed and authorised Mr Khuba and Angus to attend to collect the docket from the NPA offices. It is inconceivable that Mr McBride would not know that once an IPID docket is submitted the NPA it is submitted together with a report with recommendations. On 23 April 2015, during his interview with us, Mr Khuba stated the first report was part of the docket collected at the NPA on 7 March 2014 and the it was common sense the first report had been removed by Mr McBride when he submitted the docket together with the second report. I refer to the relevant passages of the transcript herein below.

"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 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. 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 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 that part, I do not know. But my common sense 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? ["SJ31" page 22 line 1 to 24]

256.4 I submit that Mr McBride was aware of the fact that the first report had been submitted to the NPA. Mr McBride knows that a docket is submitted to the NPA together with a report containing recommendations to the NPA. Mr McBride had done so when he submitted the second report to the NPA.

257 **Ad paragraph 38.4**

257.1 I deny that Mr McBride only became aware of the fact that the first report was submitted to the NPA during January 2015.

257.2 As stated above, the first report was part of the docket collected from the NPA and had been removed by Mr McBride and Sesoko when he submitted the second report together with the docket. I have also referred to relevant pages and paragraphs in Mr McBride's affidavit in the High Court case wherein he admitted to have read the evidence in the docket as well as the first report, which he considered preliminary.

258 Ad paragraph 38.5

258.1 I have no knowledge of whether Mr Khuba advised Mr McBride that he did not consider the report submitted to the NPA to be a final report. Mr McBride's account of events is inconsistent with what he stated in his affidavit in High Court regarding his knowledge of the first report. Mr McBride was aware of the first report the moment he joined the IPID. In the process of drafting the second report he found "*the provisional recommendations made in the first report unsustainable on the evidence and accordingly were not included in the final investigation report (of 18 March 2014).*" As such it is not true that Mr McBride "*questioned*" Mr Khuba about the first report in January 2015. As I have already pointed out above, Mr Khuba informed Werksmans that the report submitted to the NPA on 22 January 2014 was a final report with recommendations. Between Mr McBride and Mr Khuba either or both are lying and in the process making a mockery of the work this Commission was tasked to investigate.

258.2 Messrs Khuba's and McBride's opinions on what constitutes of a completed investigation are inconsistent with the IPID Act,³⁷ the IPID Regulations³⁸ and IPID's SOP.

³⁷ Section 21(d);
³⁸ Regulation 4(9).

259 Ad paragraphs 38.6 and 38.7

I have no knowledge of the content of these paragraphs and therefore, I can neither deny nor admit.

260 Ad paragraph 38.8

260.1 This update to the Minister was misleading. It was misleading to record that a thorough analysis of all the evidence had been conducted.

260.2 I have read the report prepared by the trio dated 18 March 2014. It was from a thorough analysis. The exercise conducted by the trio consisted of a deletion of material information relating to Generals Dramat and Sibiya which was properly recorded in the report originally submitted to the NPA. I still maintain that there was no such thorough analysis conducted by the trio, instead of conducting an analysis they deleted crucial information.

261 Ad paragraphs 38.9 to 40

261.1 The contents of these paragraphs are denied.

261.2 I deny that Adv. Mosing advised Mr Khuba to get the docket from the South Gauteng DPP's office. On a careful reading of RMBW15 it is apparent that the email containing General Sibiya's response to questions sent by IPID, was forwarded to Mr Khuba by Mr Sesoko on 27 February 2014. The body of the email is blank. On 28 February 2014, Mr Khuba forwarded the same email to Adv. Mosing with no message in

the body of the email. Importantly, nowhere in this email did Mr Khuba express a desire to "collect", remove or "get" the docket from the NPA offices.

261.3 Adv. Mosing responded to Khuba's email as follows:

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

261.4 Nowhere in the aforesaid response did Adv. Mosing advise Mr Khuba to get or collect the docket from the DPP of South Gauteng. To the contrary, Adv. Mosing advised Mr Khuba to file the evidence in the docket and in future forward additional evidence directly to the DPP for South Gauteng. On this basis alone Mr McBride's account of events cannot be true.

261.5 In his interview with Werksmans on 26 March 2015 Mr Khuba stated that he had contacted the NPA on 28 February 2014 and advised them that he wished to attach further information to the docket. The information that he needed to add, was inconsequential and, in any event, did not require him to remove the docket. He could quite easily have placed such information on the docket without having to remove it.

"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 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..." ["SJ23" page 42 line to 25]

261.6 Further, at his interview on 23 April 2015 Mr Khuba stated that:

"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 remember now, I spoke to SESOKO, and said: Why can't I attach all these things and return the docket?" ["SJ31" page 12 line 17 to page 13 line 3]

261.7 However, Mr McBride had subsequently, upon taking up employment with IPID, instructed Messrs Khuba and Angus to attend at the NPA to collect the docket. The fact that Mr Khuba had initially enquired about the docket, does not exclude the possibility that no instruction was issued to him and Mr Angus to attend to the collection of the docket.

261.8 During our interview with Mr Khuba on 23 April 2015, he told us the following:

"MR KHUBA: Yes, those statements and whatever was not 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 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 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 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..." ["SJ31" page number 13 lines 5 to 25]

261.9 Later, he stated:

"He gave me 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 ...

Khuba: Yes. When we briefed him, I never opened my mouth. It was ANGUS who was talking." ["SJ31" page14 line 3 to 17]

261.10 It is reasonable to infer from the above extract from the transcript and the circumstances under which Mr Angus became involved in the Rendition investigation (*albeit* on a very limited scale), that Messrs Khuba and Angus attended at the NPA to collect the docket on the instructions of McBride. This is an objective conclusion.

261.11 Importantly at paragraph 50.3 of his replying affidavit attached to the supplementary statement as annexure RMB.W.1, McBride says that Khuba advised him that the docket was with the NPA and that he intended to retrieve it and update the evidence, and sought McBride's consent. He goes on to say that he authorised Khuba to do so. This goes to show that McBride on his own version sanctioned the retrieval or collection of the docket. As already stated elsewhere in this affidavit, a docket submitted to the NPA is submitted in terms of the Act and Regulations, McBride must surely have appreciated this fundamental principle at the IPID.

261.12 The above extract of the transcript shows a disturbing picture of how Mr Khuba was bullied by Mr McBride into obtaining the docket from the NPA and how terrified he was of Mr McBride.

262 **Ad paragraphs 41**

262.1 The allegations contained in this paragraph are denied.

262.2 Mr McBride is not telling the truth when he claims to have never been given the docket on the Renditions investigation prior to signing the

second report. This claim by Mr McBride is contradicted by Mr Khuba during his interview with Werksmans on 23 April 2015 when he stated the following:

“MR KHUBA: Yes, those statements and whatever was not 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 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...” [Emphasis added]
[“SJ31” page 13 line 5 to 14]

262.3 This extract shows the McBride was given all the information regarding the Rendition investigation including the docket.

262.4 Furthermore, Mr McBride's recollection is further contradicted by his own evidence under oath contained in the affidavit filed in support of his case before the High Court. Wherein he stated at page 22 (paragraph 51.2)

“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”.

262.5 I submit that this statement could not have been made by a person who did not have regard to the evidence on the docket.

263 Ad paragraph 42

The contents of this paragraph are denied. Mr McBride participated in the so called analysis of evidence and drafting of the second report.

264 Ad paragraph 43 to 45

Inasmuch I do not have personal knowledge of what Mr McBride says in these paragraphs, Mr McBride confirms that he was involved in the preparation of the second report. He may not have personally affected his input into the second report but he certainly made such input which was incorporated by Khuba and Sesoko.

265 Ad paragraph 46

265.1 I disagree with Mr McBride's claim that the only input he had into the report dated 18 March 2014 related to grammatical changes and that he did not see the report submitted to the NPA on or about 22 January 2014. This version is contradicted by Mr Khuba who stated that Mr McBride had in fact seen the soft copy of the report of 22 January 2014. Being a soft copy, it was unsigned. Mr Khuba stated that Mr McBride had certainly read the first report which he (Mr Khuba) had shared with Mr Sesoko. Mr Khuba stated that it was obvious to him from discussions with Mr McBride that the latter had read the report.

265.2 Werksmans considered and investigated the so-called grammatical changes allegedly made by Mr McBride manually on the report he was working on (a copy of which was never shared with Werksmans). It is clear that no grammatical changes that were present in the first report were corrected in the second report. In fact, the only differences between the two reports consisted of the deletion of information implicating Generals Dramat and Sibiya and the alteration to reflect a different recommendation. I invite McBride to take this Commission into his confidence and share the hard copy on which he made the grammatical changes or to demonstrate what grammatical changes were made.

266 **Ad paragraph 47**

266.1 This is an admission on the part of Mr McBride that he knew of the first report.

266.2 On his own version Mr McBride discussed his concern about the leaking of the January 2014 report with the NDPP. According to Mr McBride as at 6 March 2014 he was aware of the existence of the report dated 22 January 2014 which, so he says, had been leaked by the offices of the NPA.

267 **Ad paragraph 48**

267.1 I disagree with Mr McBride when he says that there was no *prima facie* case against the Generals, as concluded by Mr Khuba in the first report.

267.2 The NPA, independently of Mr Khuba's recommendations, took its own prosecutorial decision and decided to charge the Generals Dramat and Sibiya criminally.

268 **Ad paragraph 49**

I maintain that McBride is part of the IPID employees who changed the IPID to change earlier recommendations regarding the criminal charges against General Sibiya and Dramat.

269 **Ad paragraph 50**

269.1 I disagree with Mr McBride's contention.

269.2 Firstly, all of the events that Mr McBride challenges occurred before he had commenced employment with IPID. He has repeatedly claimed that he knows or knew nothing about reports and dockets submitted to the NPA before 3 March 2014. The enduring question has always been how could Mr McBride contradict evidence given by individuals who were involved in the Rendition investigation prior to him joining IPID. For example, other than bare denials and a baseless dismissal of the evidence of Adv. Mosing, Mr Khuba and Col. Moukangwe, Mr McBride has made no effort to explain why their evidence, considered together with the IPID Act and IPID Regulations should be disbelieved. The most disconcerting aspect of his bare denials is that they are made by a person who was not even employed by IPID at the time the 22 January 2014 report was prepared. This person further accuses everyone who

disagreed with him, having been captured or interfering with the independence of IPID.

270 Ad paragraph 51

270.1 I deny that the first report was not part of the docket collected by Messrs Khuba and Angus. This is not what Mr Khuba said during the interview. In fact, Mr Khuba agreed that the first report was included in the docket collected by him and Mr Angus from Advocate Van Zyl.

270.2 Mr McBride's version that the first report was not part of the docket uplifted and collected from the NPA, in any event, defies logic. Why would anybody within the NPA remove a report with recommendations submitted with the docket in terms of the Act and Regulations? I reiterate that a docket submitted by an investigator, Provincial Head or Executive Director, is accompanied by a report with recommendations.

270.3 For the sake of completeness and to prevent Mr McBride from continuing to make misleading references to the transcript of the interview held with Khuba on 13 April 2015, I quote from the interview:

"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 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. 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 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 [i.e. Sesoko and McBride] removed that part [i.e. the first report] or kept that part, I do not know. But my common sense is that they would have removed it [i.e. the first report], because they wouldn't send it [i.e. the first report] with it [i.e. the docket].

MR JULY: So who took the docket to the NDPP then?

MR KHUBA: My role ended when I signed that report, in 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 ..." [Emphasis added]

270.4 It is clear from the above extract that Mr Khuba agreed that the first report was part of the docket collected from Advocate Van Zyl. When Mr Khuba says it was common sense that the first report was removed, he refers to Messrs McBride and Sesoko having removed the said first report when they submitted the second report with the docket to the NDPP. This is apparent from my next question regarding who took the docket to the NDPP, and Mr Khuba's subsequent response.

270.5 It is clear from the transcript that Mr Khuba does not suggest that Adv. Van Zyl removed the first report from the docket he and Mr Angus collected.

271 **Ad paragraph 52**

The allegations contained in this paragraph are denied.

272 **Ad paragraphs 53 to 54**

272.1 I disagree with Mr McBride's claim that there was material evidence still outstanding and other evidence which remained outstanding.

272.2 I have already dealt with the issue of the warning statements and the analysis of the cell phone records at elsewhere in this affidavit, I repeat what is stated there.

272.3 Mr McBride deliberately misinterprets Adv. Mosing's email to Mr Khuba. Adv. Mosing says nothing more in his email than that Mr Khuba should *file* the said evidence in the docket. This with respect, does not and cannot be interpreted to mean he should collect or uplift the docket from the NPA. It simply means place the said evidence into the docket which was with DPP Gauteng.

273 Ad paragraph 55

273.1 Mr McBride's obsession with the notion of *material* outstanding information is disconcerting. He is so blinded by the narrative that there was material information outstanding that he ignores un-contradicted evidence that during February 2014, Mr Khuba, Col. Moukangwe and Mr Sesoko went to the NPA offices demanding warrants of arrest to be issued against Generals Dramat and Sibiya. Mr McBride obviously read the transcripts of the interviews held with Mr Khuba and would be aware of what Mr Khuba stated in his interview with Werksmans.

273.2 It may be mentioned that in seeking such warrants of arrest, they must have been satisfied that there was *prima facie* evidence of criminal responsibility. Repeating this narrative will never elevate it to the truth.

274 Ad paragraphs 56 to 58

274.1 This, with respect, is an extremely reckless and unsubstantiated claim by Mr McBride.

274.2 I have read media reports that General Dramat and Minister Nhleko settled their employment dispute on the basis that General Dramat agreed to early retirement. If General Dramat was aggrieved by the action taken by the Minister, he had legal remedies available to him. I attach marked "SJ37" a copy of an article from the *Mail & Guardian* newspaper to support this. I do not state that this was, necessarily, the media report I read at the time. I simply do not recall.

274.3 Werksmans is a reputable law firm with a track record that speaks for itself. None of the professionals who conducted the investigation owe any allegiance to the Minister. We are all officers of the Court and we all acted professionally at all times. The conclusions reached by Werksmans in its report are based on the facts that were placed before us at the time and the terms of reference given to Werksmans. This is yet another unfortunate allegation made by McBride without providing proof.

274.4 Mr McBride's understanding of interference is seriously concerning and shocking. To him everything the Minister did at IPID amounts to interference. Even requesting an employee of IPID to cooperate with an investigation commissioned by the Minister apparently amounts to interference. It bears mentioning that Mr McBride through his attorney, Mr Jac Marais, refused Mr Khuba permission to consult with Werksmans without any cogent reason. In fact, Mr McBride was engaging in conduct aimed at deliberately frustrating the investigation commissioned by the Minister to whom he was accountable.

275 Ad paragraph 64

275.1 Mr McBride is again deliberately misleading the commission. He knows very well that the report dated 22 October 2013, was a progress report, contained no recommendations, was not signed and was not submitted with a docket.

275.2 On the other hand, the first report was submitted as a final report with recommendations for action to be taken by the NPA.

275.3 The deletions were captured and explained in section B of the Werksmans report, I beg leave to incorporate same herein by reference.

276 Ad paragraph 70

276.1 I have elsewhere in this affidavit addressed the issue regarding my unwillingness to testify in the criminal matter.

276.2 I also addressed this issue in my letter attached to the supplementary statement marked as RMB.W.25. I stand by the views recorded and expressed in the said letter and record that my refusal to testify has nothing to do with state capture. I wish to state that it is not uncommon for private investigative bodies or actors to, in the course of their investigations, recommend criminal action where there is evidence of the commission of a crime. Even this commission can and might at some stage recommend criminal action against those it believes have committed crime. It would be ridiculous to expect the chairperson or any

of the evidence leaders to become witnesses in those criminal proceedings simply because of their role in establishing a *prima facie* case of criminal conduct and referring such a case to law enforcement agencies.

277 Ad paragraph 71

277.1 As lead investigator during the Werksmans investigation and as one of the authors of the report, I still stand by the conclusions arrived at in the report.

277.2 It really does not concern me how the Minister utilised the Werksmans report.

277.3 What I can say is that the investigation was done and the report compiled properly. We were dealing with extremely untruthful senior managers of IPID. It is important to note that Mr Khuba simply lacks integrity his as his version changes with conditions and circumstances. At least Messrs Sesoko and McBride have been consistent in their version, although they are patently false. Messrs Khuba and Sesoko were dismissed because they were found guilty in disciplinary hearings constituted by independent chairpersons. To date Mr McBride has avoided and evaded any disciplinary process against him. He never explained what the constitutional court [2016 (11) BCLR 1398 (CC)] referred to as "*the glaring discrepancies in the two reports*".

- 277.4 At his disciplinary hearing, Mr Khuba pleaded guilty to a charge of dishonesty and defeating the ends of justice. By pleading guilty he in fact admitted that the first investigation report was the final report.
- 277.5 When Mr Khuba pleaded guilty to the charges preferred against him, he was legally represented. He did so freely and voluntarily.
- 277.6 A settlement agreement in respect of sanction ONLY was entered into between IPID and Mr Khuba. In terms of the settlement agreement, a lenient sanction of a final written warning was imposed despite the seriousness of the charges that he pleaded guilty to.
- 277.7 Later on, about 25 September 2015, Mr Khuba deposed to an affidavit that contradicted his guilty plea. Mr Khuba was confronted by the then Acting Executive Director of IPID Mr Kgamanyane about his new affidavit. He was given an opportunity to make written representations as to why he should not be dismissed in light of the perpetuation of his untruthfulness. Mr Kgamanyane proceeded to summarily dismiss him on the grounds of the employment relationship having irreparably broken down, after considering his written representations.
- 277.8 Subsequent to his dismissal, Mr Khuba referred an unfair dismissal dispute to the Bargaining Council and lost as his dismissal was found to have been fair. I attach hereto the arbitration award by the bargaining council as annexure "SJ38".

277.9 Mr Sesoko also tried his utmost to avoid the disciplinary enquiry chaired by Adv. Mxolisi Zondo. This enquiry provided Mr Sesoko with a golden opportunity to deal with the adverse findings made about him in the Werksmans report. I am advised that Mr Sesoko tried every trick in the book to delay and derail the disciplinary inquiry. He was eventually dismissed by the chairperson in his absence on the basis of evidence led by Adv. Mosing. I attach hereto a copy of the chairperson's findings as annexure "SJ39".

277.10 I hasten to mention that the disciplinary proceedings against Messrs McBride, Sesoko and Khuba were not handled by Werksmans and neither was I a witness in those proceedings.

278 **Ad paragraph 73**

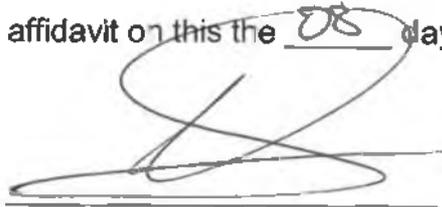
278.1 To the extent that McBride suggests that he was charged by Werksmans, that is denied. Werksmans merely made recommendations to the Minister and no one else.

278.2 Nowhere in the Werksmans report is the NPA directed to charge or prosecute anybody. The prosecutorial decision was always and has always been that of the NPA.



 DEPONENT

The deponent has acknowledged that he knows and understands the contents of this affidavit, he has no objection to taking the prescribed oath and that he regards the prescribed oath as binding upon his conscience, the deponent having sworn to this affidavit on this the 08 day of MAY 2020.



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"SJS1" 189

IN THE CONSTITUTIONAL COURT OF THE REPUBLIC OF SOUTH AFRICA

Case No. CCT/3/94

In the matter of:

THE STATE

versus

T MAKWANYANE AND M MCHUNU

Heard on:

15 February to 17 February 1995

Delivered on:

6 June 1995

JUDGMENT

- [1] **CHASKALSON P:** The two accused in this matter were convicted in the Witwatersrand Local Division of the Supreme Court on four counts of murder, one count of attempted murder and one count of robbery with aggravating circumstances. They were sentenced to death on each of the counts of murder and to long terms of imprisonment on the other counts. They appealed to the Appellate Division of the Supreme Court against the convictions and sentences. The Appellate Division dismissed the appeals against the convictions and came to the conclusion that the circumstances of the murders were such that the accused should receive the heaviest sentence permissible according to law.
- [2] *Section 277(1)(a)* of the Criminal Procedure Act No. 51 of 1977 prescribes that the death penalty is a competent sentence for murder. Counsel for the accused was invited by the Appellate Division to consider whether this provision was consistent with the Republic of South Africa Constitution, 1993, which had come into force subsequent to the conviction and sentence by the trial court. He argued that it was not, contending that it was in conflict with the provisions of *sections 9* and *11(2)* of

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the Constitution.

- [3] The Appellate Division dismissed the appeals against the sentences on the counts of attempted murder and robbery, but postponed the further hearing of the appeals against the death sentence until the constitutional issues are decided by this Court. See: *S v Makwanyane en 'n Ander* 1994 (3) SA 868 (A). Two issues were raised: the constitutionality of *section 277(1)(a)* of the Criminal Procedure Act, and the implications of *section 241(8)* of the Constitution. Although there was no formal reference of these issues to this Court in terms of *section 102(6)* of the Constitution, that was implicit in the judgment of the Appellate Division, and was treated as such by the parties.
- [4] The trial was concluded before the 1993 Constitution came into force, and so the question of the constitutionality of the death sentence did not arise at the trial. Because evidence which might possibly be relevant to that issue would not have been led, we asked counsel appearing before this Court to consider whether evidence, other than undisputed information placed before us in argument, would be relevant to the determination of the question referred to us by the Appellate Division. Apart from the issue of public opinion, with which I will deal later in this judgment, counsel were not able to point to specific material that had not already been placed before us which might be relevant to the decision on the constitutional issues raised in this case. I am satisfied that no good purpose would be served by referring the case back to the trial court for the hearing of further evidence and that we should deal with the matter on the basis of the information and arguments that have been presented to us.
- [5] It would no doubt have been better if the framers of the Constitution had stated specifically, either that the death sentence is not a competent penalty, or that it is permissible in circumstances sanctioned by law. This, however, was not done and it has been left to this Court to decide whether the penalty is consistent with the provisions of the Constitution. That is the extent and limit of the Court's power in this case.

[6] No executions have taken place in South Africa since 1989.¹ There are apparently over 300 persons, and possibly as many as 400 if persons sentenced in the former Transkei, Bophuthatswana and Venda are taken into account, who have been sentenced to death by the Courts and who are on death row waiting for this issue to be resolved. Some of these convictions date back to 1988, and approximately half of the persons on death row were sentenced more than two years ago.² This is an intolerable situation and it is essential that it be resolved one way or another without further delay.³

The Relevant Provisions of the Constitution

[7] The Constitution

¹ The last execution in South Africa occurred on 14 November 1989. See *infra* note 26.

² This information was contained in the written argument filed on behalf of the South African Government and was not disputed.

³ The mental anguish suffered by convicted persons awaiting the death sentence is well documented. A prolonged delay in the execution of a death sentence may in itself be cause for the invalidation of a sentence of death that was lawfully imposed. In India, Zimbabwe and Jamaica, where the death sentence is not unconstitutional, sentences of death have been set aside on these grounds. The relevant authorities are collected and discussed by Gubbay CJ in *Catholic Commission for Justice and Peace in Zimbabwe v Attorney-General, Zimbabwe and Others* 1993 (4) SA 239 (ZSC), and by Lord Griffiths in *Pratt v Attorney-General for Jamaica* [1993] 3 WLR 995 (JPC).

... provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.⁴

It is a transitional constitution but one which itself establishes a new order in South Africa; an order in which human rights and democracy are entrenched and in which the Constitution:

... shall be the supreme law of the Republic and any law or act inconsistent with its provisions shall, unless otherwise provided expressly or by necessary implication in this Constitution, be of no force and effect to the extent of the inconsistency.⁵

- [8] Chapter Three of the Constitution sets out the fundamental rights to which every person is entitled under the Constitution and also contains provisions dealing with the way in which the Chapter is to be interpreted by the Courts. It does not deal specifically with the death penalty, but in *section 11(2)*, it prohibits "cruel, inhuman or degrading treatment or punishment." There is no definition of what is to be regarded as "cruel, inhuman or degrading" and we therefore have to give meaning to these words ourselves.

⁴ These words are taken from the first paragraph of the provision on National Unity and Reconciliation with which the Constitution concludes. *Section 232(4)* provides that for the purposes of interpreting the Constitution, this provision shall be deemed to be part of the substance of the Constitution, and shall not have a lesser status than any other provision of the Constitution.

⁵ *Section 4(1)* of the Constitution.

[9] In *S v Zuma and Two Others*,⁶ this Court dealt with the approach to be adopted in the interpretation of the fundamental rights enshrined in Chapter Three of the Constitution. It gave its approval to an approach which, whilst paying due regard to the language that has been used, is "generous" and "purposive" and gives expression to the underlying values of the Constitution. Kentridge AJ, who delivered the judgment of the Court, referred with approval⁷ to the following passage in the Canadian case of *R v Big M Drug Mart Ltd*:

The meaning of a right or freedom guaranteed by the Charter was to be ascertained by an analysis of the *purpose* of such a guarantee; it was to be understood, in other words, in the light of the interests it was meant to protect.

In my view this analysis is to be undertaken, and the purpose of the right or freedom in question is to be sought by reference to the character and larger objects of the Charter itself, to the language chosen to articulate the specific right or freedom, to the historical origins of the concept enshrined, and where applicable, to the meaning and purpose of the other specific rights and freedoms with which it is associated within the text of the Charter. The interpretation should be...a generous rather than legalistic one, aimed at fulfilling the purpose of a guarantee and securing for individuals the full benefit of the Charter's protection.⁸

⁶ Constitutional Court Case No. CCT/5/94 (5 April 1995).

⁷ *Id.* at para. 15.

⁸ (1985) 13 CRR 64 at 103. As O'Regan J points out in her concurring judgment, there may possibly be instances where the "generous" and "purposive" interpretations do not coincide. That problem does not arise in the present case.

[10] Without seeking in any way to qualify anything that was said in *Zuma's* case, I need say no more in this judgment than that *section 11(2)* of the Constitution must not be construed in isolation, but in its context, which includes the history and background to the adoption of the Constitution, other provisions of the Constitution itself and, in particular, the provisions of Chapter Three of which it is part.⁹ It must also be construed in a way which secures for "individuals the full measure" of its protection.¹⁰ Rights with which *section 11(2)* is associated in Chapter Three of the Constitution, and which are of particular importance to a decision on the constitutionality of the death penalty are included in *section 9*, "every person shall have the right to life", *section 10*, "every person shall have the right to respect for and protection of his or her dignity", and *section 8*, "every person shall have the right to equality before the law and to equal protection of the law." Punishment must meet the requirements of *sections 8, 9 and 10*; and this is so, whether these sections are treated as giving meaning to *Section 11(2)* or as prescribing separate and independent standards with which all punishments must comply.¹¹

[11] Mr. Bizos, who represented the South African government at the hearing of this matter, informed us that the government accepts that the death penalty is a cruel, inhuman and degrading punishment and that it should be declared unconstitutional. The Attorney General of the Witwatersrand, whose office is independent of the government, took a different view, and contended that the death penalty is a necessary and acceptable form of punishment and that it is not cruel, inhuman or degrading within the meaning of *section 11(2)*. He argued that if the framers of the Constitution had wished to make the death penalty unconstitutional they would have said so, and

⁹ *Jaga v Dönges, N.O. and Another* 1950 (4) SA 653 (A) at 662-663.

¹⁰ *Minister of Home Affairs (Bermuda) v Fisher* [1980] AC 319 (PC) at 328-329.

¹¹ In the analysis that follows *sections 8, 9 and 10* are treated together as giving meaning to *section 11(2)*, which is the provision of Chapter Three that deals specifically with punishment.

that their failure to do so indicated an intention to leave the issue open to be dealt with by Parliament in the ordinary way. It was for Parliament, and not the government, to decide whether or not the death penalty should be repealed, and Parliament had not taken such a decision.

Legislative History

- [12] The written argument of the South African government deals with the debate which took place in regard to the death penalty before the commencement of the constitutional negotiations. The information that it placed before us was not disputed. It was argued that this background information forms part of the context within which the Constitution should be interpreted.
- [13] Our Courts have held that it is permissible in interpreting a statute to have regard to the purpose and background of the legislation in question.

Certainly no less important than the oft repeated statement that the words and expressions used in a statute must be interpreted according to their ordinary meaning is the statement that they must be interpreted in the light of their context. But it may be useful to stress two points in relation to the application of this principle. The first is that "the context", as here used, is not limited to the language of the rest of the statute regarded as throwing light of a dictionary kind on the part to be interpreted. Often of more importance is the matter of the statute, its apparent scope and purpose, and, within limits, its background.¹²

- [14] Debates in Parliament, including statements made by Ministers responsible for legislation, and explanatory memoranda providing reasons for new bills have not been admitted as background material. It is, however, permissible to take notice of the report of a judicial commission of enquiry for the limited purpose of ascertaining "the mischief aimed at [by] the statutory enactment in question."¹³ These principles were

¹² Per Schreiner JA in *Jaga v Dönges, N.O. and Another*, *supra* note 9, at 662G-H.

¹³ *Attorney-General, Eastern Cape v Blom and Others* 1988 (4) SA 645 (A) at 668H-669F; *Westinghouse Brake & Equipment (Pty) Ltd v Bilger Engineering (Pty) Ltd* 1986(2) SA 555(A) at 562C-563A.

derived in part from English law. In England, the courts have recently relaxed this exclusionary rule and have held, in *Pepper (Inspector of Taxes) v Hart*¹⁴ that, subject to the privileges of the House of Commons:

...reference to Parliamentary material should be permitted as an aid to the construction of legislation which is ambiguous or obscure or the literal meaning of which leads to an absurdity. Even in such cases references in court to Parliamentary material should only be permitted where such material clearly discloses the mischief aimed at or the legislative intention lying behind the ambiguous or obscure words.¹⁵

¹⁴ 1993 AC 593 HL (E).

¹⁵ Per Lord Browne-Wilkinson at 634D-E, who went on to say that "as at present advised I cannot foresee that any statement other than the statement of the Minister or other promoter of the Bill is likely to meet these criteria".

[15] As the judgment in *Pepper's* case shows, a similar relaxation of the exclusionary rule has apparently taken place in Australia and New Zealand.¹⁶ Whether our Courts should follow these examples and extend the scope of what is admissible as background material for the purpose of interpreting statutes does not arise in the present case. We are concerned with the interpretation of the Constitution, and not the interpretation of ordinary legislation. A constitution is no ordinary statute. It is the source of legislative and executive authority. It determines how the country is to be governed and how legislation is to be enacted. It defines the powers of the different organs of State, including Parliament, the executive, and the courts as well as the fundamental rights of every person which must be respected in exercising such powers.

¹⁶ Id. at 637 F.

[16] In countries in which the constitution is similarly the supreme law, it is not unusual for the courts to have regard to the circumstances existing at the time the constitution was adopted, including the debates and writings which formed part of the process. The United States Supreme Court pays attention to such matters, and its judgments frequently contain reviews of the legislative history of the provision in question, including references to debates, and statements made, at the time the provision was adopted.¹⁷ The German Constitutional Court also has regard to such evidence.¹⁸ The Canadian Supreme Court has held such evidence to be admissible, and has referred to the historical background including the pre-confederation debates for the purpose of interpreting provisions of the Canadian Constitution, although it attaches less weight to such information than the United States Supreme Court does.¹⁹ It also has regard to ministerial statements in Parliament in regard to the purpose of particular legislation.²⁰ In India, whilst speeches of individual members of Parliament or the Convention are apparently not ordinarily admissible, the reports of drafting committees can, according to Seervai, "be a helpful extrinsic aid to construction."²¹ Seervai cites Kania CJ in *A. K. Gopalan v The State*²² for the proposition that whilst not taking "...into consideration the individual opinions of Members of Parliament or Convention to construe the meaning of a particular clause, when a question is raised whether a certain phrase or expression was up for consideration at all or not, a reference to debates may be permitted." The European Court of Human Rights and the United Nations Committee on Human Rights all allow their deliberations to be

¹⁷ ROTUNDA AND NOWAK, TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE §23.6 (2d ed. 1992).

¹⁸ In the decision on the constitutionality of life imprisonment, [1977] 45 BVerfGE 187, the German Federal Constitutional Court took into account that life imprisonment was seen by the framers of the constitution as the alternative to the death sentence when they decided to abolish capital punishment. KOMMERS, THE CONSTITUTIONAL JURISPRUDENCE OF THE FEDERAL REPUBLIC OF GERMANY 315 (1989).

¹⁹ Reference re s.94(2) of the Motor Vehicle Act (British Columbia) (1986) 18 CRR 30 at 47-50; *United States v Cotroni* (1990) 42 CRR 101 at 109; *Mahe v Alberta* (1990) 46 CRR 193 at 214.

²⁰ *Irwin Toy Ltd. v Quebec (AG)* (1989) 39 CRR 193 at 241.

²¹ HM SEERVAI, CONSTITUTIONAL LAW OF INDIA, 3rd ed. (1983) Vol. I, para. 2.35 *et seq.*

²² (1950) SCR 88 at 111, as cited in Seervai, *id.*, Vol. II, para. 24.7, note 25.

informed by *travaux préparatoires*.²³

[17] Our Constitution was the product of negotiations conducted at the Multi-Party Negotiating Process. The final draft adopted by the forum of the Multi-Party Negotiating Process was, with few changes, adopted by Parliament. The Multi-Party Negotiating Process was advised by technical committees, and the reports of these committees on the drafts are the equivalent of the *travaux préparatoires*, relied upon by the international tribunals. Such background material can provide a context for the interpretation of the Constitution and, where it serves that purpose, I can see no reason why such evidence should be excluded. The precise nature of the evidence, and the purpose for which it may be tendered, will determine the weight to be given to it.

[18] It has been said in respect of the Canadian constitution that:

²³ Article 32 of the Vienna Convention of Treaties 1969, 8 ILM 679 (1969) permits the use of *travaux préparatoires* for the purpose of interpreting treaties. For examples of the application of this principle, see Keith Cox v Canada, United Nations Committee on Human Rights, Communication No. 539/1993, 3 November 1993, at 19, stating:

Nonetheless, when giving a broad interpretation to any human rights treaty, care must be taken not to frustrate or circumvent the ascertainable will of the drafters. Here the rules of interpretation set forth in article 32 of the Vienna Convention on the Law of Treaties help us by allowing the use of the *travaux préparatoires*.

Ng v Canada, United Nations Committee on Human Rights, Communication No 469/1991, 5 November 1993, at 9; Young, James and Webster v United Kingdom (1981) 3 EHRR 20, para. 166; Lithgow v United Kingdom (1986) 8 EHRR 329, para. 117; and more generally J.G. STARKE, INTRODUCTION TO INTERNATIONAL LAW 481 (10th ed., Butterworths)(1989).

...the Charter is not the product of a few individual public servants, however distinguished, but of a multiplicity of individuals who played major roles in the negotiating, drafting and adoption of the Charter. How can one say with any confidence that within this enormous multiplicity of actors ... the comments of a few federal civil servants can in any way be determinative.²⁴

Our Constitution is also the product of a multiplicity of persons, some of whom took part in the negotiations, and others who as members of Parliament enacted the final draft. The same caution is called for in respect of the comments of individual actors in the process, no matter how prominent a role they might have played.

[19] Background evidence may, however, be useful to show why particular provisions were or were not included in the Constitution. It is neither necessary nor desirable at this stage in the development of our constitutional law to express any opinion on whether it might also be relevant for other purposes, nor to attempt to lay down general principles governing the admissibility of such evidence. It is sufficient to say that where the background material is clear, is not in dispute, and is relevant to

²⁴ Reference re s.94(2) of the Motor Vehicle Act (British Columbia), *supra* note 19, at 49.

showing why particular provisions were or were not included in the Constitution, it can be taken into account by a Court in interpreting the Constitution. These conditions are satisfied in the present case.

- [20] Capital punishment was the subject of debate before and during the constitution-making process, and it is clear that the failure to deal specifically in the Constitution with this issue was not accidental.²⁵

²⁵ The brief account that follows is taken from the written submissions of the South African Government. These facts were not disputed at the hearing.

[21] In February 1990, Mr F W de Klerk, then President of the Republic of South Africa, stated in Parliament that "the death penalty had been the subject of intensive discussion in recent months", which had led to concrete proposals for reform under which the death penalty should be retained as an option to be used in "extreme cases", the judicial discretion in regard to the imposition of the death sentence should be broadened, and an automatic right of appeal allowed to those under sentence of death.²⁶ These proposals were later enacted into law by the Criminal Law Amendment Act No. 107 of 1990.

[22] In August 1991, the South African Law Commission in its Interim Report on Group and Human Rights described the imposition of the death penalty as "highly controversial".²⁷ A working paper of the Commission which preceded the Interim Report had proposed that the right to life be recognised in a bill of rights, subject to the proviso that the discretionary imposition of the sentence of death be allowed for the most serious crimes. As a result of the comments it received, the Law Commission decided to change the draft and to adopt a "Solomonic solution"²⁸ under which a constitutional court would be required to decide whether a right to life expressed in unqualified terms could be circumscribed by a limitations clause

²⁶ Address to Parliament on 2 February 1990. In this speech it was said that the last execution in South Africa had been on 14 November 1989.

²⁷ South African Law Commission, Interim Report on Group and Human Rights, Project 58, August 1991, para. 7.31.

²⁸ "The Commission ... considers that a Solomonic solution is necessary: a middle course between the retention of capital punishment and the abolition thereof must be chosen in the proposed bill of rights." *Id.* at 7.33.

contained in a bill of rights.²⁹ "This proposed solution" it said "naturally imposes an onerous task on the Constitutional Court. But it is a task which this Court will in future have to carry out in respect of many other laws and executive and administrative acts. The Court must not shrink from this task, otherwise we shall be back to parliamentary sovereignty."³⁰

[23] In March 1992, the then Minister of Justice issued a press statement in which he said:

²⁹ Id. at para. 7.36.

³⁰ Id. at para. 7.37.

Opinions regarding the death penalty differ substantially. There are those who feel that the death penalty is a cruel and inhuman form of punishment. Others are of the opinion that it is in some extreme cases the community's only effective safeguard against violent crime and that it gives effect in such cases to the retributive and deterrent purposes of punishment.³¹

He went on to say that policy in regard to the death penalty might be settled during negotiations on the terms of a Bill of Fundamental Rights, and that pending the outcome of such negotiations, execution of death sentences which had not been commuted, would be suspended. He concluded his statement by saying that:

The government wishes to see a speedy settlement of the future constitutionality of this form of punishment and urges interested parties to join in the discussions on a Bill of Fundamental Rights.³²

- [24] The moratorium was in respect of the carrying out, and not the imposition, of the death sentence. The death sentence remained a lawful punishment and although the courts may possibly have been influenced by the moratorium, they continued to impose it in cases in which it was considered to be the "only proper" sentence. According to the statistics provided to us by the Attorney General, 243 persons have been sentenced to death since the amendment to *section 277* in 1990, and of these sentences, 143 have been confirmed by the Appellate Division.

³¹ South African Government Heads of Argument, Vol 1, authorities, 32-34.

³² *Id.*

[25] In the constitutional negotiations which followed, the issue was not resolved. Instead, the "Solomonic solution" was adopted.³³ The death sentence was, in terms, neither sanctioned nor excluded, and it was left to the Constitutional Court to decide whether the provisions of the pre-constitutional law making the death penalty a competent sentence for murder and other crimes are consistent with Chapter Three of the Constitution. If they are, the death sentence remains a competent sentence for murder

³³ This is apparent from the reports of the Technical Committee on Fundamental Rights and, in particular, the Fourth to the Seventh reports, which were brought to our attention by counsel. The reports show that the question whether the death penalty should be made an exception to the right to life was "up for debate" in the Negotiating Council. The Sixth Report contained the following references to the right to life:

Life: (1) Every person shall have the right to life. (2) A law in force at the commencement of subsection (1) relating to capital punishment or abortion shall remain in force until repealed or amended by the [legislature]. (3) No sentence of death shall be carried out until the [Constitutional Assembly] has pronounced finally on the abolition or retention of capital punishment.

[Comment: The Council still has to decide on the inclusion of this right and if so whether its formulation should admit of qualification of the type suggested above. The unqualified inclusion of the right will result in the [Constitutional Court] having to decide on the validity of any law relating to capital punishment or abortion.] Sixth Report, 15 July 1993 at 5.

In the Seventh Report the right to life was formulated in the terms in which it now appears in *section 9* of the Constitution. The report contained the following comment:

[Comment: The Ad Hoc Committee appointed by the Planning Committee recommends the unqualified inclusion of this right in the Chapter. We support this proposal.] Seventh Report, 29 July 1993 at 3.

in cases in which those provisions are applicable, unless and until Parliament otherwise decides; if they are not, it is our duty to say so, and to declare such provisions to be unconstitutional.

Section 11(2) - Cruel, Inhuman or Degrading Punishment

[26] Death is the most extreme form of punishment to which a convicted criminal can be subjected. Its execution is final and irrevocable. It puts an end not only to the right to life itself, but to all other personal rights which had vested in the deceased under Chapter Three of the Constitution. It leaves nothing except the memory in others of what has been and the property that passes to the deceased's heirs. In the ordinary meaning of the words, the death sentence is undoubtedly a cruel punishment. Once sentenced, the prisoner waits on death row in the company of other prisoners under sentence of death, for the processes of their appeals and the procedures for clemency to be carried out. Throughout this period, those who remain on death row are uncertain of their fate, not knowing whether they will ultimately be reprieved or taken to the gallows. Death is a cruel penalty and the legal processes which necessarily involve waiting in uncertainty for the sentence to be set aside or carried out, add to the cruelty. It is also an inhuman punishment for it "...involves, by its very nature, a denial of the executed person's humanity",³⁴ and it is degrading because it strips the convicted person of all dignity and treats him or her as an object to be eliminated by the state. The question is not, however, whether the death sentence is a cruel, inhuman or degrading punishment in the ordinary meaning of these words but whether it is a cruel, inhuman or degrading punishment within the meaning of *section 11(2)* of our Constitution.³⁵ The accused, who rely on *section 11(2)* of the

³⁴ *Furman v. Georgia*, 408 U.S. 238, 290 (1972)(Brennan, J., concurring).

³⁵ This has been the approach of certain of the justices of the United States Supreme Court. Thus, White, J., concurring, who said in *Furman v. Georgia*, *supra* note 34, at 312, that "[T]he imposition and execution of the death penalty are obviously cruel in the dictionary sense", was one of the justices who held in *Gregg v Georgia*, *infra* note 60, that capital punishment was not per se cruel and unusual punishment within the meaning of the Fifth and Fourteenth Amendments of the United States Constitution. Burger, CJ., dissenting, refers in *Furman's* case at 379, 380, and 382 to a punishment being cruel "in the constitutional sense". See also, comments by Justice Stewart, concurring in *Furman's* case at 309, "... the death sentences now before us are the product of a

Constitution, carry the initial onus of establishing this proposition.³⁶

The Contentions of the Parties

[27] The principal arguments advanced by counsel for the accused in support of their contention that the imposition of the death penalty for murder is a "cruel, inhuman or degrading punishment," were that the death sentence is an affront to human dignity, is inconsistent with the unqualified right to life entrenched in the Constitution, cannot be corrected in case of error or enforced in a manner that is not arbitrary, and that it negates the essential content of the right to life and the other rights that flow from it. The Attorney General argued that the death penalty is recognised as a legitimate form of punishment in many parts of the world, it is a deterrent to violent crime, it meets society's need for adequate retribution for heinous offences, and it is regarded by South African society as an acceptable form of punishment. He asserted that it is, therefore, not cruel, inhuman or degrading within the meaning of *section 11(2)* of the Constitution. These arguments for and against the death sentence are well known and have been considered in many of the foreign authorities and cases to which we were referred. We must deal with them now in the light of the provisions of our own Constitution.

The Effect of the Disparity in the Laws Governing Capital Punishment

legal system that brings them, I believe, within the very core of the... guarantee against cruel and unusual punishments...it is clear that these sentences are 'cruel' in the sense that they excessively go beyond, not in degree but in kind, the punishments that the legislatures have determined to be necessary [citing *Weems v. United States*, 217 U.S. 349 (1910)]...death sentences [imposed arbitrarily] are cruel and unusual in the same way that being struck by lightning is cruel and unusual".

³⁶ *Matinkinca and Another v Council of State, Ciskei and Another* 1994 (1) BCLR 17 (Ck) at 34B-D; *Qozeleni v Minister of Law and Order and Another* 1994 (1) BCLR 75(E) at 87D-E. *Cf. Kindler v Canada* (Minister of Justice) (1992) 6 CRR (2d) 193 at 214.

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[28] One of the anomalies of the transition initiated by the Constitution is that the Criminal Procedure Act does not apply throughout South Africa. This is a consequence of *section 229* of the Constitution which provides:

Subject to this Constitution, all laws which immediately before the commencement of this Constitution were in force in any area which forms part of the national territory, shall continue in force in such area, subject to any repeal or amendment of such laws by a competent authority.

[29] Prior to the commencement of the Constitution, the Criminal Procedure Act was in force only in the old Republic of South Africa. Its operation did not extend to the former Transkei, Bophuthatswana, Venda or Ciskei, which were then treated by South African law as independent states and had their own legislation. Although their respective Criminal Procedure statutes were based on the South African legislation, there were differences, including differences in regard to the death penalty. The most striking difference in this regard was in Ciskei, where the death sentence was abolished on June 8, 1990 by the military regime,³⁷ the *de facto* government of the territory, and it ceased from that date to be a competent sentence.³⁸ These differences still exist,³⁹ which means that the law governing the imposition of the death sentence in South Africa is not uniform. The greatest disparity is in the Eastern Cape Province. A person who commits murder and is brought to trial in that part of the province which was formerly Ciskei, cannot be sentenced to death, whilst a person who commits murder and is brought to trial in another part of the same province, can be sentenced to death. There is no rational reason for this distinction, which is the result

³⁷ The Criminal Procedure Second Amendment Decree, 1990, Decree No. 16 of 1990 of the Council of State of the Republic of Ciskei, 8 June 1990, as amended.

³⁸ *S v Qeqe and Another* 1990 (2) SACR 654 (CKAD).

³⁹ In the former Transkei, Bophuthatswana and Venda the death sentence was a competent verdict for murder but the provisions of the relevant statutes in Transkei and Bophuthatswana are not identical to *section 277*. For the purposes of this judgment it is not necessary to analyse the differences, which relate in the main to the procedure prescribed for appeals and the powers of the court on appeal, procedures that are now subject to the provisions of *section 241(1)* and (1A) of the Constitution, as amended by the Constitution of the Republic of South Africa Third Amendment Act No. 13 of 1994.

of history, and we asked for argument to be addressed to us on the question whether this difference has a bearing on the constitutionality of *section 277(1)(a)* of the Criminal Procedure Act.

[30] Counsel for the accused argued that it did. They contended that in the circumstances *section 277* was not a law of general application (which is a requirement under *section 33(1)* for the validity of any law which limits a Chapter Three right), and that the disparate application of the death sentence within South Africa discriminates unfairly between those prosecuted in the former Ciskei and those prosecuted elsewhere in South Africa, and offends against the right to "equality before the law and to equal protection of the law."⁴⁰

[31] If the disparity had been the result of legislation enacted after the Constitution had come into force the challenge to the validity of *section 277* on these grounds may well have been tenable. Criminal law and procedure is a national competence and the national government could not without very convincing reasons have established a "safe haven" in part of one of the provinces in which the death penalty would not be enforced. The disparity is not, however, the result of the legislative policy of the new Parliament, but a consequence of the Constitution which brings together again in one country the parts that had been separated under apartheid. The purpose of *section 229* was to ensure an orderly transition, and an inevitable consequence of its provisions is that there will be disparities in the law reflecting pre-existing regional variations, and that this will continue until a uniform system of law has been established by the national and provincial legislatures within their fields of competence as contemplated by Chapter Fifteen of the Constitution.

⁴⁰ See *section 8* of the Constitution.

[32] The requirement of *section 229* that existing laws shall continue to be in force *subject to the Constitution*, makes the Constitution applicable to existing laws within each of the geographic areas. These laws have to meet all the standards prescribed by Chapter Three, and this no doubt calls for consistency and parity of laws within the boundaries of each of the different geographic areas. It does not, however, mean that there has to be consistency and parity between the laws of the different geographic areas themselves.⁴¹ Such a construction would defeat the apparent purpose of *section 229*, which is to allow different legal orders to exist side by side until a process of rationalisation has been carried out, and would inappropriately expose a substantial part if not the entire body of our statutory law to challenges under *section 8* of the Constitution. It follows that disparities between the legal orders in different parts of the country, consequent upon the provisions of *section 229* of the Constitution, cannot for that reason alone be said to constitute a breach of the equal protection provisions of *section 8*, or render the laws such that they are not of general application.

International and Foreign Comparative Law

⁴¹ *AK Entertainment CC v Minister of Safety and Security and Others* 1995 (1) SACLR 130 (E) at 135-136.

- [33] The death sentence is a form of punishment which has been used throughout history by different societies. It has long been the subject of controversy.⁴² As societies became more enlightened, they restricted the offences for which this penalty could be imposed.⁴³ The movement away from the death penalty gained momentum during the second half of the present century with the growth of the abolitionist movement. In some countries it is now prohibited in all circumstances, in some it is prohibited save in times of war, and in most countries that have retained it as a penalty for crime, its use has been restricted to extreme cases. According to Amnesty International, 1,831 executions were carried out throughout the world in 1993 as a result of sentences of death, of which 1,419 were in China, which means that only 412 executions were carried out in the rest of the world in that year.⁴⁴ Today, capital punishment has been abolished as a penalty for murder either specifically or in practice by almost half the countries of the world including the democracies of Europe and our neighbouring countries, Namibia, Mozambique and Angola.⁴⁵ In most of those countries where it is retained, as the Amnesty International statistics show, it is seldom used.
- [34] In the course of the arguments addressed to us, we were referred to books and articles on the death sentence, and to judgments dealing with challenges made to capital punishment in the courts of other countries and in international tribunals. The international and foreign authorities are of value because they analyse arguments for and against the death sentence and show how courts of other jurisdictions have dealt with this vexed issue. For that reason alone they require our attention. They may also have to be considered because of their relevance to *section 35(1)* of the Constitution,

⁴² An account of the history of the death sentence, the growth of the abolitionist movement, and the application of the death sentence by South African courts is given by Prof. B. van Niekerk in *Hanged by the Neck Until You Are Dead*, (1969) 86 SALJ 457; Professor E. Kahn in *The Death Penalty in South Africa*, (1970) 33 THRHR 108; and by Professor G. Devenish in *The historical and jurisprudential evolution and background to the application of the death penalty in South Africa and its relationship with constitutional and political reform*, SACJ (1992) 1. For analysis of trends in capital punishment internationally, see AMNESTY INTERNATIONAL, *WHEN THE STATE KILLS... THE DEATH PENALTY V. HUMAN RIGHTS* (1989).

⁴³ See generally, Amnesty International, *The Death Penalty: List of Abolitionist and Retentionist Countries* (December 1, 1993), AI Index ACT 50/02/94.

⁴⁴ Amnesty International, *Update to Death Sentences and executions in 1993*, AI Index ACT 51/02/94.

⁴⁵ *Supra* note 43.

which states:

In interpreting the provisions of this Chapter a court of law shall promote the values which underlie an open and democratic society based on freedom and equality and shall, where applicable, have regard to public international law applicable to the protection of the rights entrenched in this Chapter, and may have regard to comparable foreign case law.

[35] Customary international law and the ratification and accession to international agreements is dealt with in *section 231* of the Constitution which sets the requirements for such law to be binding within South Africa. In the context of *section 35(1)*, public international law would include non-binding as well as binding law.⁴⁶ They may both be used under the *section* as tools of interpretation. International agreements and customary international law accordingly provide a framework within which Chapter Three can be evaluated and understood, and for that purpose, decisions of tribunals dealing with comparable instruments, such as the United Nations Committee on Human Rights,⁴⁷ the Inter-American Commission on Human Rights,⁴⁸ the Inter-American Court of Human Rights,⁴⁹ the European Commission on Human Rights,⁵⁰ and the European Court of Human Rights,⁵¹ and in appropriate cases, reports

⁴⁶ J. Dugard in RIGHTS AND CONSTITUTIONALISM: THE NEW SOUTH AFRICAN LEGAL ORDER 192-195 (Dawid van Wyk et al.eds., Juta & Co., Ltd., 1994). Professor Dugard suggests, at 193-194, that *section 35* requires regard to be had to "all the sources of international law recognised by article 38(1) of the Statute of the International Court of Justice, ie:

- (a) international conventions, whether general or particular, establishing rules expressly recognised by the contesting states;
- (b) international custom, as evidence of a general practice accepted as law;
- (c) the general principles of law recognized by civilized nations; [and]
- (d) ... judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

⁴⁷ Established under *article 28* of the International Covenant on Civil and Political Rights (ICCPR or International Covenant) 1966.

⁴⁸ Established in terms of *article 33* of the American Convention on Human Rights 1969.

⁴⁹ Id.

⁵⁰ Established in terms of *article 19* of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 ("European Convention").

⁵¹ Id.

of specialised agencies such as the International Labour Organisation may provide guidance as to the correct interpretation of particular provisions of Chapter Three.

- [36] Capital punishment is not prohibited by public international law, and this is a factor that has to be taken into account in deciding whether it is cruel, inhuman or degrading punishment within the meaning of *section 11(2)*. International human rights agreements differ, however, from our Constitution in that where the right to life is expressed in unqualified terms they either deal specifically with the death sentence, or authorise exceptions to be made to the right to life by law.⁵² This has influenced the way international tribunals have dealt with issues relating to capital punishment, and is relevant to a proper understanding of such decisions.

⁵² The pertinent part of *article 6* of the ICCPR reads:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. ...sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present covenant ...

Article 4(2) of the American Convention on Human Rights and *article 2* of the European Convention of Human Rights contain similar provisions. *Article 4* of the African Charter of Human and People's Rights provides:

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right. (Emphasis supplied)

[37] Comparative "bill of rights" jurisprudence will no doubt be of importance, particularly in the early stages of the transition when there is no developed indigenous jurisprudence in this branch of the law on which to draw. Although we are told by *section 35(1)* that we "may" have regard to foreign case law, it is important to appreciate that this will not necessarily offer a safe guide to the interpretation of Chapter Three of our Constitution.⁵³ This has already been pointed out in a number of decisions of the Provincial and Local Divisions of the Supreme Court,⁵⁴ and is implicit in the injunction given to the Courts in *section 35(1)*, which in permissive terms allows the Courts to "have regard to" such law. There is no injunction to do more than this.

[38] When challenges to the death sentence in international or foreign courts and tribunals have failed, the constitution or the international instrument concerned has either directly sanctioned capital punishment or has specifically provided that the right to life is subject to exceptions sanctioned by law. The only case to which we were referred in which there were not such express provisions in the Constitution, was the decision of the Hungarian Constitutional Court. There the challenge succeeded and the death penalty was declared to be unconstitutional.⁵⁵

⁵³ See *S v Zuma and Two Others*, *supra* note 6.

⁵⁴ See, e.g., *Qozeleni*, *supra* note 36, at 80B-C; *S v Botha and Others* 1994 (3) BCLR 93 (W) at 110F-G.

⁵⁵ Decision No. 23/1990 (X.31.) AB of the (Hungarian) Constitutional Court (George Feher trans.).

[39] Our Constitution expresses the right to life in an unqualified form, and prescribes the criteria that have to be met for the limitation of entrenched rights, including the prohibition of legislation that negates the essential content of an entrenched right. In dealing with comparative law, we must bear in mind that we are required to construe the South African Constitution, and not an international instrument or the constitution of some foreign country, and that this has to be done with due regard to our legal system, our history and circumstances, and the structure and language of our own Constitution.⁵⁶ We can derive assistance from public international law and foreign case law, but we are in no way bound to follow it.

Capital Punishment in the United States of America

⁵⁶ The judgment of Kentridge AJ in *S v Zuma and Two Others*, *supra* note 6, discusses the relevance of foreign case law in the context of the facts of that case, and demonstrates the use that can be made of such authorities in appropriate circumstances.

[40] The earliest litigation on the validity of the death sentence seems to have been pursued in the courts of the United States of America. It has been said there that the "Constitution itself poses the first obstacle to [the] argument that capital punishment is per se unconstitutional".⁵⁷ From the beginning, the United States Constitution recognised capital punishment as lawful. The Fifth Amendment (adopted in 1791) refers in specific terms to capital punishment and impliedly recognises its validity. The Fourteenth Amendment (adopted in 1868) obliges the states, not to "deprive any person of life, liberty, or property, without due process of law" and it too impliedly recognises the right of the states to make laws for such purposes.⁵⁸ The argument that capital punishment is unconstitutional was based on the Eighth Amendment, which prohibits cruel and unusual punishment.⁵⁹ Although the Eighth Amendment "has not been regarded as a static concept"⁶⁰ and as drawing its meaning "from the evolving standards of decency that mark the progress of a maturing society",⁶¹ the fact that the Constitution recognises the lawfulness of capital punishment has proved to be an obstacle in the way of the acceptance of this argument, and this is stressed in some of the judgments of the United States Supreme Court.⁶²

[41] Although challenges under state constitutions to the validity of the death sentence have been successful,⁶³ the federal constitutionality of the death sentence as a legitimate form of punishment for murder was affirmed by the United States Supreme

⁵⁷ *Furman v. Georgia*, *supra* note 34, at 418 (Powell, J., joined by Burger, CJ., Blackmun, J. and Rehnquist, J., dissenting).

⁵⁸ *See Furman v. Georgia*, *supra* note 34.

⁵⁹ *Id.*

⁶⁰ *Gregg v. Georgia*, 428 U.S. 153, 173 (1976)(Stewart, Powell and Stevens, JJ.).

⁶¹ *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

⁶² *See Furman v. Georgia*, *supra* note 34, at 380-384, and at 417-420 (Burger, CJ., and Powell, J., respectively, dissenting). *See also*, *Gregg v. Georgia*, *supra* note 60, at 176-180; and *Callins v Collins*, 114 S.Ct. 1127 (1994)(judgement denying cert.)(Scalia, J., concurring). Those who take the contrary view say that these provisions do no more than recognise the existence of the death penalty at the time of the adoption of the Constitution, but do not exempt it from the cruel and unusual punishment clause. *Furman v Georgia* at 283-284 (Brennan, J., concurring); *People v. Anderson*, 493 P.2d 880, 886 (Cal. 1972)(Wright, CJ.).

⁶³ *See infra* paras. 91-92.

Court in *Gregg v. Georgia*.⁶⁴ Both before and after *Gregg's* case, decisions upholding and rejecting challenges to death penalty statutes have divided the Supreme Court, and have led at times to sharply-worded judgments.⁶⁵ The decisions ultimately turned on the votes of those judges who considered the nature of the discretion given to the sentencing authority to be the crucial factor.

⁶⁴ *Supra* note 60, at 187.

⁶⁵ *See, e.g.*, the concurring opinion of Scalia, J., in *Callins v. Collins*, *supra* note 62; the opinions of Rehnquist, J., concurring in part and dissenting in part, in *Lockett v. Ohio*, *supra* note 66, at 628 *et seq.*, and dissenting in *Woodson v. North Carolina*, *supra* note 66, at 308 *et seq.*

[42] Statutes providing for mandatory death sentences, or too little discretion in sentencing, have been rejected by the Supreme Court because they do not allow for consideration of factors peculiar to the convicted person facing sentence, which may distinguish his or her case from other cases.⁶⁶ For the same reason, statutes which allow too wide a discretion to judges or juries have also been struck down on the grounds that the exercise of such discretion leads to arbitrary results.⁶⁷ In sum, therefore, if there is no discretion, too little discretion, or an unbounded discretion, the provision authorising the death sentence has been struck down as being contrary to the Eighth Amendment; where the discretion has been "suitably directed and limited so as to minimise the risk of wholly arbitrary and capricious action",⁶⁸ the challenge to the statute has failed.⁶⁹

Arbitrariness and Inequality

[43] Basing his argument on the reasons which found favour with the majority of the United States Supreme Court in *Furman v. Georgia*, Mr Trengove contended on behalf of the accused that the imprecise language of section 277, and the unbounded discretion vested by it in the Courts, make its provisions unconstitutional.

[44] Section 277 of the Criminal Procedure Act provides:

Sentence of death

- (1) The sentence of death may be passed by a superior court only and only in

⁶⁶ *Woodson v. North Carolina*, 428 U.S. 280 (1976); *Roberts v. Louisiana*, 428 U.S. 325 (1976), reh'g denied 429 U.S. 890 (1976); *Lockett v. Ohio*, 438 U.S. 586 (1978) (system for imposing death sentences invalid to the extent it precludes consideration by sentencing jury or judge of potentially mitigating factors).

⁶⁷ See *Green v. Georgia* 442 U.S. 95 (1979).

⁶⁸ *Gregg v. Georgia*, *supra* note 60, at 189.

⁶⁹ *Id.* See also, *Proffitt v. Florida*, 428 U.S. 242 (1976). The nature of the offence for which the sentence is imposed is also relevant. *Coker v. Georgia*, 433 U.S. 584 (1977).

the case of a conviction for-

- (a) murder;
- (b) treason committed when the Republic is in a state of war;
- (c) robbery or attempted robbery, if the court finds aggravating circumstances to have been present;
- (d) kidnapping;
- (e) child-stealing;
- (f) rape.

(2) The sentence of death shall be imposed-

- (a) after the presiding judge conjointly with the assessors (if any), subject to the provisions of s 145(4)(a), or, in the case of a trial by a special superior court, that court, with due regard to any evidence and argument on sentence in terms of section 274, has made a finding on the presence or absence of any mitigating or aggravating factors; and
- (b) if the presiding judge or court, as the case may be, with due regard to that finding, is satisfied that the sentence of death is the proper sentence.

(3)

- (a) The sentence of death shall not be imposed upon an accused who was under the age of 18 years at the time of the commission of the act which constituted the offence concerned.
- (b) If in the application of paragraph (a) the age of an accused is placed in issue, the onus shall be on the State to show beyond reasonable doubt that the

accused was 18 years of age or older at the relevant time.

[45] Under our court system questions of guilt and innocence, and the proper sentence to be imposed on those found guilty of crimes, are not decided by juries. In capital cases, where it is likely that the death sentence may be imposed, judges sit with two assessors who have an equal vote with the judge on the issue of guilt and on any mitigating or aggravating factors relevant to sentence; but sentencing is the prerogative of the judge alone. The Criminal Procedure Act allows a full right of appeal to persons sentenced to death, including a right to dispute the sentence without having to establish an irregularity or misdirection on the part of the trial judge. The Appellate Division is empowered to set the sentence aside if it would not have imposed such sentence itself, and it has laid down criteria for the exercise of this power by itself and other courts.⁷⁰ If the person sentenced to death does not appeal, the Appellate Division is nevertheless required to review the case and to set aside the death sentence if it is of the opinion that it is not a proper sentence.⁷¹

⁷⁰ Criminal Procedure Act No. 51 of 1977, *section 322(2A)*(as amended by *section 13* of Act No. 107 of 1990).

⁷¹ *Id. section 316A(4)(a)*.

[46] Mitigating and aggravating factors must be identified by the Court, bearing in mind that the onus is on the State to prove beyond reasonable doubt the existence of aggravating factors, and to negative beyond reasonable doubt the presence of any mitigating factors relied on by the accused.⁷² Due regard must be paid to the personal circumstances and subjective factors which might have influenced the accused person's conduct,⁷³ and these factors must then be weighed up with the main objects of punishment, which have been held to be: deterrence, prevention, reformation, and retribution.⁷⁴ In this process "[e]very relevant consideration should receive the most scrupulous care and reasoned attention",⁷⁵ and the death sentence should only be imposed in the most exceptional cases, where there is no reasonable prospect of reformation and the objects of punishment would not be properly achieved by any other sentence.⁷⁶

[47] There seems to me to be little difference between the guided discretion required for the death sentence in the United States, and the criteria laid down by the Appellate

⁷² S v Nkwanyana and Others 1990 (4) SA 735 (A) at 743E-745A.

⁷³ S v Masina and Others 1990 (4) SA 709 (A) at 718G-H.

⁷⁴ S v J 1989 (1) SA 669 (A) at 682G. "Generally speaking, however, retribution has tended to yield ground to the aspects of correction and prevention, and it is deterrence (including prevention) which has been described as the 'essential', 'all important', 'paramount' and 'universally admitted' object of punishment". *Id.* at 682I-J (cited with approval in S v P 1991 (1) SA 517 (A) at 523G-H). *Cf.* R v Swanepoel 1945 AD 444 at 453-455.

⁷⁵ Per Holmes JA in S v Letsolo 1970 (3) SA 476 (A) at 477B (cited with approval by Nicholas AJA in S v Dlamini 1992 (1) SA 18 (A) at 31I-32A in the context of the approach to sentencing under section 322(2A)(b) of the Criminal Procedure Act No. 51 of 1977).

⁷⁶ S v Senonohi 1990 (4) SA 727 (A) at 734F-G; S v Nkwanyana, *supra* note 72, at 749A-D.

Division for the imposition of the death sentence. The fact that the Appellate Division, a court of experienced judges, takes the final decision in all cases is, in my view, more likely to result in consistency of sentencing, than will be the case where sentencing is in the hands of jurors who are offered statutory guidance as to how that discretion should be exercised.

- [48] The argument that the imposition of the death sentence under *section 277* is arbitrary and capricious does not, however, end there. It also focuses on what is alleged to be the arbitrariness inherent in the application of *section 277* in practice. Of the thousands of persons put on trial for murder, only a very small percentage are sentenced to death by a trial court, and of those, a large number escape the ultimate penalty on appeal.⁷⁷ At every stage of the process there is an element of chance. The outcome may be dependent upon factors such as the way the case is investigated by the police, the way the case is presented by the prosecutor, how effectively the accused is defended, the personality and particular attitude to capital punishment of the trial judge and, if the matter goes on appeal, the particular judges who are selected to hear the case. Race⁷⁸ and poverty are also alleged to be factors.

⁷⁷ According to the statistics referred to in the *amicus brief* of the South African Police approximately 9 000 murder cases are brought to trial each year. In the more than 40 000 cases that have been heard since the amendment to *section 277* of the Criminal Procedure Act, only 243 persons were sentenced to death, and of these sentences, only 143 were ultimately confirmed on appeal. *See also*, Devenish, *supra* note 42, at 8 and 13.

⁷⁸ In the *amicus brief* of Lawyers for Human Rights, Centre for Applied Legal Studies and the Society for the Abolition of the Death Penalty in South Africa it is pointed out that the overwhelming majority of those



sentenced to death are poor and black. There is an enormous social and cultural divide between those sentenced to death and the judges before whom they appear, who are presently almost all white and middle class. This in itself gives rise to problems which even the most meticulous judge cannot avoid. The formal trial proceedings are recorded in English or Afrikaans, languages which the judges understand and speak, but which many of the accused may not understand, or of which they may have only an imperfect understanding. The evidence of witnesses and the discourse between the judge and the accused often has to be interpreted, and the way this is done influences the proceedings. The differences in the backgrounds and culture of the judges and the accused also comes into the picture, and is particularly relevant when the personal circumstances of the accused have to be evaluated for the purposes of deciding upon the sentence. All this is the result of our history, and with the demise of apartheid this will change. Race and class are, however, factors that run deep in our society and cannot simply be brushed aside as no longer being relevant.

[49] Most accused facing a possible death sentence are unable to afford legal assistance, and are defended under the *pro deo* system. The defending counsel is more often than not young and inexperienced, frequently of a different race to his or her client, and if this is the case, usually has to consult through an interpreter. *Pro deo* counsel are paid only a nominal fee for the defence, and generally lack the financial resources and the infrastructural support to undertake the necessary investigations and research, to employ expert witnesses to give advice, including advice on matters relevant to sentence, to assemble witnesses, to bargain with the prosecution, and generally to conduct an effective defence. Accused persons who have the money to do so, are able to retain experienced attorneys and counsel, who are paid to undertake the necessary investigations and research, and as a result they are less likely to be sentenced to death than persons similarly placed who are unable to pay for such services.⁷⁹

[50] It needs to be mentioned that there are occasions when senior members of the bar act *pro deo* in particularly difficult cases - indeed the present case affords an example of that, for Mr Trengove and his juniors have acted *pro deo* in the proceedings before us, and the Legal Resources Centre who have acted as their instructing attorneys, have done so without charge. An enormous amount of research has gone into the preparation of the argument and it is highly doubtful that even the wealthiest members of our society could have secured a better service than they have provided. But this is the exception and not the rule. This may possibly change as a result of the provisions of *section 25(3)(e)* of the Constitution, but there are limits to the available financial and human resources, limits which are likely to exist for the foreseeable future, and which will continue to place poor accused at a significant disadvantage in defending themselves in capital cases.

⁷⁹ I do not want to be understood as being critical of the *pro deo* counsel who perform an invaluable service, often under extremely difficult conditions, and to whom the courts are much indebted. But the unpalatable truth is that most capital cases involve poor people who cannot afford and do not receive as good a defence as those who have means. In this process, the poor and the ignorant have proven to be the most vulnerable, and are the persons most likely to be sentenced to death.

[51] It cannot be gainsaid that poverty, race and chance play roles in the outcome of capital cases and in the final decision as to who should live and who should die. It is sometimes said that this is understood by the judges, and as far as possible, taken into account by them. But in itself this is no answer to the complaint of arbitrariness; on the contrary, it may introduce an additional factor of arbitrariness that would also have to be taken into account. Some, but not all accused persons may be acquitted because such allowances are made, and others who are convicted, but not all, may for the same reason escape the death sentence.⁸⁰

[52] In holding that the imposition and the carrying out of the death penalty in the cases then under consideration constituted cruel and unusual punishment in the United States, Justice Douglas, concurring in *Furman v. Georgia*, said that "[a]ny law which is nondiscriminatory on its face may be applied in such a way as to violate the Equal Protection Clause of the Fourteenth Amendment." Discretionary statutes are:

⁸⁰ See the comments of Curlewis, J in [1991] SAJHR, Vol. 7, p. 229, arguing that judges who do not impose the death sentence when they should do so are not doing their duty. "Let me return to the point that troubles the authors: 'that a person's life may depend upon who sits in judgment.' Of course this happens. I do not know why the authors are so hesitant in saying so. Their own reasoning, let alone their tables, proves this". Id. at 230.

...pregnant with discrimination and discrimination is an ingredient not compatible with the idea of equal protection of the laws that is implicit in the ban on "cruel and unusual" punishments.⁸¹

- [53] It was contended that we should follow this approach and hold that the factors to which I have referred, make the application of *section 277*, in practice, arbitrary and capricious and, for that reason, any resulting death sentence is cruel, inhuman and degrading punishment.

⁸¹ *Furman v. Georgia*, *supra* note 34, at 257.

[54] The differences that exist between rich and poor, between good and bad prosecutions, between good and bad defence, between severe and lenient judges, between judges who favour capital punishment and those who do not, and the subjective attitudes that might be brought into play by factors such as race and class, may in similar ways affect any case that comes before the courts, and is almost certainly present to some degree in all court systems. Such factors can be mitigated, but not totally avoided, by allowing convicted persons to appeal to a higher court. Appeals are decided on the record of the case and on findings made by the trial court. If the evidence on record and the findings made have been influenced by these factors, there may be nothing that can be done about that on appeal. Imperfection inherent in criminal trials means that error cannot be excluded; it also means that persons similarly placed may not necessarily receive similar punishment. This needs to be acknowledged. What also needs to be acknowledged is that the possibility of error will be present in any system of justice and that there cannot be perfect equality as between accused persons in the conduct and outcome of criminal trials. We have to accept these differences in the ordinary criminal cases that come before the courts, even to the extent that some may go to gaol when others similarly placed may be acquitted or receive non-custodial sentences. But death is different, and the question is, whether this is acceptable when the difference is between life and death. Unjust imprisonment is a great wrong, but if it is discovered, the prisoner can be released and compensated; but the killing of an innocent person is irremediable.⁸²

⁸² "While this court has the power to correct constitutional or other errors retroactively...it cannot, of course, raise the dead." *Suffolk District v. Watson and Others*, 381 Mass. 648, 663 (1980)(Hennessy, CJ.)(plurality decision holding the death penalty unconstitutionally cruel under the Massachusetts State Constitution). "Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two. Because of the qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case". *Woodson v. North Carolina*, *supra* note 66, at 305 (Stewart, Powell and Stevens, JJ.).

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[55] In the United States, the Supreme Court has addressed itself primarily to the requirement of due process. Statutes have to be clear and discretion curtailed without ignoring the peculiar circumstances of each accused person. Verdicts are set aside if the defence has not been adequate,⁸³ and persons sentenced to death are allowed wide rights of appeal and review. This attempt to ensure the utmost procedural fairness has itself led to problems. The most notorious is the "death row phenomenon" in which prisoners cling to life, exhausting every possible avenue of redress, and using every device to put off the date of execution, in the natural and understandable hope that there will be a reprieve from the Courts or the executive. It is common for prisoners in the United States to remain on death row for many years, and this dragging out of the process has been characterised as being cruel and degrading.⁸⁴ The difficulty of

⁸³ *Voyles v. Watkins*, 489 F.Supp 901 (D.D.C.: N.D.Miss. 1980). See also, *People v. Frierson*, 599 P.2d. 587 (1979). Cf. *Powell v. Alabama*, 287 U.S. 45 (1932).

⁸⁴ *Furman v. Georgia*, *supra* note 34, at 288-289 (Brennan, J., concurring). Although in the United States prolonged delay extending even to more than ten years has not been held, in itself, a reason for setting aside a death sentence, *Richmond v. Lewis*, 948 F.2d 1473, 1491 (9th Cir. 1990)(rejecting a claim that execution after sixteen years on death row would constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments), in other jurisdictions a different view is taken.

It is part of the human condition that a condemned man will take every opportunity to save his life through use of the appellate procedure. If the appellate procedure enables the prisoner to prolong the appellate hearings over a period of years, the fault is attributed to the appellate system that permits such delay and not to the prisoner who takes advantage of it. Appellate procedures that echo down the years are not compatible with capital punishment. The death row phenomenon must not become established as a part of our jurisprudence.

Pratt v Attorney-General for Jamaica, *supra* note 3, at 1014.

implementing a system of capital punishment which on the one hand avoids arbitrariness by insisting on a high standard of procedural fairness, and on the other hand avoids delays that in themselves are the cause of impermissible cruelty and inhumanity, is apparent. Justice Blackmun, who sided with the majority in *Gregg's* case, ultimately came to the conclusion that it is not possible to design a system that avoids arbitrariness.⁸⁵ To design a system that avoids arbitrariness and delays in carrying out the sentence is even more difficult.

⁸⁵ *Callins v. Collins*, *supra* note 62, (Blackmun, J., dissenting).

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[56] The United States jurisprudence has not resolved the dilemma arising from the fact that the Constitution prohibits cruel and unusual punishments, but also permits, and contemplates that there will be capital punishment. The acceptance by a majority of the United States Supreme Court of the proposition that capital punishment is not per se unconstitutional, but that in certain circumstances it may be arbitrary, and thus unconstitutional, has led to endless litigation. Considerable expense and interminable delays result from the exceptionally-high standard of procedural fairness set by the United States courts in attempting to avoid arbitrary decisions. The difficulties that have been experienced in following this path, to which Justice Blackmun and Justice Scalia have both referred,⁸⁶ but from which they have drawn different conclusions, persuade me that we should not follow this route.

The Right to Dignity

[57] Although the United States Constitution does not contain a specific guarantee of human dignity, it has been accepted by the United States Supreme Court that the concept of human dignity is at the core of the prohibition of "cruel and unusual punishment" by the Eighth and Fourteenth Amendments.⁸⁷ For Brennan J this was decisive of the question in *Gregg v. Georgia*.

The fatal constitutional infirmity in the punishment of death is that it treats

⁸⁶ *Id.* (compare Scalia, J., concurring, with Blackmun, J., dissenting).

⁸⁷ *Trop v. Dulles*, *supra* note 61, at 100. *See also*, *Furman v. Georgia*, *supra* note 34, at 270-281 (Brennan, J., concurring); *Gregg v. Georgia*, *supra* note 60, at 173; *People v. Anderson*, *supra* note 62, at 895 ("The dignity of man, the individual and the society as a whole, is today demeaned by our continued practice of capital punishment.").

"members of the human race as nonhumans, as objects to be toyed with and discarded. [It is] thus inconsistent with the fundamental premise of the Clause that even the vilest criminal remains a human being possessed of common human dignity."⁸⁸

[58] Under our constitutional order the right to human dignity is specifically guaranteed. It can only be limited by legislation which passes the stringent test of being 'necessary'. The weight given to human dignity by Justice Brennan is wholly consistent with the values of our Constitution and the new order established by it. It is also consistent with the approach to extreme punishments followed by courts in other countries.

[59] In Germany, the Federal Constitutional Court has stressed this aspect of punishment.

⁸⁸ *Gregg v. Georgia*, *supra* note 60, at 230 (Brennan, J., dissenting) (quoting his opinion in *Furman v. Georgia*, at 273). *See also*, *Furman v. Georgia*, *supra* note 34, at 296, where Brennan, J., concurring, states: "The country has debated whether a society for which the dignity of the individual is the supreme value can, without a fundamental inconsistency, follow the practice of deliberately putting some of its members to death."

Respect for human dignity especially requires the prohibition of cruel, inhuman, and degrading punishments. [The state] cannot turn the offender into an object of crime prevention to the detriment of his constitutionally protected right to social worth and respect.⁸⁹

- [60] That capital punishment constitutes a serious impairment of human dignity has also been recognised by judgments of the Canadian Supreme Court. *Kindler v Canada*⁹⁰ was concerned with the extradition from Canada to the United States of two fugitives, Kindler, who had been convicted of murder and sentenced to death in the United States, and Ng who was facing a murder charge there and a possible death sentence. Three of the seven judges who heard the cases expressed the opinion that the death penalty was cruel and unusual:

It is the supreme indignity to the individual, the ultimate corporal punishment, the final and complete lobotomy and the absolute and irrevocable castration. [It is] the ultimate desecration of human dignity...⁹¹

- [61] Three other judges were of the opinion that:

⁸⁹ [1977] 45 BVerfGE 187, 228 (*Life Imprisonment case*)(as translated in Kommers, *supra* note 18, at 316). The statement was made in the context of a discussion on punishment to be meted out in respect of murders of wanton cruelty. It was held that a life sentence was a competent sentence as long as it allowed the possibility of parole for a reformed prisoner rehabilitated during his or her time in prison.

⁹⁰ (1992) 6 CRR (2d) 193 SC.

⁹¹ *Id.* at 241 (per Cory, J, dissenting with Lamer, CJC, concurring). *See also*, Sopinka, J, dissenting (with Lamer, CJC, concurring) at 220.

[t]here is strong ground for believing, having regard to the limited extent to which the death penalty advances any valid penological objectives and the serious invasion of human dignity it engenders, that the death penalty cannot, except in exceptional circumstances, be justified in this country.⁹²

In the result, however, the majority of the Court held that the validity of the order for extradition did not depend upon the constitutionality of the death penalty in Canada, or the guarantee in its Charter of Rights against cruel and unusual punishment. The Charter was concerned with legislative and executive acts carried out in Canada, and an order for extradition neither imposed nor authorised any punishment within the borders of Canada.

- [62] The issue in *Kindler's* case was whether the action of the Minister of Justice, who had authorised the extradition without any assurance that the death penalty would not be imposed, was constitutional. It was argued that this executive act was contrary to *section 12* of the Charter which requires the executive to act in accordance with fundamental principles of justice. The Court decided by a majority of four to three that in the particular circumstances of the case the decision of the Minister of Justice could not be set aside on these grounds. In balancing the international obligations of Canada in respect of extradition, and another purpose of the extradition legislation - to prevent Canada from becoming a safe haven for criminals, against the likelihood that the fugitives would be executed if returned to the United States, the view of the majority was that the decision to return the fugitives to the United States could not be said to be contrary to the fundamental principles of justice. In their view, it would not shock the conscience of Canadians to permit this to be done.

The International Covenant on Civil and Political Rights

- [63] *Ng and Kindler* took their cases to the Human Rights Committee of the United Nations, contending that Canada had breached its obligations under the International

⁹² Id. at 202 (per La Forest, J)(L'Heureux-Dube and Gonthier, JJ concurring).

Covenant on Civil and Political Rights. Once again, there was a division of opinion within the tribunal. In *Ng's* case it was said:

The Committee is aware that, by definition, every execution of a sentence of death may be considered to constitute cruel and inhuman treatment within the meaning of article 7 of the covenant.⁹³

⁹³ *Ng v Canada*, *supra* note 23, at 21.

- [64] There was no dissent from that statement. But the International Covenant contains provisions permitting, with some qualifications, the imposition of capital punishment for the most serious crimes. In view of these provisions, the majority of the Committee were of the opinion that the extradition of fugitives to a country which enforces the death sentence in accordance with the requirements of the International Covenant, should not be regarded as a breach of the obligations of the extraditing country. In *Ng's* case, the method of execution which he faced if extradited was asphyxiation in a gas chamber. This was found by a majority of the Committee to involve unnecessary physical and mental suffering and, notwithstanding the sanction given to capital punishment, to be cruel punishment within the meaning of *article 7* of the International Covenant. In *Kindler's* case, in which the complaint was delivered at the same time as that in the *Ng's* case, but the decision was given earlier, it was held that the method of execution which was by lethal injection was not a cruel method of execution, and that the extradition did not in the circumstances constitute a breach of Canada's obligations under the International Covenant.⁹⁴
- [65] The Committee also held in *Kindler's* case that prolonged judicial proceedings giving rise to the death row phenomenon does not *per se* constitute cruel, inhuman or degrading treatment. There were dissents in both cases. Some Commissioners in *Ng's* case held that asphyxiation was not crueller than other forms of execution. Some in *Kindler's* case held that the provision of the International Covenant against the arbitrary deprivation of the right to life took priority over the provisions of the International Covenant which allow the death sentence, and that Canada ought not in the circumstances to have extradited Kindler without an assurance that he would not be executed.
- [66] It should be mentioned here that although *articles 6(2) to (5)* of the International Covenant specifically allow the imposition of the death sentence under strict controls

⁹⁴ *Joseph Kindler v Canada*, United Nations Committee on Human Rights, Communication No 470/1991, 30 July 1993.

"for the most serious crimes" by those countries which have not abolished it, it provides in *article 6(6)* that "[n]othing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant." The fact that the International Covenant sanctions capital punishment must be seen in this context. It tolerates but does not provide justification for the death penalty.

- [67] Despite these differences of opinion, what is clear from the decisions of the Human Rights Committee of the United Nations is that the death penalty is regarded by it as cruel and inhuman punishment within the ordinary meaning of those words, and that it was because of the specific provisions of the International Covenant authorising the imposition of capital punishment by member States in certain circumstances, that the words had to be given a narrow meaning.

The European Convention on Human Rights

- [68] Similar issues were debated by the European Court of Human Rights in *Soering v United Kingdom*.⁹⁵ This case was also concerned with the extradition to the United States of a fugitive to face murder charges for which capital punishment was a competent sentence. It was argued that this would expose him to inhuman and degrading treatment or punishment in breach of *article 3* of the European Convention on Human Rights. *Article 2* of the European Convention protects the right to life but makes an exception in the case of "the execution of a sentence of a court following [the] conviction of a crime for which this penalty is provided by law." The majority of the Court held that *article 3* could not be construed as prohibiting all capital punishment, since to do so would nullify *article 2*. It was, however, competent to test the imposition of capital punishment in particular cases against the requirements of *article 3* -- the manner in which it is imposed or executed, the personal circumstances of the condemned person and the disproportionality to the gravity of the crime committed, as well as the conditions of detention awaiting execution, were capable of

⁹⁵ (1989) 11 EHRR 439 at paras. 103, 105 and 111.

bringing the treatment or punishment received by the condemned person within the proscription.

- [69] On the facts, it was held that extradition to the United States to face trial in Virginia would expose the fugitive to the risk of treatment going beyond the threshold set by *article 3*. The special factors taken into account were the youth of the fugitive (he was 18 at the time of the murders), an impaired mental capacity, and the suffering on death row which could endure for up to eight years if he were convicted. Additionally, although the offence for which extradition was sought had been committed in the United States, the fugitive who was a German national was also liable to be tried for the same offence in Germany. Germany, which has abolished the death sentence, also sought his extradition for the murders. There was accordingly a choice in regard to the country to which the fugitive should be extradited, and that choice should have been exercised in a way which would not lead to a contravention of *article 3*. What weighed with the Court was the fact that the choice facing the United Kingdom was not a choice between extradition to face a possible death penalty and no punishment, but a choice between extradition to a country which allows the death penalty and one which does not. We are in a comparable position. A holding by us that the death penalty for murder is unconstitutional, does not involve a choice between freedom and death; it involves a choice between death in the very few cases which would otherwise attract that penalty under *section 277(1)(a)*, and the severe penalty of life imprisonment.

Capital Punishment in India

- [70] In the *amicus brief* of the South African Police, reliance was placed on decisions of the Indian Supreme Court, and it is necessary to refer briefly to the way the law has developed in that country.
- [71] *Section 302* of the Indian Penal Code authorises the imposition of the death sentence

as a penalty for murder. In *Bachan Singh v State of Punjab*,⁹⁶ the constitutionality of this provision was put in issue. *Article 21* of the Indian Constitution provides that:

No person shall be deprived of his life or personal liberty except according to procedure established by law.

[72] The wording of this article presented an obstacle to a challenge to the death sentence, because there was a "law" which made provision for the death sentence. Moreover, *article 72* of the Constitution empowers the President and Governors to commute sentences of death, and *article 134* refers to the Supreme Court's powers on appeal in cases where the death sentence has been imposed. It was clear, therefore, that capital punishment was specifically contemplated and sanctioned by the framers of the Indian Constitution, when it was adopted by them in November 1949.⁹⁷

[73] Counsel for the accused in *Bachan Singh's* case sought to overcome this difficulty by contending that *article 21* had to be read with *article 19(1)*, which guarantees the freedoms of speech, of assembly, of association, of movement, of residence, and the freedom to engage in any occupation. These fundamental freedoms can only be restricted under the Indian Constitution if the restrictions are reasonable for the attainment of a number of purposes defined in *sections 19(2) to (6)*. It was contended that the right to life was basic to the enjoyment of these fundamental freedoms, and that the death sentence restricted them unreasonably in that it served no social purpose, its deterrent effect was unproven and it defiled the dignity of the individual.

⁹⁶ (1980) 2 SCC 684.

⁹⁷ *Id.* at 730, para. 136.

[74] The Supreme Court analysed the provisions of *article 19(1)* and came to the conclusion, for reasons that are not material to the present case, that the provisions of *section 302* of the Indian Penal Code did "not have to stand the test of *article 19(1)* of the Constitution."⁹⁸ It went on, however, to consider "arguendo" what the outcome would be if the test of reasonableness and public interest under *article 19(1)* had to be satisfied.

⁹⁸ *Id.* at 709, para. 61.

[75] The Supreme Court had recognised in a number of cases that the death sentence served as a deterrent, and the Law Commission of India, which had conducted an investigation into capital punishment in 1967, had recommended that capital punishment be retained. The court held that in the circumstances it was "for the petitioners to prove and establish that the death sentence for murder is so outmoded, unusual or excessive as to be devoid of any rational nexus with the purpose and object of the legislation."⁹⁹

[76] The Court then dealt with international authorities for and against the death sentence, and with the arguments concerning deterrence and retribution.¹⁰⁰ After reviewing the arguments for and against the death sentence, the court concluded that:

...the question whether or not [the] death penalty serves any penological purpose is a difficult, complex and intractable issue [which] has evoked strong, divergent views. For the purpose of testing the constitutionality of the impugned provisions as to death penalty ... on the grounds of reasonableness in the light of Articles 19 and 21 of the Constitution, it is not necessary for us to express any categorical opinion, one way or another, as to which of these antithetical views, held by the Abolitionists and the Retentionists, is correct. It is sufficient to say that the very fact that persons of reason, learning and light are rationally and deeply divided in their opinion on this issue, is ground among others, for rejecting the petitioners'

⁹⁹ Id. at 712, para. 71.

¹⁰⁰ I have not yet dealt specifically with the issues of deterrence, prevention and retribution, on which the Attorney General placed reliance in his argument. These are all factors relevant to the purpose of punishment and are present both in capital punishment, and in the alternative of imprisonment. Whether they serve to make capital punishment a more effective punishment than imprisonment is relevant to the argument on justification, and will be considered when that argument is dealt with. For the moment it is sufficient to say that they do not have a bearing on the nature of the punishment, and need not be taken into account at this stage of the enquiry.

argument that retention of death penalty in the impugned provision, is totally devoid of reason and purpose.¹⁰¹

It accordingly held that *section* 302 of the Indian Penal Code "violates neither the letter nor the ethos of Article 19."¹⁰²

[77] The Court then went on to deal with *article* 21. It said that if *article* 21 were to be expanded in accordance with the interpretative principle applicable to legislation limiting rights under Article 19(1), *article* 21 would have to be read as follows:

No person shall be deprived of his life or personal liberty except according to fair, just and reasonable procedure established by a valid law.

¹⁰¹ *Supra* note 96, at 729, para. 132.

¹⁰² *Id.*

And thus expanded, it was clear that the State could deprive a person of his or her life, by "fair, just and reasonable procedure." In the circumstances, and taking into account the indications that capital punishment was considered by the framers of the constitution in 1949 to be a valid penalty, it was asserted that "by no stretch of the imagination can it be said that death penalty...either per se or because of its execution by hanging constitutes an unreasonable, cruel or unusual punishment" prohibited by the Constitution.¹⁰³

[78] The wording of the relevant provisions of our Constitution are different. The question we have to consider is not whether the imposition of the death sentence for murder is "totally devoid of reason and purpose", or whether the death sentence for murder "is devoid of any rational nexus" with the purpose and object of *section 277(1)(a)* of the Criminal Procedure Act. It is whether in the context of our Constitution, the death penalty is cruel, inhuman or degrading, and if it is, whether it can be justified in terms of *section 33*.

¹⁰³ *Supra* note 96, at 730-731, para. 136. For similar reasons, the death penalty was held not to be inconsistent with the Constitution of Botswana, or with the Constitution of the former Bophuthatswana. *S v Ntesang* 1995 (4) BCLR 426 (Botswana); *S v Chabalala* 1986 (3) SA 623 (B AD).

[79] The Indian Penal Code leaves the imposition of the death sentence to the trial judge's discretion. In *Bachan Singh's* case there was also a challenge to the constitutionality of the legislation on the grounds of arbitrariness, along the lines of the challenges that have been successful in the United States. The majority of the Court rejected the argument that the imposition of the death sentence in such circumstances is arbitrary, holding that a discretion exercised judicially by persons of experience and standing, in accordance with principles crystallized by judicial decisions, is not an arbitrary discretion.¹⁰⁴ To complete the picture, it should be mentioned that long delays in carrying out the death sentence in particular cases have apparently been held in India to be unjust and unfair to the prisoner, and in such circumstances the death sentence is liable to be set aside.¹⁰⁵

The Right to Life

[80] The unqualified right to life vested in every person by *section 9* of our Constitution is another factor crucially relevant to the question whether the death sentence is cruel, inhuman or degrading punishment within the meaning of *section 11(2)* of our Constitution. In this respect our Constitution differs materially from the Constitutions of the United States and India. It also differs materially from the European Convention and the International Covenant. Yet in the cases decided under these constitutions and treaties there were judges who dissented and held that notwithstanding the specific language of the constitution or instrument concerned, capital punishment should not be permitted.

¹⁰⁴ Id. at 740, para. 165. Bhagwati J dissented. The dissenting judgement is not available to me, but according to AMNESTY INTERNATIONAL, WHEN THE STATE KILLS, *supra* note 42, at 147, Bhagwati J asserted in his judgement that "[t]he prevailing standards of human decency are incompatible with [the] death penalty."

¹⁰⁵ *Triveniben v State of Gujarat* [1992] LRC(Const.) 425 (Sup. Ct. of India); *Daya Singh v Union of India* [1992] LRC(Const.) 452 (Sup. Ct. of India).

[81] In some instances the dissent focused on the right to life. In *Soering's* case before the European Court of Human Rights, Judge de Meyer, in a concurring opinion, said that capital punishment is "not consistent with the present state of European civilisation"¹⁰⁶ and for that reason alone, extradition to the United States would violate the fugitive's right to life.

[82] In a dissent in the United Nations Human Rights Committee in *Kindler's* case, Committee member B. Wennergren also stressed the importance of the right to life.

¹⁰⁶ *Supra* note 95, at 484.

The value of life is immeasurable for any human being, and the right to life enshrined in article 6 of the Covenant is the supreme human right. It is an obligation of States [P]arties to the Covenant to protect the lives of all human beings on their territory and under their jurisdiction. If issues arise in respect of the protection of the right to life, priority must not be accorded to the domestic laws of other countries or to (bilateral) treaty articles. Discretion of any nature permitted under an extradition treaty cannot apply, as there is no room for it under Covenant obligations. It is worth repeating that no derogation from a State's obligations under article 6, paragraph 1, is permitted. This is why Canada, in my view, violated article 6, paragraph 1, by consenting to extradite Mr. Kindler to the United States, without having secured assurances that Mr. Kindler would not be subjected to the execution of the death sentence.¹⁰⁷

[83] An individual's right to life has been described as "[t]he most fundamental of all human rights",¹⁰⁸ and was dealt with in that way in the judgments of the Hungarian Constitutional Court declaring capital punishment to be unconstitutional.¹⁰⁹ The challenge to the death sentence in Hungary was based on *section 54* of its Constitution which provides:

(1) In the Republic of Hungary everyone has the inherent right to life and to human dignity, and no one shall be arbitrarily deprived of these rights.

(2) No one shall be subjected to torture or to cruel or inhuman or degrading punishment

[84] *Section 8*, the counterpart of *section 33* of our Constitution, provides that laws shall not impose any limitations on the essential content of fundamental rights. According to the finding of the Court, capital punishment imposed a limitation on the essential

¹⁰⁷ *Joseph Kindler v Canada*, *supra* note 94, at 23.

¹⁰⁸ Per Lord Bridge in *R v Home Secretary, Ex parte Bugdaycay* (1987) AC 514 at 531G.

¹⁰⁹ *Supra* note 55.

content of the fundamental rights to life and human dignity, eliminating them irretrievably. As such it was unconstitutional. Two factors are stressed in the judgment of the Court. First, the relationship between the rights of life and dignity, and the importance of these rights taken together. Secondly, the absolute nature of these two rights taken together. Together they are the source of all other rights. Other rights may be limited, and may even be withdrawn and then granted again, but their ultimate limit is to be found in the preservation of the twin rights of life and dignity. These twin rights are the essential content of all rights under the Constitution. Take them away, and all other rights cease. I will deal later with the requirement of our Constitution that a right shall not be limited in ways which negate its essential content. For the present purposes it is sufficient to point to the fact that the Hungarian Court held capital punishment to be unconstitutional on the grounds that it is inconsistent with the right to life and the right to dignity.

- [85] Our Constitution does not contain the qualification found in *section 54(1)* of the Hungarian constitution, which prohibits only the *arbitrary* deprivation of life. To that extent, therefore, the right to life in *section 9* of our Constitution is given greater protection than it is by the Hungarian Constitution.
- [86] The fact that in both the United States and India, which sanction capital punishment, the highest courts have intervened on constitutional grounds in particular cases to prevent the carrying out of death sentences, because in the particular circumstances of such cases, it would have been cruel to do so, evidences the importance attached to the protection of life and the strict scrutiny to which the imposition and carrying out of death sentences are subjected when a constitutional challenge is raised. The same concern is apparent in the decisions of the European Court of Human Rights and the United Nations Committee on Human Rights. It led the Court in *Soering's* case to order that extradition to the United States, in the circumstances of that case, would result in inhuman or degrading punishment, and the Human Rights Committee to declare in *Ng's* case that he should not be extradited to face a possible death by asphyxiation in a gas chamber in California.

Public Opinion

- [87] The Attorney General argued that what is cruel, inhuman or degrading depends to a large extent upon contemporary attitudes within society, and that South African society does not regard the death sentence for extreme cases of murder as a cruel, inhuman or degrading form of punishment. It was disputed whether public opinion, properly informed of the different considerations, would in fact favour the death penalty. I am, however, prepared to assume that it does and that the majority of South Africans agree that the death sentence should be imposed in extreme cases of murder. The question before us, however, is not what the majority of South Africans believe a proper sentence for murder should be. It is whether the Constitution allows the sentence.
- [88] Public opinion may have some relevance to the enquiry, but in itself, it is no substitute for the duty vested in the Courts to interpret the Constitution and to uphold its provisions without fear or favour. If public opinion were to be decisive there would be no need for constitutional adjudication. The protection of rights could then be left to Parliament, which has a mandate from the public, and is answerable to the public for the way its mandate is exercised, but this would be a return to parliamentary sovereignty, and a retreat from the new legal order established by the 1993 Constitution. By the same token the issue of the constitutionality of capital punishment cannot be referred to a referendum, in which a majority view would prevail over the wishes of any minority. The very reason for establishing the new legal order, and for vesting the power of judicial review of all legislation in the courts, was to protect the rights of minorities and others who cannot protect their rights adequately through the democratic process. Those who are entitled to claim this protection include the social outcasts and marginalised people of our society. It is only if there is a willingness to protect the worst and the weakest amongst us, that all of us can be secure that our own rights will be protected.
- [89] This Court cannot allow itself to be diverted from its duty to act as an independent arbiter of the Constitution by making choices on the basis that they will find favour

with the public.¹¹⁰ Justice Powell's comment in his dissent in *Furman v Georgia* bears repetition:

...the weight of the evidence indicates that the public generally has not accepted either the morality or the social merit of the views so passionately advocated by the articulate spokesmen for abolition. But however one may assess amorphous ebb and flow of public opinion generally on this volatile issue, this type of inquiry lies at the periphery - not the core - of the judicial process in constitutional cases. The assessment of popular opinion is essentially a legislative, and not a judicial, function.¹¹¹

So too does the comment of Justice Jackson in *West Virginia State Board of Education v Barnette*:

¹¹⁰ "The cruel or unusual punishment clause of the California Constitution, like other provisions of the Declaration of Rights, operates to restrain legislative and executive action and to protect fundamental individual and minority rights against encroachment by the majority. It is the function of the court to examine legislative acts in the light of such constitutional mandates to ensure that the promise of the Declaration of Rights is a reality to the individual (citations omitted)...Were it otherwise, the Legislature would ever be the sole judge of the permissible means and extent of punishment and article I, section 6, of the Constitution would be superfluous." *People v. Anderson*, *supra* note 62, at 888. This was also the approach of the President of the Hungarian Constitutional Court in his concurring opinion on the constitutionality of capital punishment, where he said: "The Constitutional Court is not bound either by the will of the majority or by public sentiments." *Supra* note 55, at 12. See also, *Gregg v. Georgia*, *supra* note 60, at 880. In the decisive judgment of the Court, Justices Stewart, Powell and Stevens, accepted that "...the Eighth Amendment demands more than that a challenged punishment be acceptable to contemporary society. The Court also must ask whether it comports with the basic concept of human dignity at the core of the Amendment." (citation omitted)

¹¹¹ *Supra* note 34, at 443.

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.¹¹²

Cruel, Inhuman and Degrading Punishment

[90] The United Nations Committee on Human Rights has held that the death sentence by definition is cruel and degrading punishment. So has the Hungarian Constitutional Court, and three judges of the Canadian Supreme Court. The death sentence has also been held to be cruel or unusual punishment and thus unconstitutional under the state constitutions of Massachusetts and California.¹¹³

¹¹² 319 U.S. 624, 638 (1943).

¹¹³ The Californian Constitution was subsequently amended to sanction capital punishment.

- [91] The California decision is *People v. Anderson*.¹¹⁴ Capital punishment was held by six of the seven judges of the Californian Supreme Court to be "impermissibly cruel"¹¹⁵ under the California Constitution which prohibited cruel or unusual punishment. Also,

It degrades and dehumanizes all who participate in its processes. It is unnecessary to any legitimate goal of the state and is incompatible with the dignity of man and the judicial process.¹¹⁶

- [92] In the Massachusetts decision in *District Attorney for the Suffolk District v. Watson*,¹¹⁷ where the Constitution of the State of Massachusetts prohibited cruel or unusual punishment, the death sentence was also held, by six of the seven judges, to be impermissibly cruel.¹¹⁸

¹¹⁴ *Supra* note 62.

¹¹⁵ *Id.* at 899. The cruelty lay "...not only in the execution itself and the pain incident thereto, but also in the dehumanizing effects of the lengthy imprisonment prior to the execution during which the judicial and administrative procedures essential to due process of law are carried out." *Id.* at 894 (citations omitted).

¹¹⁶ *Id.* at 899.

¹¹⁷ 381 Mass. 648 (1980).

¹¹⁸ "...[T]he death penalty is unacceptable under contemporary standards of decency in its unique and inherent capacity to inflict pain. The mental agony is, simply and beyond question, a horror." *Id.* at 664. "All murderers are extreme offenders. Fine distinctions, designed to select a very few from the many, are inescapably capricious when applied to murders and murderers." *Id.* at 665. "...[A]rbitrariness and

[93] In both cases the disjunctive effect of "or" was referred to as enabling the Courts to declare capital punishment unconstitutional even if it was not "unusual". Under our Constitution it will not meet the requirements of *section 11(2)* if it is cruel, or inhuman, or degrading.

discrimination...inevitably persist even under a statute which meets the demands of *Furman*." Id. at 670. "...[T]he supreme punishment of death, inflicted as it is by chance and caprice, may not stand." Id. at 671. "The death sentence itself is a declaration that society deems the prisoner a nullity, less than human and unworthy to live. But that negation of his personality carries through the entire period between sentence and execution." Id. at 683 (Liacos, J., concurring).

[94] Proportionality is an ingredient to be taken into account in deciding whether a penalty is cruel, inhuman or degrading.¹¹⁹ No Court would today uphold the constitutionality of a statute that makes the death sentence a competent sentence for the cutting down of trees or the killing of deer, which were capital offences in England in the 18th Century.¹²⁰ But murder is not to be equated with such "offences." The wilful taking of an innocent life calls for a severe penalty, and there are many countries which still retain the death penalty as a sentencing option for such cases. Disparity between the crime and the penalty is not the only ingredient of proportionality; factors such as the enormity and irredeemable character of the death sentence in circumstances where neither error nor arbitrariness can be excluded, the expense and difficulty of addressing the disparities which exist in practice between accused persons facing similar charges, and which are due to factors such as race, poverty, and ignorance, and the other subjective factors which have been mentioned, are also factors that can and should be taken into account in dealing with this issue. It may possibly be that none alone would be sufficient under our Constitution to justify a finding that the death sentence is cruel, inhuman or degrading. But these factors are not to be evaluated in isolation. They must be taken together, and in order to decide whether the threshold set by *section 11(2)* has been crossed¹²¹ they must be evaluated with other relevant factors, including the two fundamental rights on which the accused rely, the right to dignity and the right to life.

¹¹⁹ *E.g.*, *Coker v. Georgia*, 433 U.S. 782 (1977) (imposition of the death penalty for rape violates due process guarantees because the sentence is grossly disproportionate punishment for a nonlethal offence). *See also*, *Gregg v. Georgia*, *supra* note 60, at 187 ("[W]e must consider whether the punishment of death is disproportionate in relation to the crime for which it is imposed."), and *Furman v. Georgia*, *supra* note 34, at 273 ("...a punishment may be degrading simply by reason of its enormity.").

¹²⁰ The Black Act: 9 George I. C.22, as cited in E.P. THOMPSON, *WHIGS AND HUNTERS, THE ORIGIN OF THE BLACK ACT* 211 (Pantheon). The author notes that these provisions were described by Lord Chief Justice Hardwicke as "necessary for the present state and condition of things and to suppress mischiefs, which were growing frequent among us."

¹²¹ This was the approach of Brennan, J., in *Furman v. Georgia*, *supra* note 34, at 282 ("The test, then, will ordinarily be a cumulative one: If a punishment is unusually severe, if there is a strong probability that it is inflicted arbitrarily, if it is substantially rejected by contemporary society [a determination he makes based on the infrequency of use in relation to the number of offences for which such punishment may apply], and if there is no reason to believe that it serves any penal purpose more effectively than some less severe punishment, then the continued infliction of that punishment violates the [clause prohibiting cruel and unusual punishment].").

[95] The carrying out of the death sentence destroys life, which is protected without reservation under *section 9* of our Constitution, it annihilates human dignity which is protected under *section 10*, elements of arbitrariness are present in its enforcement and it is irremediable. Taking these factors into account, as well as the assumption that I have made in regard to public opinion in South Africa, and giving the words of *section 11(2)* the broader meaning to which they are entitled at this stage of the enquiry, rather than a narrow meaning,¹²² I am satisfied that in the context of our Constitution the death penalty is indeed a cruel, inhuman and degrading punishment.

Is capital punishment for murder justifiable?

[96] The question that now has to be considered is whether the imposition of such punishment is nonetheless justifiable as a penalty for murder in the circumstances contemplated by *sections 277(1)(a)*, 316A and 322(2A) of the Criminal Procedure Act.

¹²² *S v Zuma and Two Others*, *supra* note 6, para. 21.

[97] It is difficult to conceive of any circumstances in which torture, which is specifically prohibited under *section 11(2)*, could ever be justified. But that does not necessarily apply to capital punishment. Capital punishment, unlike torture, has not been absolutely prohibited by public international law. It is therefore not inappropriate to consider whether the death penalty is justifiable under our Constitution as a penalty for murder. This calls for an enquiry similar to that undertaken by Brennan J in *Furman's case*¹²³ in dealing with the contention that "death is a necessary punishment because it prevents the commission of capital crimes more effectively than any less severe punishment."¹²⁴ The same question is addressed and answered in the negative in the judgment of Wright CJ in *People v Anderson*.¹²⁵ Under the United States Constitution and the Californian Constitution, which have no limitation clauses, this enquiry had to be conducted within the larger question of the definition of the right. With us, however, the question has to be dealt with under *section 33(1)*.

[98] *Section 33(1)* of the Constitution provides, in part, that:

The rights entrenched in this Chapter may be limited by law of general application, provided that such limitation-

- (a) shall be permissible only to the extent that it is-
- (i) reasonable; and
 - (ii) justifiable in an open and democratic society based on freedom and equality; and

¹²³ *Furman v. Georgia*, *supra* note 34, at 300. Brennan, J., was dealing here with the proposition that "an unusually severe and degrading punishment may not be excessive in view of the purposes for which it is inflicted."

¹²⁴ *Id.*

¹²⁵ "The People concede that capital punishment is cruel to the individual involved. They argue, however, that only "unnecessary" cruelty is constitutionally proscribed, and that if a cruel punishment can be justified it is not forbidden by article I, section 6, of the California Constitution." *Supra* note 62, at 895.

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(b) shall not negate the essential content of the right in question.

[99] Section 33(1)(b) goes on to provide that the limitation of certain rights, including the rights referred to in section 10 and section 11 "shall, in addition to being reasonable as required in paragraph (a)(f), also be necessary."

The Two-Stage Approach

[100] Our Constitution deals with the limitation of rights through a general limitations clause. As was pointed out by Kentridge AJ in *Zuma's case*,¹²⁶ this calls for a "two-stage" approach, in which a broad rather than a narrow interpretation is given to the fundamental rights enshrined in Chapter Three, and limitations have to be justified through the application of section 33. In this it differs from the Constitution of the United States, which does not contain a limitation clause, as a result of which courts in that country have been obliged to find limits to constitutional rights through a narrow interpretation of the rights themselves. Although the "two-stage" approach may often produce the same result as the "one-stage" approach,¹²⁷ this will not always be the case.

[101] The practical consequences of this difference in approach are evident in the present case. In *Gregg v. Georgia*, the conclusion reached in the judgment of the plurality was summed up as follows:

¹²⁶ *S v Zuma and Two Others*, *supra* note 6.

¹²⁷ *Attorney-General of Hong Kong v Lee Kwong-Kut*, (1993) AC 951 at 970-972 (PC).

In sum, we cannot say that the judgment of the Georgia legislature that capital punishment may be necessary in some cases is clearly wrong. Considerations of federalism, as well as respect for the ability of a legislature to evaluate, in terms of its particular state the moral consensus concerning the death penalty and its social utility as a sanction, require us to conclude in the absence of more convincing evidence, that the infliction of death as a punishment for murder is not without justification, and is thus not unconstitutionally severe.¹²⁸

[102] Under our Constitution, the position is different. It is not whether the decision of the State has been shown to be clearly wrong; it is whether the decision of the State is justifiable according to the criteria prescribed by *section 33*. It is not whether the infliction of death as a punishment for murder "is not without justification", it is whether the infliction of death as a punishment for murder has been shown to be both reasonable and necessary, and to be consistent with the other requirements of *section 33*. It is for the legislature, or the party relying on the legislation, to establish this justification, and not for the party challenging it to show that it was not justified.¹²⁹

The Application of Section 33

[103] The criteria prescribed by *section 33(1)* for any limitation of the rights contained in *section 11(2)* are that the limitation must be justifiable in an open and democratic society based on freedom and equality, it must be both reasonable and necessary and it must not negate the essential content of the right.

¹²⁸ *Supra* note 60, at 186-187.

¹²⁹ *S v Zuma and Two Others*, *supra* note 6.

[104] The limitation of constitutional rights for a purpose that is reasonable and necessary in a democratic society involves the weighing up of competing values, and ultimately an assessment based on proportionality.¹³⁰ This is implicit in the provisions of *section 33(1)*. The fact that different rights have different implications for democracy, and in the case of our Constitution, for "an open and democratic society based on freedom and equality", means that there is no absolute standard which can be laid down for determining reasonableness and necessity. Principles can be established, but the application of those principles to particular circumstances can only be done on a case by case basis. This is inherent in the requirement of proportionality, which calls for the balancing of different interests. In the balancing process, the relevant considerations will include the nature of the right that is limited, and its importance to an open and democratic society based on freedom and equality; the purpose for which the right is limited and the importance of that purpose to such a society; the extent of the limitation, its efficacy, and particularly where the limitation has to be necessary, whether the desired ends could reasonably be achieved through other means less damaging to the right in question. In the process regard must be had to the provisions of *section 33(1)*, and the underlying values of the Constitution, bearing in mind that, as a Canadian Judge has said, "the role of the Court is not to second-guess the wisdom of policy choices made by legislators."¹³¹

Limitation of Rights in Canada

¹³⁰ A proportionality test is applied to the limitation of fundamental rights by the Canadian courts, the German Federal Constitutional Court and the European Court of Human Rights. Although the approach of these Courts to proportionality is not identical, all recognise that proportionality is an essential requirement of any legitimate limitation of an entrenched right. Proportionality is also inherent in the different levels of scrutiny applied by United States courts to governmental action.

¹³¹ Reference re ss. 193 and 195(1)(c) of the Criminal Code of Manitoba, *infra* note 135.

[105] In dealing with this aspect of the case, Mr Trengove placed considerable reliance on the decision of the Canadian Supreme Court in *R v Oakes*.¹³² The Canadian Charter of Rights, as our Constitution does, makes provision for the limitation of rights through a general clause. *Section 1* of the Charter permits such reasonable limitations of Charter rights "as can be demonstrably justified in a free and democratic society." In *Oakes'* case it was held that in order to meet this requirement a limitation of a Charter right had to be directed to the achievement of an objective of sufficient importance to warrant the limitation of the right in question, and that there had also to be proportionality between the limitation and such objective. In a frequently-cited passage, Dickson CJC described the components of proportionality as follows:

There are, in my view, three important components of a proportionality test. First, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective. Second, the means, even if rationally connected to the objective in this first sense, should impair "as little as possible" the right or freedom in question: *R v Big M Drug Mart Ltd.* at p. 352. Third, there must be a proportionality between the *effects* of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of "sufficient importance".¹³³

[106] Although there is a rational connection between capital punishment and the purpose for which it is prescribed, the elements of arbitrariness, unfairness and irrationality in the imposition of the penalty, are factors that would have to be taken into account in the application of the first component of this test. As far as the second component is concerned, the fact that a severe punishment in the form of life imprisonment is available as an alternative sentence, would be relevant to the question whether the death sentence impairs the right as little as possible. And as I will show later, if all relevant considerations are taken into account, it is at least doubtful whether a

¹³² (1986) 19 CRR 308.

¹³³ *Id.* at 337.

sentence of capital punishment for murder would satisfy the third component of the *Oakes* test.

[107] The second requirement of the *Oakes* test, that the limitation should impair the right "as little as possible" raises a fundamental problem of judicial review. Can, and should, an unelected court substitute its own opinion of what is reasonable or necessary for that of an elected legislature? Since the judgment in *R v Oakes*, the Canadian Supreme Court has shown that it is sensitive to this tension, which is particularly acute where choices have to be made in respect of matters of policy. In *Irwin Toy Ltd v Quebec (Attorney General)*,¹³⁴ Dickson CJ cautioned that courts, "must be mindful of the legislature's representative function." In *Reference re ss. 193 and 195 (1)(c) of the Criminal Code (Manitoba)*,¹³⁵ it was said that "the role of the Court is not to second-guess the wisdom of policy choices made by ...legislators"; and in *R v Chaulk*, that the means must impair the right "as little as is reasonably possible".¹³⁶ Where choices have to be made between "differing reasonable policy options", the courts will allow the government the deference due to legislators, but "[will] not give them an unrestricted licence to disregard an individual's Charter Rights. Where the government cannot show that it had a reasonable basis for concluding that it has complied with the requirement of minimal impairment in seeking to attain its objectives, the legislation will be struck down."¹³⁷

Limitation of Rights in Germany

¹³⁴ (1989) 39 CRR 193 at 248.

¹³⁵ (1990) 48 CRR 1 at 62.

¹³⁶ (1991) 1 CRR (2d) 1 at 30.

¹³⁷ Per La Forest J in *Tetreault-Gadoury v Canada (Employment and Immigration Commission)* (1991), 4 CRR(2d) 12 at 26. See also, *Rodriguez v British Columbia (AG)* (1994) 17 CRR(2d) 192 at 222 and 247.

[108] The German Constitution does not contain a general limitations clause but permits certain basic rights to be limited by law. According to Professor Grimm,¹³⁸ the Federal Constitutional Court allows such limitation "only in order to make conflicting rights compatible or to protect the rights of other persons or important community interests...any restriction of human rights not only needs constitutionally valid reasons but also has to be proportional to the rank and importance of the right at stake." Proportionality is central to the process followed by the Federal Constitutional Court in its adjudication upon the limitation of rights. The Court has regard to the purpose of the limiting legislation, whether the legislation is suitable for the achievement of such purpose, which brings into consideration whether it in fact achieves that purpose, is necessary therefor, and whether a proper balance has been achieved between the purpose enhanced by the limitation, and the fundamental right that has been limited.¹³⁹ The German Constitution also has a provision similar to section 33(1)(b) of our Constitution, but the Court apparently avoids making use of this provision,¹⁴⁰ preferring to deal with extreme limitations of rights through the

¹³⁸ Dieter Grimm, *Human Rights and Judicial Review in Germany*, in *HUMAN RIGHTS AND JUDICIAL REVIEW: A COMPARATIVE PERSPECTIVE* 267, 275 (David H. Beatty, ed., Martinus Nijhoff publ.)(1994). Prof. Grimm is presently a member of the German Federal Constitutional Court.

¹³⁹ Id. For a discussion of the application of the principle of proportionality in German Constitutional jurisprudence, see CURRIE, *THE CONSTITUTION OF THE FEDERAL REPUBLIC OF GERMANY* 18-20, 307-310 (Univ. of Chicago Press)(1994). Prof. Currie outlines the genesis of proportionality, intimated in the Magna Carta and generally described by Blackstone, and notes that it was further developed by Carl Gottlieb Svarez, a celebrated thinker of the German Enlightenment. "Svarez insisted on proportionality both between ends and means and between costs and benefits; both aspects of the principle are reflected in the jurisprudence of the Constitutional Court." Currie at 307.

¹⁴⁰ Currie, *id.*, at 178, note 15 and accompanying text. See also *infra* note 161.

proportionality test.

Limitation of Rights Under the European Convention

[109] The European Convention also has no general limitations clause, but makes certain rights subject to limitation according to specified criteria. The proportionality test of the European Court of Human Rights calls for a balancing of ends and means. The end must be a "pressing social need" and the means used must be proportionate to the attainment of such an end. The limitation of certain rights is conditioned upon the limitation being "necessary in a democratic society" for purposes defined in the relevant provisions of the Convention. The national authorities are allowed a discretion by the European Court of Human Rights in regard to what is necessary - a margin of appreciation - but not unlimited power. The "margin of appreciation" that is allowed varies depending upon the nature of the right and the nature and ambit of the restriction. A balance has to be achieved between the general interest, and the interest of the individual.¹⁴¹ Where the limitation is to a right fundamental to democratic society, a higher standard of justification is required;¹⁴² so too, where a law interferes with the "intimate aspects of private life."¹⁴³ On the other hand, in areas such as morals or social policy greater scope is allowed to the national authorities.¹⁴⁴ The jurisprudence of the European Court of Human Rights provides some guidance as to what may be considered necessary in a democratic society, but the margin of appreciation allowed to national authorities by the European Court must be understood as finding its place in an international agreement which has to accommodate the sovereignty of the member states. It is not necessarily a safe guide as to what would be appropriate under *section 33* of our Constitution.

¹⁴¹ *R v France* (1993) 16 EHRR 1, para. 63.

¹⁴² *Handyside v United Kingdom* (1979-80) 1 EHRR 737, para. 49.

¹⁴³ *Dudgeon v United Kingdom* (1981) 4 EHRR 149, para. 52; *Norris v Ireland* (1988) 13 EHRR 186, para. 46; *Modinos v Cyprus* (1993) 16 EHRR 485.

¹⁴⁴ "...[T]he margin of appreciation available to the legislature in implementing social and economic policies should be a wide one..." *James v United Kingdom* (1986) 8 EHRR 123, para. 46. *See also*, *Lithgow v United Kingdom* (1986) 8 EHRR 329, para. 122.

Is Capital Punishment for Murder Justifiable under the South African Constitution?

[110] In *Zuma's case*, Kentridge AJ pointed out that the criteria developed by the Canadian Courts for the interpretation of *section 1* of the Canadian Charter of Rights may be of assistance to our Courts, but that there are differences between our Constitution and the Canadian Charter which have a bearing on the way in which *section 33* should be dealt with. This is equally true of the criteria developed by other courts, such as the German Constitutional Court and the European Court of Human Rights. Like Kentridge AJ, "I see no reason in this case... to attempt to fit our analysis into the Canadian pattern,"¹⁴⁵ or for that matter to fit it into the pattern followed by any of the other courts to which reference has been made. *Section 33* prescribes in specific terms the criteria to be applied for the limitation of different categories of rights and it is in the light of these criteria that the death sentence for murder has to be justified.

[111] "Every person" is entitled to claim the protection of the rights enshrined in Chapter Three, and "no" person shall be denied the protection that they offer. Respect for life and dignity which are at the heart of *section 11(2)* are values of the highest order under our Constitution. The carrying out of the death penalty would destroy these and all other rights that the convicted person has, and a clear and convincing case must be made out to justify such action.

¹⁴⁵ *S v Zuma and Two Others*, *supra* note 122, para. 35.

[112] The Attorney General contended that the imposition of the death penalty for murder in the most serious cases could be justified according to the prescribed criteria. The argument went as follows. The death sentence meets the sentencing requirements for extreme cases of murder more effectively than any other sentence can do. It has a greater deterrent effect than life imprisonment; it ensures that the worst murderers will not endanger the lives of prisoners and warders who would be at risk if the "worst of the murderers" were to be imprisoned and not executed; and it also meets the need for retribution which is demanded by society as a response to the high level of crime. In the circumstances presently prevailing in the country, it is therefore a necessary component of the criminal justice system. This, he said, is recognised by the Appellate Division, which only confirms a death sentence if it is convinced that no other sentence would be a proper sentence.¹⁴⁶

The Judgements of the Appellate Division

[113] The decisions of the Appellate Division to which the Attorney General referred are only of limited relevance to the questions that have to be decided in the present case. The law which the Appellate Division has applied prescribes that the death sentence is a competent sentence for murder in a proper case. The Appellate Division has reserved this sentence for extreme cases in which the maximum punishment would be the appropriate punishment. Were it to have done otherwise, and to have refused to pass death sentences, it would in effect have been saying that the death sentence is never a proper sentence, and that *section 277(1)(a)* should not be enforced. This was not within its competence. The criteria set by the Appellate Division for the passing of a death sentence for murder are relevant to the argument on arbitrariness, and also provide a basis for testing the justifiability of such a penalty. They do not, however, do more than that.

The Judgement of the Tanzanian Court of Appeal

¹⁴⁶ S v Senonohi, *supra* note 76, at 734F-G.

[114] There is support for part of the Attorney General's argument in the judgment of the Tanzanian Court of Appeal in *Mbushuu and Another v The Republic*.¹⁴⁷ It was held in this case that the death sentence amounted to cruel and degrading punishment, which is prohibited under the Tanzanian Constitution, but that despite this finding, it was not unconstitutional. The Constitution authorised derogations to be made from basic rights for legitimate purposes, and a derogation was lawful if it was not arbitrary, and was reasonably necessary for such purpose. The legitimate purposes to which the death sentence was directed was a constitutional requirement that "everyone's right to life shall be protected by law." The death sentence was a mandatory penalty for murder, but it was not considered by the Court to be arbitrary because decisions as to guilt or innocence are taken by judges. There was no proof one way or the other that the death sentence was necessarily a more effective punishment than a long period of imprisonment. In the view of the Court, however, it was for society and not the courts to decide whether the death sentence was a necessary punishment. The Court was satisfied that society favoured the death sentence, and that in the circumstances "the reasonable and necessary" standard had been met. Accordingly, it held that the death sentence was a lawful derogation from the prohibition of cruel and degrading punishment, and thus valid.

¹⁴⁷ Criminal Appeal No. 142 of 1994; 30 January 1995.

[115] The approach of the Tanzanian Court of Appeal to issues concerning the limitation of basic rights seems to have been influenced by the language of the Tanzanian Constitution,¹⁴⁸ and rules of interpretation developed by the Courts to deal with that language. The relevant provisions of our Constitution are different and the correct approach to the interpretation of the limitations clause must be found in the language of *section 33* construed in the context of the Constitution as a whole. It is for the Court, and not society or Parliament, to decide whether the death sentence is justifiable under the provisions of *section 33* of our Constitution.¹⁴⁹ In doing so we can have regard to societal attitudes in evaluating whether the legislation is reasonable and necessary, but ultimately the decision must be ours. If the decision of the Tanzanian Court of Appeal is inconsistent with this conclusion, I must express my disagreement with it.

Deterrence

[116] The Attorney General attached considerable weight to the need for a deterrent to violent crime. He argued that the countries which had abolished the death penalty were on the whole developed and peaceful countries in which other penalties might be sufficient deterrents. We had not reached that stage of development, he said. If in years to come we did so, we could do away with the death penalty. Parliament could decide when that time has come. At present, however, so the argument went, the death sentence is an indispensable weapon if we are serious about combatting violent crime.

¹⁴⁸ *Id.*, wherein Ramadhani JA., highlights with respect to the Republic of Tanzania Constitution, that *article 30(2)* provides that laws, and actions taken in accordance with such laws, shall not be invalidated under the Constitution if such laws (or actions) make provision, *inter alia*, for "ensuring that the rights and freedom of other or the public interest are not prejudiced by the misuse of the individual rights and freedom." *Id.* at p. 23. The judgment refers to "derogations" and not to "limitations".

¹⁴⁹ See discussion on public opinion *supra* paras. 87 to 89.

[117] The need for a strong deterrent to violent crime is an end the validity of which is not open to question. The state is clearly entitled, indeed obliged, to take action to protect human life against violation by others. In all societies there are laws which regulate the behaviour of people and which authorise the imposition of civil or criminal sanctions on those who act unlawfully. This is necessary for the preservation and protection of society. Without law, society cannot exist. Without law, individuals in society have no rights. The level of violent crime in our country has reached alarming proportions. It poses a threat to the transition to democracy, and the creation of development opportunities for all, which are primary goals of the Constitution. The high level of violent crime is a matter of common knowledge and is amply borne out by the statistics provided by the Commissioner of Police in his *amicus brief*. The power of the State to impose sanctions on those who break the law cannot be doubted. It is of fundamental importance to the future of our country that respect for the law should be restored, and that dangerous criminals should be apprehended and dealt with firmly. Nothing in this judgment should be understood as detracting in any way from that proposition. But the question is not whether criminals should go free and be allowed to escape the consequences of their anti-social behaviour. Clearly they should not; and equally clearly those who engage in violent crime should be met with the full rigour of the law. The question is whether the death sentence for murder can legitimately be made part of that law. And this depends on whether it meets the criteria prescribed by *section 33(1)*.

[118] The Attorney General pointed to the substantial increase in the incidence of violent crime over the past five years during which the death sentence has not been enforced. He contended that this supported his argument that imprisonment is not a sufficient deterrent, and that we have not yet reached the stage of development where we can do without the death sentence. Throughout this period, however, the death sentence remained a lawful punishment, and was in fact imposed by the courts although the sentences were not carried out.¹⁵⁰ The moratorium was only announced formally on

¹⁵⁰ S v W 1993(2) SACR 74, at 76H-I.

27 March 1992.¹⁵¹ A decision could have been taken at any time to terminate the moratorium on executions, and none of the criminals had any assurance that the moratorium would still be in place if they were to be caught, brought to trial, convicted and sentenced to death.



¹⁵¹ In the Statement of Minister of Justice dated 27 March 1992, *supra* note 31, para. 22.

[119] The cause of the high incidence of violent crime cannot simply be attributed to the failure to carry out the death sentences imposed by the courts. The upsurge in violent crime came at a time of great social change associated with political turmoil and conflict, particularly during the period 1990 to 1994. It is facile to attribute the increase in violent crime during this period to the moratorium on executions.¹⁵² It was a progression that started before the moratorium was announced. There are many factors that have to be taken into account in looking for the cause of this phenomenon. It is a matter of common knowledge that the political conflict during this period, particularly in Natal and the Witwatersrand, resulted in violence and destruction of a kind not previously experienced. No-go areas, random killings on trains, attacks and counter attacks upon political opponents, created a violent and unstable environment, manipulated by political dissidents and criminal elements alike.

[120] Homelessness, unemployment, poverty and the frustration consequent upon such conditions are other causes of the crime wave. And there is also the important factor that the police and prosecuting authorities have been unable to cope with this. The statistics presented in the police *amicus brief* show that most violent crime is not solved, and the Attorney General confirmed that the risk of a criminal being apprehended and convicted for such offences is somewhere between 30 and 40 per cent. Throughout the period referred to by the Attorney General the death sentence remained on the statute book and was imposed on convicted murderers when the Courts considered it appropriate to do so.

[121] We would be deluding ourselves if we were to believe that the execution of the few persons sentenced to death during this period, and of a comparatively few other people each year from now onwards will provide the solution to the unacceptably high rate of crime. There will always be unstable, desperate, and pathological people for whom

¹⁵² Indeed, such a hypothesis is not born out by the statistics analysed by Justice Didcott in his concurring opinion at para 182.

the risk of arrest and imprisonment provides no deterrent, but there is nothing to show that a decision to carry out the death sentence would have any impact on the behaviour of such people, or that there will be more of them if imprisonment is the only sanction. No information was placed before us by the Attorney General in regard to the rising crime rate other than the bare statistics, and they alone prove nothing, other than that we are living in a violent society in which most crime goes unpunished - something that we all know.

[122] The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. It is that which is presently lacking in our criminal justice system; and it is at this level and through addressing the causes of crime that the State must seek to combat lawlessness.

[123] In the debate as to the deterrent effect of the death sentence, the issue is sometimes dealt with as if the choice to be made is between the death sentence and the murder going unpunished. That is of course not so. The choice to be made is between putting the criminal to death and subjecting the criminal to the severe punishment of a long term of imprisonment which, in an appropriate case, could be a sentence of life imprisonment.¹⁵³ Both are deterrents, and the question is whether the possibility of being sentenced to death, rather than being sentenced to life imprisonment, has a marginally greater deterrent effect, and whether the Constitution sanctions the limitation of rights affected thereby.

¹⁵³ Since 1991, *section 64* of the Correctional Service Act 8 of 1959 has provided that a person sentenced to life imprisonment may only be released from prison in the following circumstances: (a) the advisory release board "with due regard to the interest of society", recommends that the prisoner be released and (b) the Minister of Correctional Services accepts that recommendation and authorizes the release of the prisoner. This means that the Minister of Correctional Services must accept responsibility for the release of the prisoner, and can only do so if the advisory release board is in favour of the prisoner being released.

[124] In the course of his argument the Attorney General contended that if sentences imposed by the Courts on convicted criminals are too lenient, the law will be brought into disrepute, and members of society will then take the law into their own hands. Law is brought into disrepute if the justice system is ineffective and criminals are not punished. But if the justice system is effective and criminals are apprehended, brought to trial and in serious cases subjected to severe sentences, the law will not fall into disrepute. We have made the commitment to "a future founded on the recognition of human rights, democracy and peaceful co-existence...for all South Africans."¹⁵⁴ Respect for life and dignity lies at the heart of that commitment. One of the reasons for the prohibition of capital punishment is "that allowing the State to kill will cheapen the value of human life and thus [through not doing so] the State will serve in a sense as a role model for individuals in society."¹⁵⁵ Our country needs such role models.

[125] The Attorney General also contended that if even one innocent life should be saved by the execution of perpetrators of vile murders, this would provide sufficient justification for the death penalty.¹⁵⁶ The hypothesis that innocent lives might be saved must be weighed against the values underlying the Constitution, and the ability of the State to serve "as a role model". In the long run more lives may be saved through the inculcation of a rights culture, than through the execution of murderers.

[126] The death sentence has been reserved for the most extreme cases, and the overwhelming majority of convicted murderers are not and, since extenuating circumstances became a relevant factor sixty years ago, have not been sentenced to death in South Africa. I

¹⁵⁴ This statement is taken from the provision on National Reconciliation.

¹⁵⁵ Sopinka J (La Forest, Gonthier, Iacobucci and Major JJ, concurring) in *Rodriquez v British Columbia* (1994) 17 CRR(2d) 193 at 218.

¹⁵⁶ This proposition is advanced in greater detail by J Price, (1995) "De Rebus" 89.

referred earlier to the figures provided by the Attorney General which show that between the amendment of the Criminal Procedure Act in 1990, and January 1995, which is the date of his written argument in the present case, 243 death sentences were imposed, of which 143 were confirmed by the Appellate Division. Yet, according to statistics placed before us by the Commissioner of Police and the Attorney General, there were on average approximately 20 000 murders committed, and 9 000 murder cases brought to trial, each year during this period. Would the carrying out of the death sentence on these 143 persons have deterred the other murderers or saved any lives?

[127] It was accepted by the Attorney General that this is a much disputed issue in the literature on the death sentence. He contended that it is common sense that the most feared penalty will provide the greatest deterrent, but accepted that there is no proof that the death sentence is in fact a greater deterrent than life imprisonment for a long period. It is, he said, a proposition that is not capable of proof, because one never knows about those who have been deterred; we know only about those who have not been deterred, and who have committed terrible crimes. This is no doubt true, and the fact that there is no proof that the death sentence is a greater deterrent than imprisonment does not necessarily mean that the requirements of *section 33* cannot be met. It is, however, a major obstacle in the way of the Attorney General's argument, for he has to satisfy us that the penalty is reasonable and necessary, and the doubt which exists in regard to the deterrent effect of the sentence must weigh heavily against his argument. "A punishment as extreme and as irrevocable as death cannot be predicated upon speculation as to what the deterrent effect might be..."¹⁵⁷ I should add that this obstacle would not be removed by the implementation of a suggestion in one of the *amicus briefs*, that *section 277(1)* of the Criminal Procedure Act should be made more specific, and should identify the extreme categories of murder for which the death sentence would be a permissible punishment.

Prevention

¹⁵⁷ Wright, CJ., in *People v. Anderson*, *supra* note 62, at 897.

[128] Prevention is another object of punishment. The death sentence ensures that the criminal will never again commit murders, but it is not the only way of doing so, and life imprisonment also serves this purpose. Although there are cases of gaol murders, imprisonment is regarded as sufficient for the purpose of prevention in the overwhelming number of cases in which there are murder convictions, and there is nothing to suggest that it is necessary for this purpose in the few cases in which death sentences are imposed.

Retribution

[129] Retribution is one of the objects of punishment, but it carries less weight than deterrence.¹⁵⁸

The righteous anger of family and friends of the murder victim, reinforced by the public abhorrence of vile crimes, is easily translated into a call for vengeance. But capital punishment is not the only way that society has of expressing its moral outrage at the crime that has been committed. We have long outgrown the literal application of the biblical injunction of "an eye for an eye, and a tooth for a tooth". Punishment must to some extent be commensurate with the offence, but there is no requirement that it be equivalent or identical to it. The state does not put out the eyes of a person who has blinded another in a vicious assault, nor does it punish a rapist, by castrating him and submitting him to the utmost humiliation in gaol. The state does not need to engage in the cold and calculated killing of murderers in order to express moral outrage at their conduct. A very long prison sentence is also a way of expressing outrage and visiting retribution upon the criminal.

[130] Retribution ought not to be given undue weight in the balancing process. The Constitution is premised on the assumption that ours will be a constitutional state founded on the recognition of human rights.¹⁵⁹ The concluding provision on National Unity and

¹⁵⁸ S v P 1991 (1) SA 517 (A) at 523D-F. See also *supra* note 74.

¹⁵⁹ The Preamble to the Constitution records that the new order will be a "constitutional state in which...all citizens shall be able to enjoy and exercise their fundamental rights and freedoms." The commitment to recognition of human rights is reaffirmed in the concluding provision on National Unity and Reconciliation.

Reconciliation contains the following commitment:

The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and *revenge*.

These can now be addressed on the basis that there is a need for understanding but *not for vengeance*, a need for reparation but *not for retaliation*, a need for *ubuntu* but *not for victimisation*. (Emphasis supplied)

[131] Although this commitment has its primary application in the field of political reconciliation, it is not without relevance to the enquiry we are called upon to undertake in the present case. To be consistent with the value of *ubuntu* ours should be a society that "wishes to prevent crime...[not] to kill criminals simply to get even with them."¹⁶⁰

The Essential Content of the Right

¹⁶⁰ Brennan, J., in *Furman v. Georgia*, *supra* note 34, at 305.

[132] Section 33(1)(b) provides that a limitation shall not negate the essential content of the right.

There is uncertainty in the literature concerning the meaning of this provision. It seems to have entered constitutional law through the provisions of the German Constitution, and in addition to the South African constitution, appears, though not precisely in the same form, in the constitutions of Namibia, Hungary, and possibly other countries as well. The difficulty of interpretation arises from the uncertainty as to what the "essential content" of a right is, and how it is to be determined. Should this be determined subjectively from the point of view of the individual affected by the invasion of the right, or objectively, from the point of view of the nature of the right and its place in the constitutional order, or possibly in some other way?

Professor Currie draws attention to the large number of theories which have been propounded by German scholars as to the how the "essence" of a right should be discerned and how the constitutional provision should be applied.¹⁶¹ The German Federal Constitutional Court has apparently avoided to a large extent having to deal with this issue by subsuming the enquiry into the proportionality test that it applies and the precise scope and meaning of the provision is controversial.¹⁶²

[133] If the essential content of the right not to be subjected to cruel, inhuman or degrading punishment is to be found in respect for life and dignity, the death sentence for murder, if viewed subjectively from the point of view of the convicted prisoner, clearly negates the essential content of the right. But if it is viewed objectively from

¹⁶¹ Currie, *supra* note 139, refers to an analysis of the 'remarkable variety of views' on the meaning of 'essence'. *Id.* at 178 (citing 2 Maunz/Durig, Art. 19, Abs. II, Rdnr. 16).

¹⁶² Grimm, *supra* note 138, at page 276 states, "operating at an earlier stage than the essential content limit in Article 19(2), the proportionality principle has rendered the former almost insignificant." Currie, *supra* note 139, notes that the German Federal Constitutional Court has remarked in at least one case that dealt with the 'essential content' question that the Court "state[d] an alternative ground that, because of its greater stringency [the proportionality test], has made it unnecessary in most cases to inquire whether a restriction invades the 'essential content' of a basic right." Currie, *supra* note 139, at 306-307 (citing 22 BVerfGE 180, 220 (1967)).

the point of view of a constitutional norm that requires life and dignity to be protected, the punishment does not necessarily negate the essential content of the right. It has been argued before this Court that one of the purposes of such punishment is to protect the life and hence the dignity of innocent members of the public, and if it in fact does so, the punishment will not negate the constitutional norm. On this analysis it would, however, have to be shown that the punishment serves its intended purpose. This would involve a consideration of the deterrent and preventative effects of the punishment and whether they add anything to the alternative of life imprisonment. If they do not, they cannot be said to serve a life protecting purpose. If the negation is viewed both objectively and subjectively, the ostensible purpose of the punishment would have to be weighed against the destruction of the individual's life. For the purpose of that analysis the element of retribution would have to be excluded and the "life saving" quality of the punishment would have to be established.

[134] It is, however, not necessary to solve this problem in the present case. At the very least the provision evinces concern that, under the guise of limitation, rights should not be taken away altogether. It was presumably the same concern that influenced Dickson CJC to say in *R v Oakes* that rights should be limited "as little as possible",¹⁶³ and the German Constitutional Court to hold in the life imprisonment case that all possibility of parole ought not to be excluded.¹⁶⁴

The Balancing Process

[135] In the balancing process, deterrence, prevention and retribution must be weighed against the alternative punishments available to the state, and the factors which taken together make capital punishment cruel, inhuman and degrading: the destruction of life, the

¹⁶³ *R v Oakes*, *supra* note 132, at 337 (citing *R v Big M Drug Mart Ltd.*, *supra*, at 352).

¹⁶⁴ See *Kommers supra* note 18.

annihilation of dignity, the elements of arbitrariness, inequality and the possibility of error in the enforcement of the penalty.

[136] The Attorney General argued that the right to life and the right to human dignity were not absolute concepts. Like all rights they have their limits. One of those limits is that a person who murders in circumstances where the death penalty is permitted by *section 277*, forfeits his or her right to claim protection of life and dignity. He sought to support this argument by reference to the principles of self-defence. If the law recognises the right to take the life of a wrongdoer in a situation in which self-defence is justified, then, in order to deter others, and to ensure that the wrongdoer does not again kill an innocent person, why should it not recognise the power of the state to take the life of a convicted murderer? Conversely, if the death sentence negates the essential content of the right to life, how can the taking of the life of another person in self-defence, or even to protect the State itself during war or rebellion, ever be justified.

[137] This argument is fallacious. The rights vested in every person by Chapter Three of the Constitution are subject to limitation under *section 33*. In times of emergency, some may be suspended in accordance with the provisions of *section 34* of the Constitution.¹⁶⁵ But subject to this, the rights vest in every person, including criminals convicted of vile crimes. Such criminals do not forfeit their rights under the Constitution and are entitled, as all in our country now are, to assert these rights, including the right to life, the right to dignity and the right not to be subjected to cruel, inhuman or degrading punishment. Whether or not a particular punishment is inconsistent with these rights depends upon an interpretation of the relevant provisions of the Constitution, and not upon a moral judgment that a murderer should not be allowed to claim them.

¹⁶⁵ SECTIONS 8(2), 9, 10 AND 11(2) ARE IN FACT NON-DEROGABLE RIGHTS AND IN TERMS OF SECTION 34(S)(C) CANNOT BE SUSPENDED DURING AN EMERGENCY.

[138] Self-defence is recognised by all legal systems. Where a choice has to be made between the lives of two or more people, the life of the innocent is given preference over the life of the aggressor. This is consistent with *section 33(1)*. To deny the innocent person the right to act in self-defence would deny to that individual his or her right to life. The same is true where lethal force is used against a hostage taker who threatens the life of the hostage. It is permissible to kill the hostage taker to save the life of the innocent hostage. But only if the hostage is in real danger. The law solves problems such as these through the doctrine of proportionality, balancing the rights of the aggressor against the rights of the victim, and favouring the life or lives of innocents over the life or lives of the guilty.¹⁶⁶ But there are strict limits to the taking of life, even in the circumstances that have been described, and the law insists upon these limits being adhered to. In any event, there are material respects in which killing in self-defence or necessity differ from the execution of a criminal by the State. Self-defence takes place at the time of the threat to the victim's life, at the moment of the emergency which gave rise to the necessity and, traditionally, under circumstances in which no less-severe alternative is readily available to the potential victim. Killing by the State takes place long after the crime was committed, at a time when there is no emergency and under circumstances which permit the careful consideration of alternative punishment.

¹⁶⁶ Self-defence is treated in our law as a species of private defence. It is not necessary for the purposes of this judgement to examine the limits of private defence. Until now, our law has allowed killing in defence of life, but also has allowed killing in defence of property, or other legitimate interest, in circumstances where it is reasonable and necessary to do so. *S v Van Wyk* 1967 (1) SA 488 (A). Whether this is consistent with the values of our new legal order is not a matter which arises for consideration in the present case. What is material is that the law applies a proportionality test, weighing the interest protected against the interest of the wrongdoer. These interests must now be weighed in the light of the Constitution.

[139] The examples of war and rebellion are also not true analogies. War and rebellion are special cases which must be dealt with in terms of the legal principles governing such situations. It is implicit in any constitutional order that the State can act to put down rebellion and to protect itself against external aggression. Where it is necessary in the pursuit of such ends to kill in the heat of battle the taking of life is sanctioned under the Constitution by necessary implication, and as such, is permissible in terms of *section 4(1)*.¹⁶⁷ But here also there are limits. Thus prisoners of war who have been captured and who are no longer a threat to the State cannot be put to death; nor can lethal force be used against rebels when it is not necessary to do so for the purposes of putting down the rebellion.

[140] The case of a police officer shooting at an escaping criminal was also raised in argument. This is permitted under *section 49(2)* of the Criminal Procedure Act as a last resort if it is not possible to arrest the criminal in the ordinary way. Once again, there are limits. It would not, for instance, be permissible to shoot at point blank range at a criminal who has turned his or her back upon a police officer in order to abscond, when other methods of subduing and arresting the criminal are possible. We are not concerned here with the validity of *section 49(2)* of the Criminal Procedure Act, and I specifically refrain from expressing any view thereon. Greater restriction on the use of lethal force may be one of the consequences of the establishment of a constitutional state which respects every person's right to life. Shooting at a fleeing criminal in the heat of the moment, is not necessarily to be equated with the execution of a captured criminal. But, if one of the consequences of this judgment might be to

¹⁶⁷ "The inherent right of the State to assume extraordinary powers and to use all means at its disposal in order to defend itself when its existence is at stake is recognized by our common law as an exceptional and extreme constitutional tool." Per Selikowitz J in *End Conscription Campaign v Minister of Defence* 1989 (2) SA 180(C) at 199H. Here too it is not necessary to examine the limits of this "inherent right", or the limitations (if any) imposed on it by the Constitution. All that need be said is that it is of an entirely different character than the alleged "right" of the State to execute murderers, and subject to different considerations.

render the provisions of *section 49(2)* unconstitutional, the legislature will have to modify the provisions of the section in order to bring it into line with the Constitution. In any event, the constitutionality of the death sentence for murder does not depend upon whether it is permissible for life to be taken in other circumstances currently sanctioned by law. It depends upon whether it is justifiable as a penalty in terms of *section 33* of the Constitution. In deciding this question, the fact that the person sentenced to death is denied his or her right to life is of the greatest importance.

[141] The Attorney General argued that all punishment involves an impairment of dignity.

Imprisonment, which is the alternative to the death sentence, severely limits a prisoner's fundamental rights and freedoms. There is only the barest freedom of movement or of residence in prison, and other basic rights such as freedom of expression and freedom of assembly are severely curtailed.

[142] Dignity is inevitably impaired by imprisonment or any other punishment, and the undoubted power of the state to impose punishment as part of the criminal justice system, necessarily involves the power to encroach upon a prisoner's dignity. But a prisoner does not lose all his or her rights on entering prison.

[Prisoners retain] those absolute natural rights relating to personality, to which every man is entitled. True [their] freedom had been greatly impaired by the legal process of imprisonment but they were entitled to demand respect for what remained. The fact that their liberty had been legally curtailed could afford no excuse for a further legal encroachment upon it. [It was] contended that the [prisoners] once in prison could claim only such rights as the Ordinance and the regulations conferred. But the directly opposite view is surely the correct one. They were entitled to all their personal rights and personal dignity not temporarily taken away by law, or necessarily inconsistent with the circumstances in which they had been placed.¹⁶⁸

¹⁶⁸ *Innes J in Whittaker v Roos and Bateman* 1912 AD 92 at 122-123. See also, *Goldberg and Others v Minister of Prisons and Others* 1979 (1) SA 14 (A) at 39H-40C; *Nestor and Others v Minister of Police and Others* 1984 (4) SA 230 (SWA) at 250F-251D.

[143] A prisoner is not stripped naked, bound, gagged and chained to his or her cell. The right of association with other prisoners, the right to exercise, to write and receive letters and the rights of personality referred to by Innes J are of vital importance to prisoners and highly valued by them precisely because they are confined, have only limited contact with the outside world, and are subject to prison discipline. Imprisonment is a severe punishment; but prisoners retain all the rights to which every person is entitled under Chapter Three subject only to limitations imposed by the prison regime that are justifiable under *section 33*.¹⁶⁹ Of these, none are more important than the *section 11(2)* right not to be subjected to "torture of any kind...nor to cruel, inhuman or degrading treatment or punishment." There is a difference between encroaching upon rights for the purpose of punishment and destroying them altogether. It is that difference with which we are concerned in the present case.

Conclusion

[144] The rights to life and dignity are the most important of all human rights, and the source of all other personal rights in Chapter Three. By committing ourselves to a society founded on the recognition of human rights we are required to value these two rights above all others. And this must be demonstrated by the State in everything that it does, including the way it punishes criminals. This is not achieved by objectifying murderers and putting them to death to serve as an example to others in the expectation that they might possibly be deterred thereby.

[145] In the balancing process the principal factors that have to be weighed are on the one hand the destruction of life and dignity that is a consequence of the implementation of the death sentence, the elements of arbitrariness and the possibility of error in the enforcement of capital punishment, and the existence of a severe alternative punishment (life imprisonment) and, on the other, the claim that the death sentence is

¹⁶⁹ See also, *Woods v Minister of Justice, Legal and Parliamentary Affairs and Others*, 1995 BCLR 56(ZSC) at 58F-G; *Turner v. Safley*, 482 U.S. 78, 84-85 (1987).

a greater deterrent to murder, and will more effectively prevent its commission, than would a sentence of life imprisonment, and that there is a public demand for retributive justice to be imposed on murderers, which only the death sentence can meet.

- [146] Retribution cannot be accorded the same weight under our Constitution as the rights to life and dignity, which are the most important of all the rights in Chapter Three. It has not been shown that the death sentence would be materially more effective to deter or prevent murder than the alternative sentence of life imprisonment would be. Taking these factors into account, as well as the elements of arbitrariness and the possibility of error in enforcing the death penalty, the clear and convincing case that is required to justify the death sentence as a penalty for murder, has not been made out. The requirements of *section 33(1)* have accordingly not been satisfied, and it follows that the provisions of *section 277(1)(a)* of the Criminal Procedure Act, 1977 must be held to be inconsistent with *section 11(2)* of the Constitution. In the circumstances, it is not necessary for me to consider whether the section would also be inconsistent with *sections 8, 9 or 10* of the Constitution if they had been dealt with separately and not treated together as giving meaning to *section 11(2)*.

Section 241(8) of the Constitution

- [147] In the present case the trial had been completed but an appeal to the Appellate Division was pending, when the 1993 Constitution came into force. The validity of the trial, and the fact that the death sentences were competent sentences at the time they were imposed, are not in issue. What is in issue before the Appellate Division is whether the death sentences can and should be confirmed. It has postponed its judgment pending the determination of the issues referred to us for our decision.
- [148] It is not necessary to deal with the provisions of *section 241(8)* in the present case. The Attorney General correctly conceded that if the death penalty for murder is unconstitutional, it would not be competent to carry out the death sentences that have been imposed on the accused. The prohibition of cruel, inhuman or degrading

punishment is applicable to all punishments implemented after the 27th April, and can be invoked to prevent a punishment being carried out even if the punishment was lawful when it was imposed.¹⁷⁰

The Order to be made

[149] I have dealt in this judgment only with the provisions of *section 277(1)(a)* of the Criminal Procedure Act, but it is clear that if subsection (1)(a) is inconsistent with the Constitution, subsections (1)(c) to (1)(f) must also be unconstitutional, so too must provisions of legislation corresponding to *sections 277(1)(a), (c), (d), (e) and (f)* that are in force in parts of the national territory in terms of *section 229* of the Constitution. Different considerations arising from *section 33(1)* might possibly apply to subsection (b) which makes provision for the imposition of the death sentence for treason committed when the republic is in a state of war. No argument was addressed to us on this issue, and I refrain from expressing any views thereon.

[150] The proper sentence to be imposed on the accused is a matter for the Appellate Division and not for us to decide. This, and other capital cases which have been postponed by the Appellate Division pending the decision of this Court on the constitutionality of the death sentence, can now be dealt with in accordance with the order made in this case. Lest there be any doubt on this score, one of the effects of our judgment is to prohibit the State, or any of its organs, from executing persons whose appeals against sentences of death have been disposed of. Such persons will remain in custody under the sentences imposed on them until such sentences have been set aside in accordance with law, and substituted by appropriate and lawful punishments. This will form part of the order made.

[151] The following order is made:

¹⁷⁰ See *Pratt v Attorney General for Jamaica; and Catholic Commission for Justice in Zimbabwe v The Attorney General, Zimbabwe, and Others*, *supra* note 3.

1. In terms of *section 98(5)* of the Constitution, and with effect from the date of this order, the provisions of paragraphs (a), (c), (d), (e) and (f) of *section 277(1)* of the Criminal Procedure Act, and all corresponding provisions of other legislation sanctioning capital punishment which are in force in any part of the national territory in terms of *section 229*, are declared to be inconsistent with the Constitution and, accordingly, to be invalid.
2. In terms of *section 98(7)* of the Constitution, and with effect from the date of this order:
 - (a) the State is and all its organs are forbidden to execute any person already sentenced to death under any of the provisions thus declared to be invalid; and
 - (b) all such persons will remain in custody under the sentences imposed on them, until such sentences have been set aside in accordance with law and substituted by lawful punishments.

[152] ACKERMANN J: I concur fully in the judgment of the President, both regarding his conclusions and his reasons therefor, save in the respects hereinafter set forth. I also agree with the order proposed by him.

[153] I place greater emphasis on the inevitably arbitrary nature of the decision involved in the imposition of the death penalty as a form of punishment in supporting the conclusion that it constitutes "cruel", "inhuman" and "degrading punishment" within the meaning of section 11(2) of the Constitution, which cannot be saved by section 33(1).

[154] In paragraphs [43] to [56] of his judgment the President deals with the arbitrariness and inequality of the death penalty. He deals (more particularly in paragraphs [55] and [56]) with the difficulties faced by the US Supreme Court in trying to eliminate the dangers of arbitrariness by employing the due process provisions of the Fifth and

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Fourteenth Amendments. Such efforts cause considerable expense and interminable delays, and the President concludes by expressing the view that we should not follow the United States route. I agree, but that does not mean that we ought not to accord greater weight to considerations of arbitrariness and inequality. The US Supreme Court has been obliged to follow the route it did because, so it seems to me, their Constitution postulates (by implication) that it is possible to devise due process mechanisms which can deal with the arbitrary and unequal features of death sentence imposition. We are not so constrained. Our right to life is not qualified in the way it is qualified in the Fifth and Fourteenth Amendments of the US Constitution. We are not constitutionally constrained to accept the arbitrary consequences of the imposition of the death penalty.

- [155] The preamble to the Constitution refers to the creation of a new order in a state, which, amongst other things, is described as a "constitutional state." Section 4(1) declares the Constitution to be the "supreme law of the Republic" which by virtue of section 4(2) "binds all legislative, executive and judicial organs of state at all levels of government." Every person's right to equality before the law is entrenched in section 8(1) and in section 8(2) a substantial number of different grounds of unfair discrimination are prohibited. The constitutional importance of equality is further underscored in section 35(1) which enjoins the courts to promote the values which underlie an open and democratic society based on freedom and equality in interpreting the provisions of Chapter 3.
- [156] In reaction to our past, the concept and values of the constitutional state, of the "regstaat", and the constitutional right to equality before the law are deeply foundational to the creation of the "new order" referred to in the preamble. The detailed enumeration and description in section 33(1) of the criteria which must be met before the legislature can limit a right entrenched in Chapter 3 of the Constitution emphasises the importance, in our new constitutional state, of reason and justification when rights are sought to be curtailed. We have moved from a past characterised by much which was arbitrary and unequal in the operation of the law to a present and a future in a

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constitutional state where state action must be such that it is capable of being analysed and justified rationally. The idea of the constitutional state presupposes a system whose operation can be rationally tested against or in terms of the law. Arbitrariness, by its very nature, is dissonant with these core concepts of our new constitutional order. Neither arbitrary action nor laws or rules which are inherently arbitrary or must lead to arbitrary application can, in any real sense, be tested against the precepts or principles of the Constitution¹⁷¹. Arbitrariness must also inevitably, by

¹⁷¹See in general Prof. E Mureinik 'A Bridge to Where? Introducing the Interim Bill of Rights' 10 (1994) SAJHR 31. At 32 the learned author points out that -

"If the new Constitution is a bridge away from a culture of authority, it is clear what it must be a bridge to. It must lead to a culture of justification - a culture in which every exercise of power is expected to be justified; ... If the Constitution is to be a bridge in this direction, it is plain that the Bill of Rights must be its chief strut".

At 38 he points out that Chapter 3 of the Constitution, and in particular section 24, the administrative justice clause -

"gives a lead which, properly followed, would put South Africa at the frontiers of the search for a culture of justification."

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its very nature, lead to the unequal treatment of persons. Arbitrary action, or decision making, is incapable of providing a rational explanation as to why similarly placed persons are treated in a substantially different way. Without such a rational justifying mechanism, unequal treatment must follow.

[157] It is in the context of our (textually) unqualified section 9 right to life that I find certain observations in the US decisions supportive on the issue and consequences of arbitrariness. We are free to look at the incidence and consequences of arbitrariness without being constrained by a constitutional authorization (whether explicit or implicit) of the death penalty. One must of course constantly bear in mind that the relevant criteria in the Eighth Amendment of the US Constitution also differ from those in section 11(2) of our Constitution. Whereas in the former they are "cruel and unusual" in the latter they are "cruel, inhuman or degrading".

[158] In Furman v. Georgia¹⁷² the US Supreme Court had to consider a case where the determination of whether the penalty for murder and rape should be death or another punishment was left by the State of Georgia to the discretion of the judge or of the jury. In the course of his judgment¹⁷³ Douglas J referred with approval to the following comments in a journal article:

"A penalty ... should be considered 'unusually' imposed if it is administered arbitrarily or discriminatingly ... [t]he extreme rarity with which applicable death penalty provisions are put to use raises a strong inference of arbitrariness."

He further expressed the view¹⁷⁴ that -

"[t]he high service rendered by the 'cruel and unusual' punishment clause of the Eighth Amendment is to require legislatures to write penal laws that are evenhanded,

¹⁷²408 US 238 (1972).

¹⁷³Id. at 249.

¹⁷⁴Id. at 256.

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non-selective, and nonarbitrary ..."

[159] On the issue of arbitrariness Brennan J observed in Furman¹⁷⁵ that -

"In determining whether a punishment comports with human dignity, we are aided also by a second principle inherent in the [Cruel and Unusual Punishments] Clause - that the State must not arbitrarily inflict a severe punishment. This principle derives from the notion that the State does not respect human dignity when, without reason, it inflicts upon some people a severe punishment that it does not inflict upon others."

¹⁷⁵Id. at 274.

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He also stated¹⁷⁶ (in a context not dissimilar to ours where a vast number of murders are committed, a large number of accused charged and convicted but relatively few ultimately executed) that -

"No one has yet suggested a rational basis that could differentiate in those terms the few who die from the many who go to prison. Crimes and criminals simply do not admit of a distinction that can be drawn so finely as to explain, on that ground, the execution of such a tiny sample of those eligible Nor is the distinction credible in fact."

[160] Stewart J founded his judgment on the fact that the imposition of so extreme a penalty in pursuance of the Georgia statute was inevitably arbitrary. After referring to the fact that "the petitioners are among a capriciously selected random handful upon whom the sentence of death has in fact been imposed" he concludes simply by holding that -

"the Eighth and Fourteenth Amendments cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed"¹⁷⁷

¹⁷⁶Id. at 294.

¹⁷⁷Id. at 309 - 310.

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[161] In Callins v. Collins, cert. denied, 114 S.Ct. 1127, 127 L.Ed 435 (1994) Blackmun J filed a dissenting opinion. In it he observed that¹⁷⁸ -

"[e]xperience has taught us that the constitutional goal of eliminating arbitrariness and discrimination from the administration of death, see Furman v. Georgia, *supra*, can never be achieved without compromising an equally essential component of fundamental fairness - individualized sentencing. See Lockett v. Ohio, 438 U.S. 586 (1978)."

and, commenting upon its unavoidable arbitrariness, that¹⁷⁹ -

"[i]t is virtually self-evident to me now that no combination of procedural rules or substantive regulations ever can save the death penalty from its inherent constitutional deficiencies. The basic question - does the system accurately and consistently determine which defendants 'deserve' to die? - cannot be answered in the affirmative."

He further expressed the view that¹⁸⁰ -

"[a]lthough most of the public seems to desire, and the Constitution appears to permit, the penalty of death, it surely is beyond dispute that if the death penalty cannot be administered consistently and rationally, it must not be administered at all." (emphasis added)

¹⁷⁸Callins v. Collins, *supra*, at 1129.

¹⁷⁹*Id.* at 1130.

¹⁸⁰*Id.* at 1131.

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and that¹⁸¹, in the aftermath of the Furman judgment -

"[i]t soon became apparent that discretion could not be eliminated from capital sentencing without threatening the fundamental fairness due a defendant when life is at stake. Just as contemporary society was no longer tolerant of the random or discriminatory infliction of the penalty of death ... evolving standards of decency required due consideration of the uniqueness of each individual defendant when imposing society's ultimate penalty ... [T]he consistency and rationality promised in Furman are inversely related to the fairness owed the individual when considering a sentence of death. A step toward consistency is a step away from fairness".

[162] In considering a constitutional right to life unfettered by the restraints or interpretative problems of the right in the US Constitution, I am of the view that the above dicta are appropriate to the issue of the constitutionality of the death sentence in South Africa. As general propositions, which can be applied in the context of our Constitution, I would accept and endorse the views of Blackmun J.

[163] As to the more general principle that arbitrariness conflicts with the idea of a right to equality and equality before the law I am fortified in my view by the following remarks of Bhagwati, J in Gandhi v. Union of India 1978 SC 597 at 624:

"We must reiterate here what was pointed out by the majority in E.P. Royappa v. State of Tamil Nadu (1974) 2 SCR 348: (AIR 1974 SC 555) namely, that 'from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore violative of Article 14.'"

[164] I am mindful of the fact that it is virtually impossible (save in the case of rigidly circumscribed mandatory sentences - which present other dangers) to avoid elements of arbitrariness in the imposition of any punishment. Arbitrary elements are present in

¹⁸¹Id. at 1132.

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the difficult decision to send an offender to prison for the first time, or in deciding what the appropriate length of the prison sentence should be in any case where it is imposed. However, the consequences of the death sentence, as a form of punishment, differ so radically from any other sentence that the death sentence differs not only in degree but also

in substance from any other form of punishment. A sentence which preserves life differs incomparably from one which obliterates life. The executed person has, in fact, "lost the right to have rights."¹⁸² In this sense the death sentence is unique and

¹⁸²Trop v. Dulles 356 US 84 (1958) at 102 quoted with approval by Brennan J in Furman, supra note 2, at 289. See also Stewart J in Furman at 306:

"The penalty of death differs from all other forms of criminal punishment, not in degree but in kind. It is unique in its total irrevocability. It is unique in its rejection of rehabilitation of the convict as a basic purpose of criminal justice. And it is unique, finally, in its absolute renunciation of all that is embodied in our concept of humanity."

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the dimension and consequences of arbitrariness in its imposition differ fundamentally from the dimension and consequences of arbitrariness in the imposition of any other punishment¹⁸³.

¹⁸³In Callins v. Collins, supra, at 1132, Blackmun J, quoting from the opinion of Stewart, Powell and Stevens JJ in Woodson v. North Carolina 428 US 280 (1976) at 305, pointed out that because of the qualitative difference of the death penalty, "there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case."

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[165] In paragraphs [44] to [46] of his judgment the President has referred to the relevant statutory provisions prescribing the tests to be applied for the imposition of the death sentence and the guidelines laid down for their application by the Appellate Division of the Supreme Court. In the end, whatever guidelines are employed, a process of weighing up has to take place between "mitigating factors" (if any) and "aggravating factors" and thereafter a value judgment made as to whether "the sentence of death is the proper sentence." I am not suggesting that the statutory provisions could have been better formulated or that the Appellate Division guidelines could be improved upon. The fact of the matter is that they leave such a wide latitude for differences of individual assessment, evaluation and normative judgment, that they are inescapably arbitrary to a marked degree. There must be many borderline cases where two courts, with the identical accused and identical facts, would undoubtedly come to different conclusions. I have no doubt that even on a court composed of members of the genus Hercules¹⁸⁴ and Athena there would in many cases be differences of opinion, incapable of rational elucidation, on whether to impose the death penalty in a particular case, where its imposition was, as in the case of section 277(1) of the Criminal Procedure Act, dependant on the application of widely formulated criteria and the exercise of difficult value judgments.

[166] The conclusion which I reach is that the imposition of the death penalty is inevitably arbitrary and unequal. Whatever the scope of the right to life in section 9 of the Constitution may be, it unquestionably encompasses the right not to be deliberately put to death by the state in a way which is arbitrary and unequal. I would therefore hold that section 277(1)(a) of the Criminal Procedure Act is inconsistent with the section 9 right to life. I would moreover also hold that it is inconsistent with section

¹⁸⁴Prof. Dworkin's lawyer "of superhuman skill, learning, patience and acumen"; see Taking Rights Seriously (1978) 105.

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11(2). Where the arbitrary and unequal infliction of punishment occurs at the level of a punishment so unique as the death penalty, it strikes me as being cruel and inhuman. For one person to receive the death sentence, where a similarly placed person does not, is, in my assessment of values, cruel to the person receiving it. To allow chance, in this way, to determine the life or death of a person, is to reduce the person to a cypher in a sophisticated judicial lottery. This is to treat the sentenced person as inhuman. When these considerations are taken in conjunction with those set forth by the President in his judgment, they render the death penalty a cruel, inhuman and degrading punishment. For the reasons expounded by the President in his judgment, and with which I fully agree, neither the infringement of section 9 nor of section 11(2) by section 277(1)(a) of the Criminal Procedure Act, can be saved by the provisions of section 33(1) of the Constitution. Accordingly the provisions of section 277(1)(a) must be held to be inconsistent with sections 9 and 11(2) of the Constitution.

[167] In paragraphs [132] to [134] of his judgment the President alludes to the provision in section 33(1)(b) of the Constitution that a limitation "shall not negate the essential content of the right in question" but, after referring to uncertainties concerning its meaning, finds it unnecessary to resolve the issue in the present case. In paragraph [133] he postulates, however, a subjective and an objective approach to the problem. I do not necessarily agree with his formulation of the objective approach. In my view it is unnecessary in the present case to say anything at all about the meaning to be attached to this provision. It is one which the framers of our Constitution borrowed in part from article 19(2) of the German Basic Law ("Grundgesetz") which provides that

"In keinem Falle darf ein Grundrecht in seinem Wesensgehalt angetastet werden"

("In no case may the essence of a basic right be encroached upon"¹⁵)

¹⁵From the official translation published by the Press and Information Office of the Federal Government, Bonn (1994).

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There are obvious differences in the wording of the qualification. Nevertheless there is a wealth of German case law and scholarship on the topic¹⁶. Without the fullest

¹⁶Decisions of the Federal Constitutional Court: 2 BVerfGE 266 at 285; 6 BVerfGE 32 at 41; 7 BVerfGE 377 at 411; 13 BVerfGE 97 at 122; 15 BVerfGE 126 at 144; 16 BVerfGE 194 at 201; 21 BVerfGE 92 at 93; 22 BVerfGE 180 at 218; 27 BVerfGE 344 at 350; 30 BVerfGE 1 at 24; 30 BVerfGE 47 at 53; 31 BVerfGE 58 at 61; 32 BVerfGE 373 at 379; 34 BVerfGE 238 at 245; 58 BVerfGE 300 at 348; 61 BVerfGE 82 at 113; 80 BVerfGE 367 at 373.

Decisions of the Federal Administrative Court: 1 BVerwGE 92 at 93; 1 BVerwGE 269 at 270; 2 BVerwGE 85 at 87; BVerwGE reported in 90 Deutsches Verwaltungsblatt at 709.

Decisions of the Federal Court of Justice: 4 BGHSt 375 at 377 (also reported in 1955 Die Öffentliche Verwaltung at 176); 4 BGHSt 385; 5 BGHSt 375; 6 BGHZ 270 at 275; 22 BGHZ 168 at 176.

General academic works: Von Münch/Kunig Grundgesetz Kommentar (1992) 997-1004; Leibholz-Rinck-Hesselberger Grundgesetz Kommentar an Hand der Rechtsprechung des Bundesverfassungsgerichts (1994)(commentary on art.19) 16-18; Maunz-Dürig-Herzog Grundgesetz Kommentar (1991) (commentary on art.19II) 1-14; Jarass/Pieroth Grundgesetz für die Bundesrepublik Deutschland (1992) 336-8; J Isensee & P Kirchhof (eds) Handbuch des Staatsrechts vol 5 (1992) 795; E Denninger in Reihe Alternativkommentare Kommentar zum Grundgesetz für die Bundesrepublik Deutschland (1984) 1179; Schmidt-Bleibtreu-Klein Kommentar zum Grundgesetz (1990) 397-9; K Hesse Grundzüge des Verfassungsrechts der Bundesrepublik Deutschland (1991) 140; Von Mangoldt/Klein Das Bonner Grundgesetz (1966) 551; K Doehring Allgemeine

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exposition of, and argument on, inter alia, the German jurisprudence in this regard, I consider it undesirable to express any view on the subject.

Staatslehre (1991) 222; Maunz-Zippelius Deutsches Staatsrecht (1991) 161.

Specialist literature on art.19(2) GG: P Häberle Die Wesensgehaltgarantie des Artikels 19 Abs. 2 Grundgesetz (1983); E von Hippel Grenzen und Wesensgehalt der Grundrechte (1965); H Krüger 'Der Wesensgehalt der Grundrechte des Art.19 GG' (1955) Die Öffentliche Verwaltung 597; L Scheider Der Schutz des Wesensgehalts von Grundrechten nach Art.19 Abs.2 GG (1983); G Herbert 'Der Wesensgehalt der Grundrechte' 12 (1985) Europäische Grundrechte Zeitschrift 321; Zivier Der Wesensgehalt der Grundrechte Diss. Berlin (1960); J Chlosta Der Wesensgehalt der Eigentumsgewährleistung (1975); P Lerche Übermass und Verfassungsrecht (1961); Kaufmann 'Über den 'Wesensgehalt' der Grund- und Menschenrechte' (1984) Archiv für Rechts- und Sozialphilosophie 384; E Denninger 'Zum Begriff des 'Wesensgehaltes' in der Rechtsprechung (Art.19.Abs.II GG)' (1960) Die Öffentliche Verwaltung 812.

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[168] Members of the public are understandably concerned, often frightened, for their life and safety in a society where the incidence of violent crime is high and the rate of apprehension and conviction of the perpetrators low. This is a pressing public concern. However important it undoubtedly is to emphasise the constitutional importance of individual rights, there is a danger that the other leg of the constitutional state compact may not enjoy the recognition it deserves. I refer to the fact that in a constitutional state individuals agree (in principle at least) to abandon their right to self-help in the protection of their rights only because the state, in the constitutional state compact, assumes the obligation to protect these rights. If the state fails to discharge this duty adequately, there is a danger that individuals might feel justified in using self-help to protect their rights. This is not a fanciful possibility in South Africa. "The need for a strong deterrent to violent crime" is underscored by the President in his judgment as is the duty of the state, through the criminal justice system, to ensure that offenders will be apprehended and convicted, for these steps are conditions precedent to punishment.¹⁷

[169] Apart from deterring others, one of the goals of punishment is to prevent the convicted prisoner from committing crimes again. Both the preventative and reformative components of punishment are directed towards this end, although reformation obviously has the further commendable aim of the betterment of the prisoner. Society as a whole is justifiably concerned that this aim of punishment should be achieved and society fears the possibility that the violent criminal, upon release from prison, will once again harm society. Society is particularly concerned with the possibility of this happening in the case of an unreformed recidivist murderer or rapist if the death penalty is abolished.

¹⁷Para. 117.

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[170] The President has rightly pointed out in his judgment that in considering the deterrent effect of the death sentence the evaluation is not to be conducted by contrasting the death penalty with no punishment at all but between the death sentence and "severe punishment of a long term of imprisonment which, in an appropriate case, could be a sentence of life imprisonment";¹⁸ I agree with this approach. With the abolition of the death penalty society needs the firm assurance that the unreformed recidivist murderer or rapist will not be released from prison, however long the sentence served by the prisoner may have been, if there is a reasonable possibility that the prisoner will repeat the crime. Society needs to be assured that in such cases the state will see to it that such a recidivist will remain in prison permanently.

[171] I appreciate the concern of not wishing to anticipate the issue as to whether life imprisonment, however executed and administered, is constitutional or not. At the same time I do not believe that the two issues can be kept in watertight separate juristic compartments. If the death penalty is to be abolished, as I believe it must, society is entitled to the assurance that the state will protect it from further harm from the convicted unreformed recidivist killer or rapist. If there is an individual right not to be put to death by the criminal justice system there is a correlative obligation on the state, through the criminal justice system, to protect society from once again being harmed by the unreformed recidivist killer or rapist. The right and the obligation are inseparably part of the same constitutional state compact.

¹⁸Para. 123.

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[172] Article 102 of the German Basic Law declares that capital punishment is abolished. The German Federal Constitutional Court considered the constitutionality of life imprisonment in 1977¹⁹. The provision in the criminal code which prescribes life imprisonment for murder was challenged on the basis that it conflicted with the protection afforded to human dignity (art 1.1) and personal freedom (art 2.2) in the German Basic Law. The Court upheld the law on the basis that it was not shown that the serving of a sentence of life imprisonment leads to irreparable physical or psychological damage to the prisoner's health. The Court did however find that the right to human dignity demands a humane execution of the sentence. This meant that the existing law, which made provision for executive pardon, had to be replaced by a law laying down objective criteria for the release of prisoners serving life sentences. In the course of its judgment, the Court made clear that there is nothing constitutionally objectionable to executing a life sentence in full in cases where the prisoner does not meet the criteria. At page 242 of the judgment the Court said:

"Die Menschenwürde wird auch dann nicht verletzt, wenn der Vollzug der Strafe wegen fortdauernder Gefährlichkeit des Gefangenen notwendig ist und sich aus diesem Grunde eine Begnadigung verbietet. Es ist der staatlichen Gemeinschaft nicht verwehrt, sich gegen einen gemeingefährlichen Straftäter durch Freiheitsentzug zu sichern."

("Human dignity is not infringed when the execution of the sentence remains necessary due to the continuing danger posed by the prisoner and clemency is for this reason precluded. The state is not prevented from protecting the community from dangerous criminals by keeping them incarcerated".)

[173] **DIDCOTT J:** I agree with Chaskalson P that our new Constitution (Act 200 of 1993)

¹⁹45 BVerfGE 187.

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outlaws capital punishment in South Africa for the crimes covered by his judgment, and I concur in the order giving effect to that conclusion which he proposes to make.

[174] My grounds for believing the death penalty to be unconstitutional for the crimes in question are these. Capital punishment violates the right to life of every person that is protected by section 9 of the Constitution and contravenes the prohibition pronounced in section 11(2) against cruel, inhuman or degrading punishment, both of which bind the state and its organs in terms of section 7(1). The provisions of the Criminal Procedure Act (51 of 1977) that sanction sentences of death for such crimes are not saved from nullification in their consequent clash with sections 9 and 11 (2). For they fail to satisfy the conditions which paragraph (a) of section 33(1) prescribes for their survival as exceptions to the general rule, the conditions requiring that they must be reasonable in the first place and, in a society of the sort described there, justifiable in the second. Nor do they pass the further test of necessity set by paragraph (aa) for any permissible invasion of section 11(2).

[175] Perhaps the essential content of the right to life is negated in addition, an effect not countenanced by paragraph (b) of section 33(1) which subjects the legitimacy of any encroachment on the right to the extra requirement that no such result may ever ensue. That point may be put aside, however, once the requirements of paragraphs (a) and (aa) are not met. Negating the essential content of a constitutional right is a concept less simple and clear than it may appear at first to be. Any definitive ruling on its import that was made now would have a profound bearing on other issues likely to confront us in the future, with implications for them which are difficult to foresee at so early a stage in the development of our jurisprudence. It is better, I therefore feel, not to go into the question on this occasion, but to leave that open for consideration and decision on a different one when it has to be answered.

[176] Nor, for much the same reasons, do I think it wise to venture at present a comprehensive and exact definition of what is encompassed by the constitutional right to life. It suffices for the purposes of this case to say that the proclamation of the right and the respect

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for it demanded from the state must surely entitle one, at the very least, not to be put to death by the state deliberately, systematically and as an act of policy that denies in principle the value of the victim's life. Those are hardly features of deaths which the state may happen to cause in the course of waging defensive warfare, quelling an insurrection or rescuing hostages, to cite some situations debated before us in which a constitutional protection of life was said to be inconceivable. Such hallmarks do, however, characterise every execution by the state of a criminal.

[177] Whether execution ranks also as a cruel, inhuman or degrading punishment is a question that lends itself to no precise measurement. It calls for a value judgment in an area where personal opinions are prone to differ, a value judgment that can easily become entangled with or be influenced by one's own moral attitude and feelings. Judgments of that order must often be made by courts of law, however, whose training and experience warns them against the trap of undue subjectivity. Such a judgment is now required from us, at all events, and would have been inescapable whichever way the question was answered. Nor do we lack guidance on it. A provision of the Zimbabwean Constitution which banned inhuman or degrading punishment was considered by their Supreme Court in *Catholic Commission for Justice and Peace in Zimbabwe v Attorney-General, Zimbabwe, and Others* 1993(4) SA 239 (ZSC). Gubbay CJ had this to say about it (at 247 I - 248 B):

"It is a provision that embodies broad and idealistic notions of dignity, humanity and decency. It guarantees that punishment.....of the individual be exercised within the ambit of civilised standards. Any punishment.....incompatible with the evolving standards of decency that mark the progress of a maturing society, or which involve the infliction of unnecessary suffering, is repulsive. What might not have been regarded as inhuman decades ago may be revolting to the new sensitivities which emerge as civilisation advances".

The same goes, I firmly believe, for our section 11(2). Gubbay CJ continued thus (at 248 B-C):

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"(A)n application of this approach to whether a form of ... punishment ... is inhuman or degrading is dependent upon the exercise of a value judgment ...; one that must not only take account of the emerging consensus of values in the civilised international community (of which this country is a part) ..., but of contemporary norms operative in Zimbabwe and the sensitivities of its people".

I take that view here too, where such norms and sensitivities are demonstrated, above all else, by the altruistic and humanitarian philosophy which animates the Constitution enjoyed by us nowadays.

[178] Capital punishment was discussed at length in *Furman v State of Georgia*(1972) 408 US 238, a case handled by the Supreme Court of the United States of America in which a comparably liberal philosophy was expounded by a number of the judges hearing it. Stewart J described that sentence (at 306) as -

".....unique ...in its absolute renunciation of all that is embodied in our concept of humanity."

Brennan J agreed, declaring in the same case (at 290 and 291) that:

"Death is truly an awesome punishment. The calculated killing of a human being by the state involves, by its very nature, a denial of the executed person's humanity. The contrast with the plight of a person punished by imprisonment is evident....A prisoner remains a member of the human family...In comparison to all other punishments...the deliberate extinguishment of human life by the state is uniquely degrading to human dignity".

The distinctive features of the penalty were emphasised by Brennan J elsewhere in his judgment, when he wrote (at 287 and 288) that:

"Death is today an unusually severe punishment, unusual in its pain, in its finality, and in its enormity. No other existing punishment is comparable to death in terms of physical and mental suffering... Since the discontinuance of flogging as a constitutionally permissible punishment..., death remains the only punishment that may involve the conscious infliction of physical pain. In addition, we know that

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mental pain is an inseparable part of our practice of punishing criminals by death, for the prospect of pending execution exacts a frightful toll during the inevitable long wait between the imposition of sentence and the actual infliction of death... The unusual severity of death is manifested most clearly in its finality and enormity. Death, in these respects, is in a class by itself."

In a Californian case, the one of *The People v Anderson* (1972) 493 P 2d 880, Wright CJ observed (at 894) that:

"The cruelty of capital punishment lies not only in the execution itself and the pain incident thereto, but also in the dehumanising effects of the lengthy imprisonment prior to execution during which the judicial and administrative procedures essential to due process of law are carried out. Penologists and medical experts agree that the process of carrying out a verdict of death is often so degrading and brutalising to the human spirit as to constitute psychological torture."

Liacos J elaborated on that aspect of the matter in the judgment which he delivered when *District Attorney for the Suffolk District v Watson and Others* (1980) 381 Mass 648

was decided in Massachusetts. The passages that I shall quote (at 678 - 9, 681 and 683) are vivid. They went thus:

"The ordeals of the condemned are inherent and inevitable in any system that informs the condemned person of his sentence and provides for a gap between sentence and execution. Whatever one believes about the cruelty of the death penalty itself, this violence done the prisoner's mind must afflict the conscience of enlightened government and give the civilised heart no rest... The condemned must confront this primal terror directly, and in the most demeaning circumstances. A condemned man knows, subject to the possibility of successful appeal or commutation, the time and manner of his death. His thoughts about death must necessarily be focussed more precisely than other people's. He must wait for a specific death, not merely expect death in the abstract. Apart from cases of suicide or terminal illness, this certainty is unique to those who are sentenced to death. The state puts the question of death to the condemned person, and he must grapple with it without the consolation that he will die naturally or with his humanity intact. A condemned person experiences an extreme form of debasement... The death sentence itself is a declaration that society deems the prisoner a nullity, less than

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human and unworthy to live. But that negation of his personality carries through the entire period between sentence and execution.”

A similar account was furnished by Gubbay CJ in the *Catholic Commission* case when he said (at 268 E-H):

“From the moment he enters the condemned cell, the prisoner is enmeshed in a dehumanising environment of near hopelessness. He is in a place where the sole object is to preserve his life so that he may be executed. The condemned prisoner is ‘the living dead’..... He is kept only with other death sentence prisoners - with those whose appeals have been dismissed and who await death or reprieve; or those whose appeals are still to be heard or are pending judgment. While the right to an appeal may raise the prospect of being allowed to live, the intensity of the trauma is much increased by knowledge of its dismissal. The hope of a reprieve is all that is left. Throughout all this time the condemned prisoner constantly broods over his fate. The horrifying spectre of being hanged by the neck and the apprehension of being made to suffer a painful....death isnever far from mind.”

[179] The Constitutions of California and Massachusetts forbade cruel punishments. Sentences of death were held in each state to be contraventions of the prohibition which could not stand. The decision reached in the case of the *District Attorney for Suffolk* was announced by Hennessey CJ, who said (at 664 and 665):

“(T)he death penalty is unacceptable under contemporary standards of decency in its unique and inherent capacity to inflict pain. The mental agony is, simply and beyond question, a horror.... We conclude..... that the death penalty, with its full panoply of concomitant physical and mental tortures, is impermissibly cruel.....when judged by contemporary standards of decency.”

Executions were not outlawed altogether, on the other hand, in either *Furman v State of Georgia* or the case of the *Catholic Commission*, despite the castigation that they then underwent. The reason lay in the special provisions of the governing charters, the Constitutions of the United States and Zimbabwe, each of which impliedly authorised the punishment, or appeared at least to do so, by protecting the right to life in terms that specifically excluded deaths thus caused. So, while executions could be and were banned in the particular circumstances of the two cases, insufficient room was visible for the total embargo which Brennan J and Gubbay CJ would no doubt have preferred to impose on them. No such obstacle was presented by the Constitution of Massachusetts or found to be raised at that time by the Californian one. None of this detracts, however, from my purpose in repeating the

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harrowing descriptions given on all four occasions of the ordeal suffered by criminals awaiting and experiencing execution. I am unaware of any criticism ever levelled at those descriptions, which were not disputed before us when reliance was placed on them in argument, and I have no reason to believe that they may have been inaccurate or exaggerated in any material respect. They suffice on the whole to convince me that every sentence of death must be stamped, for the purposes of section 11(2), as an intrinsically cruel, inhuman and degrading punishment.

- [180] I pass to the question whether capital punishment is nevertheless allowed by section 33(1) for the crimes that concern us now. I am not sure that a sentence with a sequel of such cruelty, inhumanity and degradation can ever be rightly regarded in a civilised society as a reasonable or justifiable measure, let alone a necessary one. But I shall assume that the penalty is not innately incapable of meeting those requirements.
- [181] The most familiar argument advanced in support of capital punishment, and the main contention we have to consider under the heading of its suggested permissibility, is that executions operate as a unique deterrent against the future commission of the crimes visited with them. That proposition, if sound indeed, deserves to be taken seriously. It then provides the strongest reason, in cases of murder at all events, for rating the sentence of death as an expedient which, though regrettable, passes constitutional muster. For section 9 protects likewise the lives of the innocent, the lives of potential victims. And that is a factor which must enter the reckoning, especially at present when the crimes of violence perpetrated here have become so prevalent and reached a level so appalling that acute anxiety is felt everywhere about the danger to life lurking around the corner. Such a time was said to be hardly propitious for, such a state of affairs to be scarcely conducive to, any relaxation in the rigour of the law. We dared not exacerbate the danger, we were warned, by reducing the force of deterrence in the combat with it. I agree that the nation cannot afford our doing so, and we would not wish it anyhow. Sight must never be lost, however, of this. The question is not whether capital punishment has a deterrent effect, but whether its deterrent effect happens to be significantly greater than that of

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the alternative sentence available, a suitably severe sentence of imprisonment which not only gets passed but may also be expected to run its course.

[182] The debate surrounding that question, an old one both here and elsewhere, has often been marked by the production of statistical evidence tendered to show that the death penalty either does not or does serve a uniquely deterrent purpose, as the case may be. The rate of capital crimes committed in a state performing executions is compared with that of the selfsame crimes experienced contemporaneously in some place or another where none occurs. The records of countries that executed convicts formerly, but have ceased doing so, are also examined. Comparisons are then drawn between the rates of those crimes found there before the punishment was abandoned and the ones encountered afterwards. Such statistics, when analysed, have always turned out to be inconclusive in the end. The pictures that they purport to present differ in the first place. The clarity of the sketching is impaired, in the second, by all sorts of variable factors for which no allowance is or can be made. One thinks, for instance, of differences and fluctuations in moral codes and values, in the efficiency and success of police forces in preventing and investigating crimes, in the climate for the collaboration and assistance that they need to obtain from the public and the extent of it which they manage to gain, in the organisation and skills of criminal conspirators and, above all perhaps, in the social and economic conditions that have so profound a bearing everywhere on the incidence of crimes. It therefore did not surprise me to hear that no great store was set in argument by figures of that kind. Others were drawn to our attention, which related to South Africa alone. They recorded the number of alleged murders that were reported here during every year from 1988 until 1993, inclusive of both. A globular increase emerged, the rate of which over the whole period of six years amounted approximately to 35% and accordingly to an annual average of almost 6%, calculated for convenience by means of a straight division that inflates the rate slightly, to be sure, since it disregards the effect on the percentage of the change from year to year in the figure on which it ought actually to be based. Interesting to notice, however, is this. The number of alleged murders rose by a mere 1% or thereabouts during 1993, in contrast with the

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average rate of 6% postulated, and by 9% during the time from the beginning of 1992 until the end of 1993, which remained lower than the corresponding average of 12% for that period of two years. The significance of the arithmetic lies in the fact that the moratorium on executions was announced, formally and firmly, in March 1992. What the exercise appears to illustrate, if statistics prove anything in such an area, is the irrelevance of the announcement to the rate of murders alleged, which had grown steadily while executions were carried out and was not accelerated by the halt in hangings. The results of my analysis, for what they are worth, may be added to the cogent and stronger reasons which Chaskalson P has supplied in paragraphs [119] and [120] for rejecting the contention addressed to us that the moratorium had contributed materially to the increase.

- [183] Without empirical proof of the extent to which capital punishment worked as a deterrent, neither side could present any argument on the point better than the appeal to common sense that tends to be lodged whenever the debate is conducted. That the extreme penalty must inevitably be more terrifying than anything else was said, on the one hand, to speak for itself. It spoke superficially, we were told on the other, and unrealistically too. What stood to reason was this instead. A very large proportion of murderers were in no mood or state of mind at the time to contemplate or care about the consequences of their killings which they might personally suffer. Those rational enough to take account of them gambled by and large on their escape from detection and arrest, where the odds in their favour were often rather high. The prospect of conviction and punishment was much less immediate and seldom entered their thinking. It was fanciful, should that happen on relatively rare occasions, to imagine their being daunted by the possibility of a journey to the gallows, a journey taken by only a small percentage of convicted murderers even at the height of executions in this country, but not by the probability of incarceration in a jail for many years and perhaps for the rest of their lives. The second school of thought is the one which gets to grips with the realities of the matter, in my opinion, appraising them with a lot more plausibility and persuasiveness than any that attaches to the stark proposition of the first school.

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- [184] It is unnecessary, however, to go so far. The protagonists of capital punishment bear the burden of satisfying us that it is permissible under section 33(1). To the extent that their case depends upon the uniquely deterrent effect attributed to it, they must therefore convince us that it indeed serves such a purpose. Nothing less is expected from them in any event when human lives are at stake, lives which may not continue to be destroyed on the mere possibility that some good will come of it. In that task they have failed and, as far as one can see, could never have succeeded.
- [185] In his judgment Chaskalson P has discussed retribution as another goal of punishment, and the arbitrariness and inequality contaminating our processes that culminate in executions. His treatment of the first subject will be found in paragraphs [129] to [131] and of the second one in paragraphs [48] to [54]. I share the view taken by him that retribution smacks too much of vengeance to be accepted, either on its own or in combination with other aims, as a worthy purpose of punishment in the enlightened society to which we South Africans have now committed ourselves, and that the expression of moral outrage which is its further and more defensible object can be communicated effectively by severe sentences of imprisonment. The inequality of which he has written may be curable in the long run, once it is not the result of the arbitrariness described by him. The same does not go, however, for the arbitrariness itself, a flaw in the edifice which Ackermann J has examined as well in paragraphs [158] to [165]. The problem of that is quite as intractable here as it has proved to be in the United States of America, where the courts have wrestled with it constantly and by no means to their satisfaction. For such arbitrariness is largely inherent in the nature of the proceedings from start to finish. Similar trouble may be inescapable, to be sure, in cases that are not capital ones. But in those producing sentences of death the arbitrariness is intolerable because of the irreversibility of the punishment once that gets put into force and the consequent irremediability of mistakes discovered afterwards, mistakes which do occur now and then notwithstanding the myth to the contrary. The defect then militates forcefully, I believe, against the reasonableness and justifiability of capital punishment.
- [186] The conclusion to which I have thus come, echoing the one reached by Chaskalson P, is that the

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death penalty cannot survive our constitutional scrutiny of it. The line I have taken in arriving there differs in some parts from that preferred by him, occasionally approaching a topic from another angle and sometimes placing the emphasis elsewhere. It has also called for less elaboration in the light of his meticulous research into a mountain of material and his erudite exposition of the themes developed from that. In general, however, I agree with his judgment, a profound and monumental work with which I feel proud to associate myself.

- [187] I wish before ending this judgment to add my voice to that of Chaskalson P in dealing with a couple of points raised in argument on which he has commented already but which I have not yet mentioned.
- [188] Whether capital punishment ought to be abolished or retained amounted, so it was said, to a question of policy which Parliament should decide, representing as it did the citizens of the country and expressing their general will. The issue is also, however, a constitutional one. It has been put before us squarely and properly. We cannot delegate to Parliament the duty that we bear to determine it, or evade that duty otherwise, but must perform it ourselves. In doing so, we were counselled in the alternative, we had to pay great attention to public opinion, which was said to favour the retention of the death penalty. We have no means of ascertaining whether that is indeed so, but I shall assume it to be the case. One may also assume, with a fair measure of confidence, that most members of the public who support capital punishment do so primarily in the belief that, owing to its uniquely deterrent force, they and their families are safer with than without its protection. The feeling is quite understandable, given its basis. But it deserves no further homage if the premise underlying and accounting for it is fallacious or unfounded, as I consider that one to be. To allow ourselves to be influenced unduly by public opinion would, in any event, be wrong. Powell J disparaged such external pressures on constitutional adjudication when he said in *Furman v State of Georgia* (at 443):

“(T)he weight of the evidence indicates that the public generally has not accepted either the morality or the social merit of the views so passionately advocated by the articulate spokesmen for abolition. But however one may assess (the) amorphous ebb and flow of

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public opinion generally on this volatile issue, this type of enquiry lies at the periphery - not the core - of the judicial process in constitutional cases. The assessment of popular opinion is essentially a legislative, not a judicial, function."

In similar vein were these remarks passed by Jackson J on the earlier occasion of *West Virginia State Board of Education v Barnette and Others* (1942) 319 U5 624 (at 638):

"The very purpose of a bill of rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities... and to establish them as legal principles to be applied by the courts. One's right to life... and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

[189] The other point was not so much a contention as a complaint, one registered against the sympathy with murderers, and the lack of any felt for the victims and their families, which some proponents of capital punishment have seen as the motivation behind every attack on it. It is unnecessary, I hope, for this court to answer that canard. In rebuttal of the criticism, lest it be levelled at us all the same, one can do no better than to repeat the following excerpts from the judgment which Wright CJ wrote in *The People v Anderson* (at 896 and 899):

"We are fully aware that many condemned prisoners have committed crimes of the utmost cruelty and depravity and that such persons are not entitled to the slightest sympathy from society in the administration of justice or otherwise.... Our conclusion that the death penalty may no longer be exacted in California... is not grounded in sympathy for those who would commit crimes of violence, but in concern for the society that diminishes itself whenever it takes the life of one of its members. Lord Chancellor Gardiner reminded the House of Lords, debating abolition of capital punishment in England: 'When we abolished the punishment for treason that you should be hanged, and then cut down while still alive, and then disembowelled while still alive, and then quartered, we did not abolish that punishment because we sympathised with traitors, but because we took the view that it was a punishment no longer consistent with our self-respect'."

[190] South Africa has experienced too much savagery. The wanton killing must stop before it makes a mockery of the civilised, humane and compassionate society to which the nation aspires and has constitutionally pledged itself. And the state must set the example by demonstrating the priceless value it places on the lives of all its subjects, even the worst.

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[191] **KENTRIDGE AJ:** I agree with the order proposed by Chaskalson P and with the reasons for it contained in his judgment and in the judgment of Didcott J In view of the importance of the issue and in deference to the forceful submissions of Mr von Lieres SC, the Attorney-General of the Witwatersrand, I add some remarks of my own.

[192] Capital punishment is an issue on which many members of the public hold strong and conflicting views. To many of them it may seem strange that so difficult and important a public issue should be decided by the eleven appointed judges of this court. It must be understood that we undertake this task not because we claim a superior wisdom for ourselves but, as Chaskalson P has explained in his judgment, because the framers of the Constitution have imposed on us the inescapable duty of deciding whether the death penalty for murder is consistent with Chapter Three of the Constitution. It should not be overlooked that a decision holding the death penalty to be constitutional would have been just as far-reaching an exercise of judicial power as the decision to strike it down.

[193] Some public commentators on the question before this court have supposed that any doubt as to the unconstitutionality of the death penalty was foreclosed by section 9 of the Constitution, which proclaims in unqualified terms that every person shall have the right of life, read with section 33(1)(b), which provides that no statutory limitation on that or any other constitutional right shall "negate the essential content of the right in question." The execution of a condemned prisoner, it is suggested, must negate entirely his right to life and must therefore *ipso facto* be in conflict with the constitution. For my part, I do not believe that this supposedly simple solution bears examination. Although the right to life is stated in unqualified terms its full scope and implications remain to be worked out in future cases. Certainly, as the President of the Court has pointed out, the right to life must accommodate the right to kill in lawful self-defence of one's own life or the lives of others, as well as the right of the State to defend itself against insurrection. The right to life may also be seen as entailing a duty on the State to protect the lives of its citizens by ensuring, as far as it is able, that unlawful killing is visited with condign punishment. That punishment like any other, must fall within the limits imposed by section 11(2) of the Constitution. As to section 33(1)(b), I agree with Chaskalson P that our decision in

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this case can be reached without requiring the Court to give an authoritative interpretation of that clause. We did, however, hear argument on the clause and I should like to state briefly why I do not think that it provides the short answer to the problem of the constitutionality of the death penalty.

[194] The source of section 33(1)(b) is presumably the similar provision in the Constitution of the Federal Republic of Germany. As far as I am aware the German Constitutional Court has never given any definite interpretation to that clause. Varying constructions of it have been suggested by the authors cited by Chaskalson P in the footnotes to paragraphs 108 and 132 of his Judgment; see also the discussion by Rautenbach in 1991 TSAR 403. For present purposes it is sufficient to mention two possible interpretations of section 33(1)(b). The first is that it requires one to consider the effect of any State action on the individual concerned - sometimes called the subjective approach. On this basis the infliction of the death penalty must conflict with section 33(1)(b) because in destroying life it must negate the essence of the right to life. I do not find this so-called subjective interpretation convincing. It cannot accommodate the many State measures which must be necessary and justifiable in any society, such as long-term imprisonment for serious crimes. It is true that a prisoner, even one held under secure conditions, retains some residual rights. See *Whittaker v Roos* 1912 A.D. 92, 122-3, per Innes J. But I find it difficult to comprehend how, on any rational use of language, it could be denied that while he is in prison the essence of the prisoner's right to freedom (section 11), of his or her right to leave the Republic (section 20) or to pursue a livelihood anywhere in the national territory (section 26) is not negated. Many other examples could be given which in my view rule out the subjective approach of the sub-section.

[195] The other approach (sometimes, not altogether appropriately, called the objective approach) is to examine the law which is sought to be justified under section 33. That section states that rights entrenched in Chapter Three may be limited by laws of general application provided that such limitation complies with the requirements of paragraph (a) of sub-section 1 and provided further that it does not negate the essential content of the right in question. What must pass scrutiny under section 33 is the limitation contained in the law

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of general application. This means in my opinion that it is the law itself which must pass the test. On this basis a law providing for imprisonment for defined criminal conduct, cannot be said to negate the essential content of the right to freedom, whatever the effect on the individual prisoner serving a sentence under that law. Similarly such a law would not negate the essential content of the right of free movement. Those are general rights entrenched in the Constitution, and a law which preserves those rights for most people at most times does not negate the essential content of those rights. An example of a law which might negate the essence of the right to freedom of movement would be a law (such as the Departure from the Republic Act, 1955) under which no person may leave the Republic without the express or implied consent of the Government. Another possible example could relate to the right of freedom of speech. A law providing for general censorship of all publications would on the face of it negate the essence of the right to freedom of speech. On the other hand a law providing penalties for what is colloquially referred to as "hate speech" would not, I think, negate the essence of that right. (Whether or not it would meet the other criteria of section 33 is a different question.)

[196] It follows that in my opinion that the true issue for decision is whether or not the death penalty for murder is a "cruel, inhuman or degrading punishment", although the entrenched right to life, like the right to dignity and to equality of treatment, does illuminate the issue. As both Chaskalson P and Didcott J have emphasised, capital punishment is qualitatively something quite apart from even the longest term of imprisonment. It entails the calculated destruction of a human life. Inequalities in its incidence are probably unavoidable. In the infliction of capital punishment judicial and executive error can never be wholly excluded nor, of course, repaired. With regard to the uniquely cruel and inhuman nature of the death penalty I would refer to the ample citation of American authority by Didcott J in paragraphs 6 and 7 of his Judgment and to the various decisions of international tribunals cited by Chaskalson P. I would add to these the judgment of Blackmun J in *Callins v Collins* 114 S. Ct. 1127 (1994). The statement of Stewart J in *Furman v Georgia* 408 US 238 at 306 cited by Scalia J in *Harmelin v Michigan* 501 US 957 (1991), also deserves repetition:

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"The penalty of death differs from all other forms of criminal punishment, not in degree but in kind. It is unique in its total irrevocability. It is unique in its rejection of rehabilitation of the convict as a basic purpose of criminal justice. And it is unique, finally, in its absolute renunciation of all that is embodied in our concept of humanity."

The "death row" phenomenon as a factor in the cruelty of capital punishment has been eloquently described by Lord Griffiths in *Pratt v Johnson* [1994] 2 AC 1 and by Gubbay CJ in *Catholic Commission for Justice and Peace in Zimbabwe v Attorney General Zimbabwe* 1994 (4) SA 329. Those were cases of inordinately extended delay in the carrying out of the death sentence, but the mental agony of the criminal, in its alternation of fear, hope and despair must be present even when the time between sentence and execution is measured in months or weeks rather than years.

[197] It may be said that if the punishment is cruel so was the act of the murderer. That cannot and should not be denied. In the present case the Appellants committed murders of horrifying callousness motivated by nothing but greed. In some of the cases summarised in the Attorney-General's written submissions, all of them cases in which the Appellate Division had confirmed the sentence of death, the accused had, if that were possible, committed even more revolting acts of cruelty against their victims. I agree with Chaskalson P that proportionality is an ingredient to be taken into account in deciding whether a penalty is cruel, inhuman or degrading. But that does not mean that the State should respond to the murderer's cruelty with a deliberate and matching cruelty of its own. As Simon Jenkins said in a recent article on the death penalty in "The Times" (London), that would imply that punishment must not merely fit the crime, but repeat the crime.

[198] Section 35 of the Constitution requires us to "promote the values which underlie an open and democratic society based on freedom and equality." We are thus entitled and obliged to consider the practices of such societies. That exercise shows us that most of the countries which we would naturally include in that category have abolished capital punishment as a penalty for murder, either by legislation or by disuse. These countries

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include the neighbouring States of Namibia, Angola and Mozambique. The principal exceptions are the great democracies of India and the United States. In each of those countries the written constitution expressly contemplates the legitimacy, subject to safeguards, of the death penalty. Thus the Fifth Amendment to the Constitution of the United States begins with the words, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury..." There are similar express indications of the acceptability of the death sentence in Article 21 of the Constitution of India. It is therefore understandable that the Supreme Courts of those two countries have found themselves unable to hold that the death penalty is *per se* unconstitutional. Nonetheless, in our attempt to identify objectively the values of an open and democratic society what I find impressive is that individual judges of great distinction such as Brennan J in the United States and Bhagwati J in India have held, notwithstanding those constitutional provisions, that the death penalty is impermissible when measured against the standards of humanity and decency which have evolved since the date of their respective constitutions. Similarly, courts to which considerable respect is due, such as the Supreme Court of California in *People v Anderson* 493 P.2d 880 (1972) and the Supreme Judicial Court of Massachusetts in *District Attorney for the Suffolk District v Watson* 381 Mass 648 (1980) have held the death penalty to be a "cruel and inhuman punishment" and therefore in conflict with their respective State constitutions. In the California case that decision was arrived at notwithstanding clauses in the State Constitution which, like the United States Constitution, recognised the existence of capital punishment. (See *Anderson's* case at 886-7).

[199] The reference to "evolving standards of decency" is taken from the judgment of Warren CJ in *Trop v Dulles* 356 US 86 at 101 (1958) where, speaking for the Court, he adopted as the measure of permissible punishment under the Eighth Amendment of the United States Constitution "the evolving standards of decency that mark the progress of a maturing society." Commenting on this dictum in *Thomson v Oklahoma* 487 US 815 (1988) Scalia J (dissenting) said at 865:

"Of course, the risk of assessing evolving standards is that it is all too easy to believe that evolution has culminated in one's own views."

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This is a pertinent warning which I have, I hope, kept in mind. I believe, nonetheless, that there is ample objective evidence that evolving standards of civilisation demonstrate the unacceptability of the death penalty in countries which are or aspire to be free and democratic societies. Most democratic countries have abandoned the death penalty for murder. Even in countries which have the death penalty on the statute books there is a decline in its use. Although one cannot say that the death penalty is as yet contrary to international law, Chaskalson P has demonstrated that that is the direction in which international law is developing. I shall come later to the question of public opinion and the guidance to be obtained from it, but what is clear to my mind is that in general in civilised democratic societies the imposition of the death penalty has been found to be unacceptably cruel, inhuman and degrading, not only to those subjected to it but also to the society which inflicts it. Simon Jenkins, in the article which I have already quoted, says that the State is (or should be) "institutionalised civilisation." I would agree, and add that this is especially true of the State created by our new Constitution. The deliberate execution of a human, however depraved and criminal his conduct, must degrade the new society which is coming into being.

[200] In the course of argument before us much was said about public opinion on the death penalty in South Africa. Both Chaskalson P and Didcott J have shown that public opinion, even if expressed in acts of Parliament, cannot be decisive. If we were simply to defer to public opinion we would be abdicating from our constitutional function. Yet, were public opinion on the question clear it could not be entirely ignored. The accepted mores of one's own society must have some relevance to the assessment whether a punishment is impermissibly cruel and inhuman. In *Furman v Georgia* 408 US 238 (1972) Brennan J at 277 said that one of the principles inherent in the constitutional prohibition of cruel and unusual punishments was that "a severe punishment must not be unacceptable to contemporary society." Much earlier, in *Weems v United States* 217 US 349, 378 (1910) the United States Supreme Court had held that that provision of the Constitution was "not fastened to the obsolete", but might "acquire meaning as public opinion becomes enlightened by a human justice." I would, with all respect, suggest that the principle propounded by Brennan J may give too much weight to prevailing opinion - an opinion

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which may swing with public moods and varying public concerns. But in any event, whether or not a punishment is acceptable to contemporary society is not to be judged by the results of informal public opinion polls, still less by letters to the press. In *People v Anderson* (supra) Wright CJ speaking for the Supreme Court of California said at 893-4:

"Public acceptance of capital punishment is a relevant but not controlling factor in assessing whether it is consonant with contemporary standards of decency. But public acceptance cannot be measured by the existence of death penalty statutes or by the fact that some juries impose death on criminal defendants. Nor are public opinion polls about a process which is far removed from the experience of those responding helpful in determining whether capital punishment would be acceptable to an informed public were it even-handedly applied to a substantial proportion of the persons potentially subject to execution."

In *Gregg v Georgia* 428 US 153 (1976) a judgment given four years after *Furman v Georgia*, supra, Stewart J at 179-180 found that developments during that period had shown that "a large proportion of American society continues to regard it (capital punishment) as an appropriate and necessary criminal sanction." The principal evidence on which Stewart J based this finding was that since the *Furman* case the legislatures of 35 of the United States had enacted new death penalty statutes. Further, the Congress of the United States had enacted a statute providing the death penalty for aircraft piracy. In addition, he referred to an official State-wide referendum in the State of California adopting a constitutional amendment that authorised capital punishment.

[201] Needless to say, there was no similar evidence before us. Public opinion has not expressed itself in a referendum, nor in any recent legislation. Certainly, there is no evidence of a general social acceptance of the death penalty for murderers such as might conceivably have influenced our conclusions. On the contrary, developments in South Africa point in the opposite direction. It is to be noted that even at the time, during the previous decade, when South Africa had the unenviable reputation for carrying out more executions than any other country in the western world, only a proportion of those convicted of murder were sentenced to death, and of those many were reprieved. The amendment to the Criminal Procedure Act introduced by Act No 107 of 1990 drastically reduced the number of convicted murderers sentenced to death. The subsequent developments described by Chaskalson P including the official executive moratorium on the death

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penalty announced in March 1992, while not evidence of general opinion, do cast serious doubt on the acceptability of capital punishment in South Africa. In fact, we are informed, since 1989 there has been no judicial execution in South Africa. Thus there has been in this country no indication whatsoever of what Stewart J in *Gregg's* case referred to as "society's endorsement of the death penalty for murder." In the Constitution itself such endorsement is markedly absent. Consequently, in all the circumstances, the appeal to public opinion could not affect our decision.

[202] There is little I wish to add to what has been said by other members of the Court on the application of section 33. On the question whether a death penalty can be justified by its deterrent effect the statistical and other evidence is inconclusive, as it was bound to be. As the analysis of *Chaskalson P* shows the statistical evidence comes nowhere near establishing that the death penalty is an effective deterrent against murder. Nor on the other hand can it be shown that it is not a deterrent. As Mr von Lieres pointed out, only those who were not deterred enter the statistics; the number who were deterred cannot be known. In Burns' well-known lines, "What's done we often may compute/But know not what's resisted." The most impressive argument of Mr von Lieres on this aspect of the case was that, statistics aside, the awfulness of the death penalty must in its nature deter some would-be murderers. In the face of the appalling murder rates in this country, he said, we cannot afford to relinquish any possible weapon in the fight against violent crime. That is a powerful argument but, given the cruelty and inhumanity of the death penalty, it is an argument which cannot in the end prevail. It relies essentially on the mere possibility that the death sentence may deter some murderers. That is not a sufficient justification for the continued existence of such an extreme punishment.

[203] I have little to add, too, to what *Chaskalson P* has said on the element of retribution as an element in punishment. The Attorney-General's argument was that the criminal law including the modes of punishment must adequately reflect the moral outrage felt by society when a vicious and cold-blooded murder is committed. This too I regard as an argument of weight. One can understand in particular the reaction of the families of victims of murderers and the feeling that the culprits "deserve to die". But the choice, as *Chaskalson P* has pointed out, is not between death penalty on the one hand and the

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condonation of the murderer's act on the other. The choice is between the death penalty and a long term of imprisonment which might in appropriate cases include life imprisonment in the fullest sense of the term. As a civilised society it is not open to us, in my opinion, to express our moral outrage by executing even the worst of murderers any more than we could do so by the public hangings or mutilations of a bygone time.

[204] In conclusion I would endorse what Didcott J has cogently stated; the striking down of the death penalty entails no sympathy whatsoever for the murderer, nor any condonation of his crime. What our decision does entail is a recognition that even the worst and most vicious criminals are not excluded from the protections of the Constitution. In 1910 Mr Winston Churchill speaking in the House of Commons said this:

"The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country. A calm dispassionate recognition of the rights of the accused, and even of the convicted criminal, against the State - a constant heart-searching by all charged with the duty of punishment - a desire and eagerness to rehabilitate in the world of industry those who have paid their due in the hard coinage of punishment: tireless efforts towards discovery of curative and regenerative processes: unfailing faith that there is a treasure, if you can only find it, in the heart of every man. These are the symbols, which, in the treatment of crime and criminal, mark and measure the stored-up strength of a nation, and are sign and proof of the living virtue in it."

[205] **KRIEGLER J:** I agree with the conclusions reached by Chaskalson P, endorse the bulk of his reasoning and concur in the order he has formulated. There are just two points that I wish to add though: the first by way of additional emphasis and the second to indicate a somewhat different line of reasoning.

[206] The basic issue, as Chaskalson P points out in the opening and concluding paragraphs of the main judgment, is whether the Constitution¹ has outlawed capital punishment in South Africa.² The issue is not whether I favour the retention or the abolition of the death

¹Constitution of The Republic of South Africa, Act No. 200 of 1993, as amended.

²As sanctioned by section 277(1) of the Criminal Procedure Act, 1977, as amended and the corresponding

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penalty, nor whether this Court, Parliament or even overwhelming public opinion supports the one or the other view. The question is what the Constitution says about it.



provisions of the former Transkei, Bophuthatswana and Venda.

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[207] In answering that question the methods to be used are essentially legal, not moral or philosophical. To be true the judicial process cannot operate in an ethical vacuum. After all, concepts like "good faith", "unconscionable" or "reasonable" import value judgments into the daily grind of courts of law. And it would be foolish to deny that the judicial process, especially in the field of constitutional adjudication, calls for value judgments in which extra-legal considerations may loom large. Nevertheless, the starting point, the framework and the outcome of the exercise must be legal. The foundation of our state and all its organs, the rules which govern their interaction and the entrenchment of the rights of its people are to be found in an Act of Parliament, albeit a unique one.³ That Act entrusts the enforcement of its provisions to courts of law.⁴ The "court of final instance over all matters relating to the interpretation, protection and enforcement" of those provisions is this Court,⁵ appointment to which is reserved for lawyers.⁶ The

³Section 4 of the Constitution describes it as "the supreme law of the Republic ... [which] shall bind all legislative, executive and judicial organs of state at all levels of government." Section 7 makes Chapter 3, containing fundamental rights, binding on "all legislative and executive organs of state at all levels of government" and provides that it "shall apply to all law in force and all administrative decisions taken and acts performed during the period of operation of this Constitution."

⁴See Chapter 7 of the Constitution.

⁵Section 98(2) of the Constitution.

⁶See section 99(2)(c) of the Constitution which requires on appointee to be a person who "(i) is a judge of the Supreme Court or is qualified to be admitted as an advocate or attorney and has, for a cumulative period of at least 10 years after having so qualified, practised as an advocate or an attorney or lectured in law at a university; or (ii) is a person who, by reason of his or her training and experience, has expertise in the field of constitutional

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incumbents are judges, not sages; their discipline is the law, not ethics or philosophy and certainly not politics.

[208] The exercise is to establish whether there is an invalid infringement of a right protected by Chapter Three. This

"calls for a 'two-stage' approach. First, has there been a contravention of a guaranteed right? If so, is it justified under the limitation clause?"⁷

For the first step, one need go no further than section 9 of the Constitution, which could not possibly be plainer:

"Every person shall have the right to life."

Whatever else section 9 may mean in other contexts, with regard to which I express no view, at the very least it indicates that the State may not deliberately deprive any person of his or her life. As against that general prohibition section 277(1) of the Criminal Procedure Act sanctions a judicial order for the deprivation of a person's life. The two provisions are clearly not reconcilable. Therefore, the latter provision is liable to be struck down under section 4(1) of the Constitution, unless it is saved by the second step of the analysis -application of the limitations clause.

law relevant to the application of this Constitution and the law of the Republic."

⁷Per Kentridge AJ, in *S v Zuma and Others* 1995 (4) BCLR 401, 414 (SA). The "limitation clause" he refers to is section 33(1) of the Constitution.

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[209] During the second step of the exercise one must ask whether that infringement of the right to life is reasonable and also whether it is justifiable in an open and democratic society based on freedom and equality (sections 33(1)(a)(i) & (ii)).⁸ As I am satisfied that section 277(1)(a) does not meet the threshold test of reasonableness, I find it unnecessary to ask whether it is justifiable in the kind of society postulated. Nor do I consider the meaning of section 33(1)(b), which is discussed in paragraphs 132, 133 and 134 of the main judgment and paragraphs 193, 194 and 195 of the judgment of Kentridge AJ.⁹ In respect thereof I express no opinion.

⁸The questions may well be asked what the distinction is between reasonable and justifiable and whether one test can be met and not the other. Be that as it may, this case is so clear that the distinction, if any, between the two criteria need not be considered.

⁹Relating to the meaning and effect of the prohibition in section 33(1)(b) against a limitation which "negate[s] the essential content of the right in question."

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[210] I also find it unnecessary to probe the outer limits of what is reasonable. At the very least the reasonableness of a provision which flies directly in the face of an entrenched right would have to be cogently established. Furthermore a provision relating to so basic and so precious a right as the right to life itself (without which all other rights are nought), would have to be manifestly reasonable.¹⁰

[211] We were favoured with literally thousands of pages of material in support of and opposed to the death penalty, ranging from the religious, ethical, philosophical and ideological to the mathematical and statistical. Mr Von Lieres, SC, who argued the retentionist cause with great skill, in essence sought to bring the death sentence within the protection of section 33(1) on the strength of its deterrent and retributive value. The main judgment deals with these two considerations¹¹ and I merely wish to make a few additional observations regarding deterrence.¹²

¹⁰The reasonableness of other limitations on the right to life does not arise here. Suffice it to say that there must always be a proportionality between any right and the limitation thereof sought to be saved under section 33(1).

¹¹Paragraphs 116 to 127 on deterrence and 129 to 131 on retribution.

¹²No more need be said about retribution than has been said by my colleagues. See also paragraph 203 of the judgment of Kentridge AJ and paragraph 185 of the judgment of Didcott J.

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[212] Nearly a quarter of a century ago the US Supreme Court decided the watershed case of Furman v Georgia.¹³ In the course of a compendiously researched opinion, Marshall J reviewed virtually every scrap of Anglo-American evidence for and against capital punishment. In the course of his "long and tedious journey" (his own description) he made the crucial finding that 200 years of research had established

"that capital punishment serves no purpose that life imprisonment could not serve equally well."¹⁴

A decade later the Indian Supreme Court surveyed the international authorities for and against the death penalty in Bachan Singh's case.¹⁵ Since then a great deal more has been written in support of both the abolitionist and the retentionist schools. But when all is said and done the answer is still what it was to Marshall J in Furman's case: the death penalty has no demonstrable penological value over and above that of long-term imprisonment. No empirical study, no statistical exercise and no theoretical analysis has been able to demonstrate that capital punishment has any deterrent force greater than that of a really heavy sentence of imprisonment. That is the ineluctable conclusion to be drawn from the mass of data so thoroughly canvassed in the written and oral arguments presented to us.

[213] Another equally ineluctable conclusion then is that capital punishment cannot be vindicated by the provisions of section 33(1) of the Constitution.¹⁶ It simply cannot be reasonable to

¹³408 US 238 (1972).

¹⁴*Id.* at 359.

¹⁵Bachan Singh v State of Punjab (1980) 2 SCC 684, quoted in paragraph 76 of the main judgment.

¹⁶The provisions of section 277(1)(b), which sanction the death penalty for treason committed at a time when

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sanction judicial killing without knowing whether it has any marginal deterrent value.

[214] Having concluded that capital punishment is inconsistent with section 9 of the Constitution and cannot be saved by section 33(1), I find it unnecessary to consider its possible inconsistency with any other fundamental rights protected by Chapter Three. Vigilant protection of the right to human dignity (section 10) and of the immunity from cruel, inhuman or degrading punishment (section 11(2)) is undoubtedly essential. So too arbitrariness in the imposition of any sentence is fatally inconsistent with the demand for equality so emphatically mandated in sections 8(1) and (2). I do not want to be understood as disagreeing with the views expressed by any of my colleagues in regard to those rights and their importance; but in the hierarchy of values and fundamental rights guaranteed under chapter 3, I see them as ranking below the right to life. Indeed, they are subsumed by that most basic of rights. Inasmuch as capital punishment, by definition, strikes at the heart of the right to life, the debate need go no further.

[215] **LANGA J:** I agree with the conclusions reached by Chaskalson P and generally with the reasons he advances in his exhaustive and erudite judgment. I concur in the order he has proposed. I wish to put additional emphasis on some of the aspects he has dealt with.

[216] The death sentence, in terms of the provisions of section 277 of the Criminal Procedure Act, No. 51 of 1977, is unconstitutional, violating as it does:

- (a) the right to life which is guaranteed to every person by section 9 of the Constitution;

the Republic is in a state of war, do not arise for consideration in this case. That is a wholly different situation which requires independent evaluation.

- (b) the right to respect for human dignity guaranteed in section 10;
- (c) the right not to be subjected to cruel, inhuman and degrading punishment as set out in section 11(2).

[217] For the reasons set out in Didcott J's judgment, I place more emphasis on the right to life. Section 9 of the Constitution proclaims it in unqualified terms. It is the most fundamental of all rights,¹ the supreme human right.² I do not consider it necessary or desirable to define the exact scope of the right, save to make two points, namely:

- (a) It does mean that every person has the right not to be deliberately put to death by the State as punishment, as envisaged in section 277 of the Criminal Procedure Act.
- (b) I do not exclude the application of the limitations clause to the right to life. Any law which seeks to limit the right will have to comply with the requirements of section 33(1) of the Constitution. For the reasons set out in Chaskalson P's judgment, the requirements have not been met; the State has been unable to justify the limitation which is imposed on the right to life by section 277 of the Criminal Procedure Act. I cannot accept that it is "reasonable," as required by section 33(1) of the Constitution, to override what is the most fundamental of all rights, without clear proof that the deterrence value of the penalty is substantially higher than that which the imposition of a suitably long period of imprisonment has. This has not been proved. Because of the view I take, I find it unnecessary

¹ See the remarks of Lord Bridge in *Bugdaycay v Secretary of State* 1987(1) All ER 940 at 952b.

² See paragraph 82 of Chaskalson P's judgment.

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to deal with the other requirements of section 33(1) of the Constitution.

- [218] The emphasis I place on the right to life is, in part, influenced by the recent experiences of our people in this country. The history of the past decades has been such that the value of life and human dignity have been demeaned. Political, social and other factors created a climate of violence resulting in a culture of retaliation and vengeance. In the process, respect for life and for the inherent dignity of every person became the main casualties. The State has been part of this degeneration, not only because of its role in the conflicts of the past, but also by retaining punishments which did not testify to a high regard for the dignity of the person and the value of every human life.
- [219] The primacy of the right to life and its relationship to punishment needs to be emphasized also in view of our constitutional history. The doctrine of parliamentary sovereignty meant, virtually, that the State could do anything, enact any law, subject only to procedural correctness.³
- [220] When the Constitution was enacted, it signalled a dramatic change in the system of governance from one based on rule by parliament to a constitutional state in which the rights of individuals are guaranteed by the Constitution. It also signalled a new dispensation, as it were, where rule by force would be replaced by democratic principles and a governmental system based on the precepts of equality and freedom.
- [221] It may well be that for millions in this country, the effect of the change has yet to be felt in a material sense. For all of us though, a framework has been created in which a new culture must take root and develop.

³ S v Tuhadeleni and Others 1969(1) SA 153 (A) at 172D - 173F; Baxter, *Administrative Law*, page 30 (1984).

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[222] Implicit in the provisions and tone of the Constitution are values of a more mature society, which relies on moral persuasion rather than force; on example rather than coercion. In this new context, then, the role of the State becomes clear. For good or for worse, the State is a role model for our society.⁴ A culture of respect for human life and dignity, based on the values reflected in the Constitution, has to be engendered, and the State must take the lead. In acting out this role, the State not only preaches respect for the law and that the killing must stop, but it demonstrates in the best way possible, by example, society's own regard for human life and dignity by refusing to destroy that of the criminal. Those who are inclined to kill need to be told why it is wrong. The reason surely must be the principle that the value of human life is inestimable, and it is a value which the State must uphold by example as well. As pointed out by Mr Justice Schaefer of the Supreme Court of Illinois:⁵

"The methods we employ in the enforcement of our criminal law have aptly been called the measures by which the quality of our civilisation may be judged."

⁴ Brandeis J in his dissenting opinion in *Olmstead v United States*, 277 US 438, 485 (1928) put it succinctly: "Our Government is the potent, the omni-present teacher. For good or for ill, it teaches the whole of our people by its example."

⁵ In his Oliver Wendell Holmes lecture at the Harvard Law School, reprinted under the heading *Federalism and State Criminal Procedure*, 70 Harv. L. Rev. 1, 26 (1956). The passage was referred to with approval in *Coppedge v United States*, 369 US 438, 449 (1962).

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[223] The ethos of the new culture is expressed in the much-quoted provision on National Unity and Reconciliation which forms part of the Constitution. Chaskalson P quotes the various components of it in paragraphs 7 and 130 of his judgment. It describes the Constitution as a "bridge" between the past and the future; from "the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, ... for all South Africans ..."; and finally, it suggests a change in mental attitude from vengeance to an appreciation of the need for understanding, from retaliation to reparation and from victimisation to *ubuntu*. The Constitution does not define this last-mentioned concept.

[224] The concept is of some relevance to the values we need to uphold. It is a culture which places some emphasis on communality and on the interdependence of the members of a community. It recognises a person's status as a human being, entitled to unconditional respect, dignity, value and acceptance from the members of the community such person happens to be part of. It also entails the converse, however. The person has a corresponding duty to give the same respect, dignity, value and acceptance to each member of that community. More importantly, it regulates the exercise of rights by the emphasis it lays on sharing and co-responsibility and the mutual enjoyment of rights by all. It is perhaps best illustrated in the following remarks in the judgment of the Court of Appeal of the Republic of Tanzania in *DPP v Pete*,⁶

"The second important principle or characteristic to be borne in mind when interpreting our Constitution is a corollary of the reality of co-existence of the individual and society, and also the reality of co-existence of rights and duties of the individual on the one hand, and the collective of communitarian rights and duties of society on the other. In effect this co-existence means that the rights and duties of the individual are limited by the rights and duties of society, and vice versa."

[225] An outstanding feature of *ubuntu* in a community sense is the value it puts on life and human dignity. The dominant theme of the culture is that the life of another person is at least as valuable as one's own. Respect for the dignity of every person is integral to this concept. During violent conflicts and times when violent crime is rife, distraught members of

⁶ [1991] LRC (Const) 553 at 566b-d, per Nyalali CJ, Makame and Ramadhani JJA.

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society decry the loss of *ubuntu*. Thus heinous crimes are the antithesis of *ubuntu*. Treatment that is cruel, inhuman or degrading is bereft of *ubuntu*.

- [226] We have all been affected, in some way or other, by the "strife, conflict, untold suffering and injustice" of the recent past. Some communities have been ravaged much more than others. In some, there is hardly anyone who has not been a victim in some way or who has not lost a close relative in senseless violence. Some of the violence has been perpetrated through the machinery of the State, in order to ensure the perpetuation of a *status quo* that was fast running out of time. But all this was violence on human beings by human beings. Life became cheap, almost worthless.
- [227] It was against a background of the loss of respect for human life and the inherent dignity with attaches to every person that a spontaneous call has arisen among sections of the community for a return to *ubuntu*. A number of references to *ubuntu* have already been made in various texts but largely without explanation of the concept.⁷ It has however always been mentioned in the context of it being something to be desired, a commendable attribute which the nation should strive for.
- [228] At first blush, it may sound odd that the issue of the right to life is being decided on the basis of persons condemned to death for killing other human beings. In this regard, it is relevant to note that there are some 400 people presently under sentence of death for acts of violence. That in itself means that there are probably an equivalent number of victims whose lives have been prematurely, violently, terminated. They died without having had any recourse to law. For them there was no "due process."
- [229] That is why, during argument, a tentative proposition was made that a person who has killed another has forfeited the right to life. Although the precise implications of this suggestion were not thoroughly canvassed, this cannot be so. The test of our

⁷ See paragraphs 130 and 131 of Chaskalson P's judgment. The concept has been referred to also by Madala J, Mahomed J and Mokgoro J in their separate concurring judgments in this matter.

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commitment to a culture of rights lies in our ability to respect the rights not only of the weakest, but also of the worst among us. A person does not become "fair game" to be killed at the behest of the State, because he has killed.

[230] The protection afforded by the Constitution is applicable to every person. That includes the weak, the poor and the vulnerable. It includes others as well who might appear not to need special protection; it includes criminals and all those who have placed themselves on the wrong side of the law. The Constitution guarantees them their right, as persons, to life, to dignity and to protection against torture or cruel, inhuman or degrading punishment or treatment.

[231] The violent acts of those who destroy life cannot be condoned, neither should anyone think that the abolition of the sentence of death means that the crime is regarded as anything but one of extreme seriousness. The sentence itself was an indication of society's abhorrence for the cruel and inhuman treatment of others. That moral outrage has been expressed in the strongest terms that society could muster.

[232] Severe punishments must be meted out where deserved, but they should never be excessive. As Brennan J observed in his concurring judgment in *Furman v Georgia*,⁸

"... a severe punishment must not be excessive. A punishment is excessive under this principle if it is unnecessary . . . [i]f there is a significantly less severe punishment adequate to achieve the purposes for which the punishment is inflicted, the punishment inflicted is unnecessary and therefore excessive."

⁸ 408 US 238, 279 (1972).

Righteous anger against those who destroy the human life and dignity of others must be appropriately expressed by the Courts;⁹ but in doing so, the State must not send the wrong message, namely, that the value of human life is variable.¹⁰ Society cannot now succumb to the doctrine of "an eye for an eye." Its actions must be informed by the high values which reflect the quality of this nation's civilization.

[233] The Constitution constrains society to express its condemnation and its justifiable anger in a manner which preserves society's own morality. The State should not make itself guilty of conduct which violates that which it is in the community's interests to nurture. The Constitution, in deference to our humanity and sense of dignity, does not allow us to kill in cold blood in order to deter others from killing. Nor does it allow us to "kill criminals simply to get even with them."¹¹ We are not to stoop to the level of the criminal.

[234] It follows from the remarks above that as a 'punishment' the death penalty is a violation of the right to life. It is cruel, inhuman and degrading. It is also a severe affront to human dignity. The 'death row phenomenon' merely aggravates the position. Section 277 of the Criminal Procedure Act cannot be saved by the provisions of section 33(1) of the Constitution in respect of any of the rights affected. The punishment is not reasonable on any basis. In view of the available alternative sentence of a long term of

⁹ See *R v Karg* 1961(1) SA 231(A) at 236A.

¹⁰ Brennan J in *Furman v Georgia*, *supra*, at 273 expressed himself thus: "... even the vilest criminal remains a human being possessed of common human dignity."

¹¹ Per Brennan J in *Furman v Georgia*, *supra*, at 305.

imprisonment, it is also unnecessary.

[235] **MADALA J:** I am in agreement with the views expressed in the judgment of Chaskalson P and with his decision on the unconstitutionality of the death penalty. The punishment, in my view, is clearly offensive to the cardinal principles for which our Constitution stands.

However, while I concur, as aforesaid, I believe that there are some additional matters that need to be mentioned and aspects that should be emphasised, and I proceed to do so briefly.

[236] The death penalty is unique. As stated by Stewart J in *Furman v Georgia* 408 US at 306:

"The penalty of death differs from all other forms of criminal punishment, not in degree but in kind. It is unique in its total irrevocability. It is unique in its rejection of rehabilitation of the convict as a basic purpose of criminal justice. And it is unique, finally, in its absolute renunciation of all that is embodied in our concept of humanity."

This statement was more recently (1991) re-affirmed by Scalia J, who delivered the judgment of the court in *Harmelin v Michigan* 501 US 957, and noted that even the most severe sentence of life imprisonment cannot compare with death.

[237] The Constitution in its post-amble declares:

"... there is a need for understanding but not vengeance, and for reparation but not for retaliation, a need for ubuntu but not victimisation."

The concept "ubuntu" appears for the first time in the post-amble, but it is a concept that permeates the Constitution generally and more particularly Chapter Three which embodies the entrenched fundamental human rights. The concept carries in it the ideas of humaneness, social justice and fairness.

[238] It was argued by Mr Bizos, on behalf of the Government, that the post-amble enjoins the people of South Africa to open a new chapter which envisages the country playing a leading role

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in the upholding of human rights. He submitted further, that the Government favoured the abolition of the death penalty because it believed that such punishment could not be reconciled with the fundamental rights contained in the Constitution, and that its application diminished the dignity of our society as a whole.

- [239] In my rejection of the death penalty as a form of punishment, I do not intend, nor do my colleagues, to condone murder, rape, armed robbery with aggravating circumstances and those other crimes which are punishable by a sentence of death in terms of Section 277 of the Criminal Procedure Act 51 of 1977. These criminal acts are, and remain, as heinous, vicious and as reprehensible as they ever were, and do not belong in civilised society. The death penalty is a punishment which involves so much pain and suffering that civilised society ought not to tolerate it even in spite of the present high rate of crime. And society ought to tolerate the death penalty even less when considering that it has not been proved that it has any greater deterrent effect on would-be murderers than life imprisonment.
- [240] The aspect of irrevocability of the death penalty has been canvassed adequately in the judgment of Chaskalson P and I propose to say no more on that score (See paragraphs 26 and 54).
- [241] As observed before, the death penalty rejects the possibility of rehabilitation of the convicted persons, condemning them as "no good", once and for all, and drafting them to the death row and the gallows. One must then ask whether such rejection of rehabilitation as a possibility accords with the concept of *ubuntu*.
- [242] One of the relative theories of punishment (the so-called purposive theories) is the reformatory theory, which considers punishment to be a means to an end, and not an end in itself - that end being the reformation of the criminal as a person, so that the person may, at a certain stage, become a normal law-abiding and useful member of the community once again. The person and the personality of the offender are the point of focus rather than the crime, although the crime is, however, not forgotten. And in terms of this theory of punishment and as a necessary consequence of its application, the offender has to be

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imprisoned for a long period for the purpose of rehabilitation. By treatment and training the offender is rehabilitated, or, at the very least, ceases to be a danger to society.

[243] This, in my view, accords fully with the concept of *ubuntu* which is so well enunciated in the Constitution.

[244] Our courts have found room for the exercise of *ubuntu*, as appears from the many cases where they have found that despite the heinousness of the offence and the brutality with which it was perpetrated, there were factors in the offenders' favour, indicating that they were, in spite of the criminal conduct of which they were convicted, responsible members of society, and were worthy and capable of rehabilitation. (See *S v Mbotshwa* 1993(2) SACR 468(A) at 468J-469F; *S v Ramba* 1990(2) SACR 334(A) at 335H-336E; *S v Ngcobo* 1992(2) SACR 515(A) at 515H-516A; Contra: *S v Bosman* 1992(1) SACR 115(A) at 116G-117F)

[245] Against *ubuntu* must be seen the other side, the inhuman side of mankind, in terms of which the death penalty violates Section 11(2) of the Constitution in that it is "cruel, inhuman or degrading treatment or punishment".

[246] In *Catholic Commission for Justice and Peace in Zimbabwe v Attorney-General, Zimbabwe* 1993(4) SA 239(ZSC) at 268E-H, Gubbay CJ, observed:

"From the moment he enters the condemned cell, the prisoner is enmeshed in a dehumanising environment of near hopelessness. He is in a place where the sole object is to preserve his life so that he may be executed. The condemned prisoner is 'the living dead' ... He is kept only with other death sentenced prisoners - with those whose appeals have been dismissed and who await death or reprieve; or those whose appeals are still to be heard or are pending judgment. While the right to an appeal may raise the prospect of being allowed to live, the intensity of the trauma is much increased by knowledge of its dismissal. The hope of a reprieve is all that is left. Throughout all this time the condemned prisoner constantly broods over his fate. The horrifying spectre of being hanged by the neck and the apprehension of being made to suffer a painful and lingering death is, if at all, never far from mind. Grim accounts exist of hangings not properly performed."

[247] Convicted persons in death row invariably find themselves there for a long time as they make

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every effort to exhaust all possible review avenues open to them. All this time they are subjected to a fate of ever increasing fear and distress. They know not what their future is and whether their efforts will come to nought; they live under the sword of Damocles - they will be advised any day about their appointment with the hangman. It is true that they might have shown no mercy at all to their victims, but we do not and should not take our standards and values from the murderer. We must, on the other hand, impose our standards and values on the murderer.

[248] In the aforementioned Zimbabwe case, the court concluded that the incarceration of the condemned person under those conditions was in conflict with the provisions of Section 15(1) of the Zimbabwe Constitution, which like our Constitution, has entrenched guarantees against torture or inhuman and degrading punishment.

[249] The so-called "death row phenomenon" also came under attack in the case of *Soering v United Kingdom* (1989) 11 EHRR 439.

From the statistics supplied by the Attorney-General and from what one gleans daily from the newspapers and other media, we live at a time when the high crime rate is unprecedented, when the streets of our cities and towns rouse fear and despair in the heart, rather than pride and hope, and this in turn, robs us of objectivity and personal concern for our brethren. But, as Marshall J put it in *Furman v Georgia (supra)* at 371:

"The measure of a country's greatness is its ability to retain compassion in time of crisis."

[250] This, in my view, also accords with *ubuntu* - and calls for a balancing of the interest of society against those of the individual, for the maintenance of law and order, but not for dehumanising and degrading the individual.

[251] We must stand tallest in these troubled times and realise that every accused person who is sent to jail is not beyond being rehabilitated - properly counselled - or, at the very least,

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beyond losing the will and capacity to do evil.

[252] A further aspect which I wish to mention is the question of traditional African jurisprudence, and the degree to which such values have not been researched for the purposes of the determination of the issue of capital punishment.

[253] Ms Davids, who appeared on behalf of the Black Advocates Forum, in its capacity as *amicus curiae*, touched on but did not fully argue this matter.

[254] She submitted that we could not determine the question of the constitutionality or otherwise of the death sentence without reference to further evidence which would include the views, aspirations and opinions of the historically disadvantaged and previously oppressed people of South Africa, who also constitute the majority of our society.

[255] As I understood her argument, the issue of capital punishment could not be determined in an open and democratic society without the active participation of the black majority. This, in my view, would be tantamount to canvassing public opinion among the black population for the decisions of our courts. I do not agree with this submission, if it implies that this Court or any other court must function according to public opinion.

[256] In order to arrive at an answer as to the constitutionality or otherwise of the death penalty or any enactment, we do not have to canvass the opinions and attitudes of the public. Ours is to interpret the provisions of the Constitution as they stand and if any matter is in conflict with the Constitution, we have to strike it down.

[257] We, as judges, are oath bound to defend the Constitution. This obligation, in turn, requires that any enactment of Parliament should be judged by standards laid down by the Constitution. The judiciary has the duty of implementing the constitutional safeguards that protect individual rights. When the State seeks to take away the individual fundamental right to life, the safeguards of the Constitution should be examined with special diligence. When it appears that an act of Parliament conflicts with the provisions of the Constitution, we have no choice but to enforce the paramount commands of the

Constitution. We are sworn to do no less.

[258] I agree with Ms Davids' submission about the need to bring in the traditional African jurisprudence to these matters, to the extent that such is applicable, and would not confine such research to South Africa only, but to Africa in general.

[259] For purposes of the determination of the question of the constitutionality of the death penalty, however, it is, in my view, not necessary or even desirable that public opinion should be sought on the matter in the manner she suggests.

[260] In my view, the death penalty does not belong to the society envisaged in the Constitution, is clearly in conflict with the Constitution generally and runs counter to the concept of *ubuntu*; additionally and just as importantly, it violates the provisions of Section 11(2) of the Constitution and, for those reasons, should be declared unconstitutional and of no force and effect.

[261] **MAHOMED J:** I have had the privilege of reading the full and erudite judgment of Chaskalson P in this matter. I agree with the order proposed by him and in general with the reasons given by him for that order. Regard being had, however, to the crucial consequences of the debate on capital punishment, and the multiplicity of potential constitutional factors and nuances which impact on its resolution, I think it is desirable for me to set out briefly some of my responses to this debate in order to explain why I have come to the conclusion that capital punishment is prohibited by the Constitution.

[262] All Constitutions seek to articulate, with differing degrees of intensity and detail, the shared aspirations of a nation; the values which bind its people, and which discipline its government and its national institutions; the basic premises upon which judicial, legislative and executive power is to be wielded; the constitutional limits and the conditions upon which that power is to be exercised; the national ethos which defines and regulates that exercise; and the moral and ethical direction which that nation has identified for its future. In some countries, the Constitution only formalizes, in a legal

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instrument, a historical consensus of values and aspirations evolved incrementally from a stable and unbroken past to accommodate the needs of the future. The South African Constitution is different: it retains from the past only what is defensible and represents a decisive break from, and a ringing rejection of, that part of the past which is disgracefully racist, authoritarian, insular, and repressive and a vigorous identification of and commitment to a democratic, universalistic, caring and aspirationally egalitarian ethos, expressly articulated in the Constitution. The contrast between the past which it repudiates and the future to which it seeks to commit the nation is stark and dramatic. The past institutionalized and legitimized racism. The Constitution expresses in its preamble the need for a "new order .. in which there is equality between ... people of all races". Chapter 3 of the Constitution extends the contrast, in every relevant area of endeavour (subject only to the obvious limitations of section 33). The past was redolent with statutes which assaulted the human dignity of persons on the grounds of race and colour alone; section 10 constitutionally protects that dignity. The past accepted, permitted, perpetuated and institutionalized pervasive and manifestly unfair discrimination against women and persons of colour; the preamble, section 8 and the postamble seek to articulate an ethos which not only rejects its rationale but unmistakably recognizes the clear justification for the reversal of the accumulated legacy of such discrimination. The past permitted detention without trial; section 11(1) prohibits it. The past permitted degrading treatment of persons; section 11(2) renders it unconstitutional. The past arbitrarily repressed the freedoms of expression, assembly, association and movement; sections 15, 16, 17 and 18 accord to these freedoms the status of "fundamental rights". The past limited the right to vote to a minority; section 21 extends it to every citizen. The past arbitrarily denied to citizens on the grounds of race and colour, the right to hold and acquire property; section 26 expressly secures it. Such a jurisprudential past created what the postamble to the Constitution recognizes as a society "characterized by strife, conflict, untold suffering and injustice". What the Constitution expressly aspires to do is to provide a transition from these grossly unacceptable features of the past to a conspicuously contrasting

"future founded on the recognition of human rights, democracy and

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peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex".

[263] The postamble to the Constitution gives expression to the new ethos of the nation by a commitment to "open a new chapter in the history of our country", by lamenting the transgressions of "human rights" and "humanitarian principles" in the past, and articulating a

"need for understanding, but not for vengeance, a need for reparation but not retaliation, a need for *ubuntu* but not for victimization".

"The need for *ubuntu*" expresses the ethos of an instinctive capacity for and enjoyment of love towards our fellow men and women; the joy and the fulfilment involved in recognizing their innate humanity; the reciprocity this generates in interaction within the collective community; the richness of the creative emotions which it engenders and the moral energies which it releases both in the givers and the society which they serve and are served by.

[264] It is against this historical background and ethos that the constitutionality of capital punishment must be determined.

[265] The death penalty sanctions the deliberate annihilation of life. As I have previously said it

"is the ultimate and the most incomparably extreme form of punishment... It is the last, the most devastating and the most irreversible recourse of the criminal law, involving as it necessarily does, the planned and calculated termination of life itself; the destruction of the greatest and most precious gift which is bestowed on all humankind" (*S v Mhlongo 1994 (1) SACR 584(A) at 587 e-g*).

This "planned and calculated termination of life itself" was permitted in the past which preceded the Constitution. Is it now permissible? Those responsible for the enactment

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of the Constitution, could, if they had so wished, have treated the issue as a substantially political and moral issue justifying a political choice, clearly expressed in the Constitution, either retaining or prohibiting the death sentence. They elected not to do so, leaving it to this Court to resolve the issue, as a constitutional issue.

[266] The difference between a political election made by a legislative organ and decisions reached by a judicial organ, like the Constitutional Court, is crucial. The legislative organ exercises a political discretion, taking into account the *political preferences* of the electorate which votes political decision-makers into office. Public opinion therefore legitimately plays a significant, sometimes even decisive, role in the resolution of a public issue such as the death penalty. The judicial process is entirely different. What the Constitutional Court is required to do in order to resolve an issue, is to examine the relevant provisions of the Constitution, their text and their context; the interplay between the different provisions; legal precedent relevant to the resolution of the problem both in South Africa and abroad; the domestic common law and public international law impacting on its possible solution; factual and historical considerations bearing on the problem; the significance and meaning of the language used in the relevant provisions; the content and the sweep of the ethos expressed in the structure of the Constitution; the balance to be struck between different and sometimes potentially conflicting considerations reflected in its text; and by a judicious interpretation and assessment of all these factors to determine what the Constitution permits and what it prohibits.

[267] Adopting that approach, I am satisfied that the death penalty as a form of punishment violates crucial sections of the Constitution and that it is not saved by the limitations permitted in terms of section 33. I wish briefly to set out my reasons for that conclusion.

[268] In the first place, it offends section 9 of the Constitution which prescribes in peremptory terms that "every person shall have the right to life". What does that mean? What is a "person"? When does "personhood" and "life" begin? Can there be a conflict between the "right to life" in section 9 and the right of a mother to "personal privacy" in terms of section 13 and her possible right to the freedom and control of her body? Does the "right

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to life", within the meaning of section 9, preclude the practitioner of scientific medicine from withdrawing the modern mechanisms which mechanically and artificially enable physical breathing in a terminal patient to continue, long beyond the point, when the "brain is dead" and beyond the point when a human being ceases to be "human" although some unfocussed claim to qualify as a "being" is still retained? If not, can such a practitioner go beyond the point of passive withdrawal into the area of active intervention? When? Under what circumstances?

[269] It is, for the purposes of the present case, unnecessary to give to the word "life" in section 9 a comprehensive legal definition, which will accommodate the answer to these and other complex questions. Whatever be the proper resolution of such issues, should they arise in the future, it is possible to approach the constitutionality of the death sentence by a question with a sharper and narrower focus, thus:

"Does the right to life guaranteed by section 9, include the right of every person, not to be deliberately killed by the State, through a systematically planned act of execution sanctioned by the State as a mode of punishment and performed by an executioner remunerated for this purpose from public funds?"

The answer to that question, is in my view: "Yes, every person has that right". It immediately distinguishes that right from some other obvious rights referred to in argument, such as for example the right of a person in life-threatening circumstances to take the life of the aggressor in self-defence or even the acts of the State, in confronting an insurrection or in the course of War.

[270] The deliberate annihilation of the life of a person, systematically planned by the State, as a mode of punishment, is wholly and qualitatively different. It is not like the act of killing in self-defence, an act justifiable in the defence of the clear right of the victim to the preservation of his life. It is not performed in a state of sudden emergency, or under the extraordinary pressures which operate when insurrections are confronted or when the State defends itself during War. It is systematically planned long after - sometimes years after - the offender has committed the offence for which he is to be punished, and whilst

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he waits impotently in custody, for his date with the hangman. In its obvious and awesome finality, it makes every other right, so vigorously and eloquently guaranteed by Chapter 3 of the Constitution, permanently impossible to enjoy. Its inherently irreversible consequence, makes any reparation or correction impossible, if subsequent events establish, as they have sometimes done, the innocence of the executed or circumstances which demonstrate manifestly that he did not deserve the sentence of death.

[271] The death sentence must, in some measure, manifest a philosophy of indefensible despair in its execution, accepting as it must do, that the offender it seeks to punish is so beyond the pale of humanity as to permit of no rehabilitation, no reform, no repentance, no inherent spectre of hope or spirituality; nor the slightest possibility that he might one day, successfully and deservedly be able to pursue and to enjoy the great rights of dignity and security and the fundamental freedoms protected in Chapter 3 of the Constitution, the exercise of which is possible only if the "right to life" is not destroyed. The finality of the death penalty allows for none of these redeeming possibilities. It annihilates the potential for their emergence. Moreover, it cannot accomplish its objective without invading in a very deep and distressing way, the guarantee of human dignity afforded by section 10 of the Constitution, as the person sought to be executed spends long periods in custody, anguished by the prospect of being "hanged by the neck until he is dead" in the language of section 279(4) of Act 51 of 1977. The invasion of his dignity is inherent. He is effectively told: "You are beyond the pale of humanity. You are not fit to live among humankind. You are not entitled to life. You are not entitled to dignity. You are not human. We will therefore annihilate your life". (See the observations of *Brennan J in Trop v Dulles 356 US 84 at 100*).

[272] It is not necessarily only the dignity of the person to be executed which is invaded. Very arguably the dignity of all of us, in a caring civilization, must be compromised, by the act of repeating, systematically and deliberately, albeit for a wholly different objective, what we find to be so repugnant in the conduct of the offender in the first place (see *Furman v Georgia 408 US 238 at 273 (1972)(Brennan J, concurring)*).

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[273] I also have very considerable difficulty in reconciling the guarantee of the right to equality which is protected by section 8 of the Constitution, with the death penalty. I have no doubt whatever that Judges seek conscientiously and sedulously to avoid, any impermissibly unequal treatment between different accused whom they are required to sentence, but there is an inherent risk of arbitrariness in the process, which makes it impossible to determine and predict which accused person guilty of a capital offence will escape the death penalty and which will not. The fault is not of the sentencing Court, but in the process itself. The ultimate result depends not on the predictable application of objective criteria, but on a vast network of variable factors which include, the poverty or affluence of the accused and his ability to afford experienced and skillful counsel and expert testimony; his resources in pursuing potential avenues of investigation, tracing and procuring witnesses and establishing facts relevant to his defence and credibility; the temperament and sometimes unarticulated but perfectly *bona fide* values of the sentencing officer and their impact on the weight to be attached to mitigating and aggravating factors; the inadequacy of resources which compels the *pro - deo* system to depend substantially on the services of mostly very conscientious but inexperienced and relatively junior counsel; the levels of literacy and communication skills of the different accused in effectively transmitting to counsel the nuances of fact and inference often vital to the probabilities; the level of training and linguistic facilities of busy interpreters; the environmental milieu of the accused and the difference between that and the comparative environment of those who defend, prosecute and judge him; class, race, gender and age differences which influence *bona fide* perceptions, relevant to the determination of the ultimate sentence; the energy, skill and intensity of police investigations in a particular case; and the forensic skills and experience of counsel for the prosecution. There are many other such factors which influence the result and which determine who gets executed and who survives. The result is not susceptible to objective prediction. Some measure of arbitrariness seems inherent in the process. This truth has caused Blackmun J, one of the most experienced Judges of the United States Supreme Court, finally to conclude that it

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"is virtually self-evident to me now that no combination of procedural rules or substantive regulations ever can save the death penalty from its inherent constitutional deficiencies. The basic question - does the system accurately and consistently determine which defendants 'deserve' to die? - cannot be answered in the affirmative" (*Collins v Collins* 114 S. Ct. 1127; 127 L.Ed.2d 435 (1994)(Blackmun J, dissenting)).

[274] It must, of course, be conceded that the factors which ensure arbitrariness in the judicial application of the death sentence, must in some considerable measure also influence a sentence of imprisonment, but there is an enormous difference between the death sentence and imprisonment or any other sentence. It is a qualitative and not just a quantitative difference. The unfair consequences of a wrong sentence of imprisonment can be reversed. Death, however, is final and irreversible. The accused, who is imprisoned, is still able to exercise, within the discipline of the prison, in varying degrees, some of the other rights which the Constitution guarantees to every person. The executed prisoner loses the right to pursue any other right. He simply dies.

[275] For substantially the reasons given by Chaskalson P, I am further of the view that the death penalty is also inconsistent with section 11(2) of the Constitution which provides that:

"No person shall be subject to torture of any kind, whether physical, mental or emotional, nor shall any person be subject to cruel, inhuman or degrading treatment or punishment."

[276] The different parts of section 11(2) must be read disjunctively. The death sentence would (subject to section 33) offend section 11(2) if it constitutes

- (a) torture; or
- (b) cruel treatment; or
- (c) cruel punishment; or
- (d) inhuman treatment; or
- (e) inhuman punishment; or
- (f) degrading treatment; or
- (g) degrading punishment.

(See *Ex Parte Attorney-General, Namibia: In re Corporal Punishment* 1991 (3) SA 76 (NmSC) at 86B-D)

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- [277] In my view, the death sentence does indeed constitute cruel, inhuman or degrading punishment within the meaning of those expressions in section 11(2).
- [278] Undoubtedly, this conclusion does involve in some measure a value judgment, but it is a value judgment which requires objectively to be formulated, having regard to the ordinary meaning of the words used in section 11(2); its consistency with the other rights protected by the Constitution and the constitutional philosophy and humanism expressed both in the preamble and the postamble to the Constitution; its harmony with the national ethos which the Constitution identifies; the historical background to the structures and objectives of the Constitution; the discipline of proportionality to which it must legitimately be subject; the effect of the death sentence on the right to life protected by the Constitution; its inherent arbitrariness in application; its impact on human dignity; and its consistency with constitutional perceptions evolving both within South Africa and the world outside with which our country shares emerging values central to the permissible limits and objectives of punishment in the civilized community.
- [279] I have dealt with some of these issues, in analysing the proper approach to the interpretation of the Constitution, and in focusing on the rights protected by sections 8, 9 and 10 of the Constitution. Some of the other issues relevant to the exercise, have been dealt with in the comprehensive judgment of the President and the persuasive comments of some of my colleagues.
- [280] Applying the relevant considerations which emerge from the proper approach in assessing whether capital punishment is "cruel, inhuman or degrading punishment", I share the conclusions arrived at by the United Nations Committee on Human Rights, and the Hungarian Constitutional Court, (*Decision 23/1990 (X31) AB*) that the death sentence is cruel and degrading punishment and the conclusion of the Californian Supreme Court that it is "impermissibly cruel" (*People v Anderson 493 P.2d 880 (1972)*).

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[281] In my view, it also constitutes inhuman punishment. It invades irreversibly the humanity of the offender by annihilating the minimum content of the right to life protected by section 9; by degrading impermissibly the humanity inherent in his right to dignity; by the inevitable arbitrariness with which its objective is implemented; by the continuing and corrosive denigration of his humanity in the long periods preceding his formal execution; by the inescapable denial of his humanity inherently involved in a sentence which directs his elimination from society.

[282] I am accordingly of the view that the death penalty does *prima facie* invade the right to life; the right to equality; the right to dignity; and the right not to be subject to cruel inhuman or degrading punishment, respectively protected by sections 9, 8, 10 and 11(2) of the Constitution.

[283] Notwithstanding that conclusion however, it would be our duty to uphold the constitutionality of the death penalty if it was saved by section 33 of the Constitution, which provides that the rights entrenched by Chapter 3 may be limited by a law of general application, provided that such limitation

- "(a) shall be permissible only to the extent that it is
- (i) reasonable; and
 - (ii) justifiable in an open and democratic society based on freedom and equality; and
- (b) shall not negate the essential content of the right in question, and provided that any limitation to
- (aa) a right entrenched in section 10, 11, 12, 14(1), 21, 25 or 30(1)(d) or (e) or (2); or
 - (bb)
- shall in addition to being reasonable as required in paragraph (a)(i) also be necessary".

On a proper construction of section 33, a "law of general application" which invades a right entrenched in Chapter 3, will be declared unconstitutional unless the party relying on such law is able to establish that it fulfils each of the conditions prescribed by this section, for its justification.

[284] In order to qualify as a permissible limitation in terms of section 33 the State must therefore

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establish that the invasions on the right to life, the right to be protected from unfair discrimination, the right to dignity and the right to be protected from cruel, inhuman or degrading punishment, which the application of the death penalty causes, satisfy at least the three separate elements specified in sections 33(1)(a)(i), (ii) and 33(1)(b). In the case of a limitation on the right to dignity and the right to be protected from cruel, inhuman or degrading punishment, the fourth element of "necessity" contained in section 33(1)(aa) must further be satisfied.

- [285] The most plausible argument in support of the submission that the death penalty does satisfy these onerous conditions prescribed by section 33 is the submission that it acts as a deterrent. That argument has dominated perceptions in support of the death penalty, both in South Africa and abroad.
- [286] It must readily be conceded that if it could be established that the death sentence does indeed deter the commission of serious offences in respect of which the death penalty is a competent sentence, it would indeed be a very relevant and at least a potentially persuasive consideration in support of its justification in terms of section 33. There are, however, some serious difficulties involved in the acceptance of the proposition that the death penalty is, or ever has been, a demonstrable deterrence.
- [287] The legitimacy of the argument must to a substantial degree be premised on an assumption which appears to me to be fallacious and at the least, highly speculative and rationally unconvincing. That assumption is that a criminal, contemplating the commission of a serious offence, weighs the risk that he might be sentenced to death against the risk that he might not be sentenced to death but only to a long term of imprisonment of twenty years or more. The assumption is that he would decide to commit the offence even at the risk of receiving a long term of imprisonment but that if the death sentence was the risk, he would refrain from committing the offence at all. I have serious difficulties with these assumptions. In the first place they are not supported by any empirical evidence or research in this country or abroad. Secondly, this argument attributes to the offender a capacity for reflection and contemplation and a maturity of analysis which appears to me

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to be unrealistic. Thirdly, and more fundamentally, it ignores what is possibly the real factor in any risk assessment which might activate a potentially serious offender: the risk which he considers is that he will not be caught. If he believed that there was a real risk of being apprehended, charged and convicted he would not willingly assume the prospect of many years of quite punishing imprisonment.

[288] If, as I believe, such offenders commit the crimes contemplated because of a belief that they will probably not be apprehended at all, it is a belief which is regrettably justified. On the information that was common cause in argument before us, sixty or seventy percent of offenders who commit serious crimes are not apprehended at all and a substantial proportion of those who are, are never convicted. The risk is therefore worth taking, not because the death penalty would, in the perception of the offender, not be imposed but because no punishment is likely to result at all. The levels of serious crimes committed in South Africa are indeed disturbing. For many in the community, life has become dangerous and intolerable. Criminals do need vigorously to be deterred from conduct which endangers the security and freedom of citizens to a very distressing degree but, on the available evidence, it is facile to assume that the retention of the death penalty will provide the deterrence which is clearly needed. I have analysed such statistics as were debated in argument. In comparisons between States in the United States of America which retained the death penalty and those which did not, there is no manifest proof that the rate of serious crime was greater in the States which did not sanction capital punishment. In the case of those which did abolish capital punishment, there was no convincing proof that the rate of serious crime was greater after such act of abolition (*Peterson and Bailey, "Murder and Capital Punishment in the context of the Post-Furman Era (1988)66 Social Forces 774; Thorsten Sellin, The Death Penalty, 1982).*

[289] Following a survey of research findings the United Nations concluded that -

"this research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment - such proof is unlikely to be following. The evidence as a whole still gives no possible support to the deterrent hypothesis". (*United Nations: The Question of the Death Penalty and the New Contributions of Criminal Science to the Matter (1988) at 110).*

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- [290] We were not furnished with any reliable research dealing with the relationship between the rate of serious offences and the proportion of successful apprehensions and convictions following on the commission of serious offences. This would have been a significant enquiry. It appears to me to be an inherent probability that the more successful the police are in solving serious crimes and the more successful they are in apprehending the criminals concerned and securing their convictions, the greater will be the perception of risk for those contemplating such offences. That increase in the perception of risk, contemplated by the offender, would bear a relationship to the rate at which serious offences are committed. Successful arrest and conviction must operate as a deterrent and the State should, within the limits of its undoubtedly constrained resources, seek to deter serious crime by adequate remuneration for the police force; by incentives to improve their training and skill; by augmenting their numbers in key areas; and by facilitating their legitimacy in the perception of the communities in which they work.
- [291] Successful deterrence of serious crime also involves the need for substantial redress in the socio-economic conditions of those ravaged by poverty, debilitated by disease and malnutrition and disempowered by illiteracy. Rapid amelioration in these areas must have some concomitant effect on the levels of crime. There has to be a corresponding campaign among the communities affected by serious crime to harness their own legitimacy and their own infrastructures, in interaction with the security agencies of the State. The power and influence of agencies of moral authority such as teachers, school principals and religious leaders must rapidly be restored. Crime is a multi-faceted phenomenon. It has to be assaulted on a multi-dimensional level to facilitate effective deterrence.
- [292] The moratorium on the execution of the death penalty, which has been effectively in operation since 1990, is also relevant in offering some insight into the veracity of the proposition that executions for capital crimes operate as a deterrent. That proposition, as Didcott J has correctly analysed, is not cogently supported by the statistics made available to us for the period following upon the moratorium; nor is it supported by the rate at which crime levels increased during periods in our history when executions were administered with

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vigour.

- [293] Bringing to bear upon the issue, therefore, a rational and judicial judgment, I have not been persuaded that the fear of the death penalty rationally or practically operates as a demonstrable deterrent for offenders seeking to perpetrate serious crimes. It remains, for the reasons I have previously discussed, an impermissibly cruel invasion of rights, the sustenance of which is fundamental to a defensible civilization, protected in South Africa by the ethos of a Constitution, which is manifestly humanistic and caring in its content.
- [294] Even if the fallacious and speculative assumptions which motivate the argument in support of the proposition that the death sentence does act as a deterrent against serious crime were to be accepted, rationally the fear of the death penalty would only operate on the mind of the potential offender if there was a serious risk that he could be so punished. On the information made available to us, however, that risk is in any event so minimal, as to constitute a remote statistical possibility, which, as Mr Trengove argued, might be no more significant than the risk of dying in a motor accident. It is difficult to appreciate how such a remote statistical possibility acts as a deterrent on the minds of potential offenders.
- [295] On a judicial application of all the relevant considerations and the facts made available to us, I therefore cannot conclude that the State has successfully established that the death penalty *per se* has any deterrent effect on the potential perpetrators of serious offences.
- [296] Is there any other basis on which the death penalty can be justified? The only serious alternative basis suggested in argument was that it is justifiable as an act of retribution. Retribution has indeed constituted one of the permissible objects of criminal punishment because there is an inherent legitimacy about the claim that the individual victims and society generally should, and are entitled to, enforce punishment as an expression of their moral outrage and sense of grievance. I have, however, some serious difficulties with the justification of the death sentence as a form of retribution. The proper approach is not to contrast the legitimacy of the death sentence as a form of retribution against no retribution at all. That is plainly untenable and manifestly indefensible. The relevant

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contrast is between the death sentence and the alternative of a very lengthy period of imprisonment, in appropriate cases. It is difficult to appreciate why a sentence which compels the offender to spend years and years in prison, away from his family, in conditions of deliberate austerity and rigid discipline, substantially and continuously impeding his enjoyment of the elementary riches and gifts of civilized living, is not an effective and adequate expression of moral outrage. The unarticulated fallacy in the argument that it is not, is the proposition that it must indeed be equivalent in form to the offence committed. That is an impermissible argument. The burning of the house of the offender is not a permissible punishment for arson. The rape of the offender is not a permissible punishment of a rapist. Why should murder be a permissible punishment for murder? Indeed, there are good reasons why it should not, because its execution might desensitize respect for life *per se*. More crucially, within the context of the South African Constitution, it appears to be at variance with its basic premise and ethos which I analysed earlier in this judgment. On these considerations, I find it difficult to hold that the death sentence has been demonstrated by the State to be "justifiable in an open and democratic society based on freedom and equality".

[297] That conclusion should make it unnecessary for me to deal with the other elements of justification set out in section 33, but I am in any event of the view that the State has not established that the limitations the death penalty imposes on the relevant rights in Chapter 3, which I have discussed, can be said to be "necessary". That is a material element for justification in terms of section 33 where what is limited is the right to human dignity in section 10 or the right to be protected from cruel, inhuman or degrading punishment in terms of section 11(2). The failure to satisfy that element is fatal to the attempt to establish justification in terms of section 33. Section 277(1)(a) of Act 51 of 1977 must therefore be the constitutional casualty of this conclusion and therefore be struck down. The reasons which have prompted that conclusion are substantially also of application to sub-paragraphs (c) (d) (e) and (f) of section 277(1) and must therefore endure the same fate. For the reasons given by Chaskalson P, I agree that the issue as to whether section 277(1)(b) is unconstitutional should be left open.

[298] It also follows from my approach and the conclusions to which I have arrived, that it is unnecessary to decide whether or not the death penalty does "negate the essential content of the right in question" within the meaning of section 33(1)(b). I also prefer to leave this question open. In the absence of full argument, I do not consider it desirable to determine what the meaning of the reference to the "essential content of the right" is. Chaskalson P, in paragraph 132 of his judgment, has, without deciding, referred to two approaches which he describes as the "objective" and "subjective" determination of the essential content. Arguably, it is possible to consider a third angle which focuses on the distinction between the "essential content" of a right and some other content. This distinction might justify a relative approach to the determination of what is the essential content of a right by distinguishing the central core of the right from its peripheral outgrowth and subjecting "a law of general application" limiting an entrenched right, to the discipline of not invading the core, as distinct from the peripheral outgrowth. In this regard, there may conceivably be a difference between rights which are inherently capable of incremental invasion and those that are not. We have not heard proper argument on any of these distinctions which justify debate in the future in a proper case. I say no more.

[299] Consistent with my approach to the judicial process involved in the determination of the constitutionality of the death sentence, I am accordingly privileged to concur in the order supported by all my colleagues.

[300] **MOKGORO J:** I am in agreement with the judgement of Chaskalson P, its reasoning, and its conclusions, and I concur in the order that gives effect to those conclusions. I give this brief concurring opinion to highlight what I regard as important: namely that, when our courts promote the underlying values of an open and democratic society in terms of Section 35 when considering the constitutionality of laws, they should recognise that indigenous South African values are not always irrelevant nor unrelated to this task. In my view, these values are embodied in the Constitution and they impact directly on the death penalty as a form of punishment.

[301] Now that constitutionalism has become central to the new emerging South African jurisprudence, legislative interpretation will be radically different from what it used to be in the past legal order. In that legal order, due to the sovereignty of parliament, the supremacy of legislation and the absence of judicial review of parliamentary statutes, courts engaged in simple statutory interpretation, giving effect to the clear and unambiguous language of the legislative text - no matter how unjust the legislative provision. The view of the court in *Bongopi v Council of the State, Ciskei 1992(3) SA 250 (CK) at 265 H - I, as per Pickard CJ* is instructive in this regard:

‘This court has always stated openly that it is not the maker of laws. It will enforce the law as it finds it. To attempt to promote policies that are not to be found in the law itself or to prescribe what it believes to be the current public attitudes or standards in regard to these policies is not its function’.

[302] With the entrenchment of a Bill of Fundamental Rights and Freedoms in a supreme constitution, however, the interpretive task frequently involves making constitutional choices by balancing competing fundamental rights and freedoms. This can often only be done by reference to a system of values extraneous to the constitutional text itself, where these principles constitute the historical context in which the text was adopted and which help to explain the meaning of the text. The constitution makes it particularly imperative for courts to develop the entrenched fundamental rights in terms of a cohesive set of values, ideal to an open and democratic society. To this end common values of human rights protection the world over and foreign precedent may be instructive.

[303] While it is important to appreciate that in the matter before us the court had been called upon to decide an issue of constitutionality and not to engage in debate on the desirability of abolition or retention, it is equally important to appreciate that the nature of the court’s role in constitutional interpretation, and the duty placed on courts by Section 35, will of necessity draw them into the realm of making necessary value choices.

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[304] The application of the limitation clause embodied in Section 33(1) to any law of general application which competes with a Chapter 3 right is essentially also an exercise in balancing opposing rights. To achieve the required balance will of necessity involve value judgements. This is the nature of constitutional interpretation. Indeed Section 11(2) which is the counterpart of Section 15(1) of the Constitution of Zimbabwe¹, and provides protection against cruel, inhuman or degrading punishment, embodies broad idealistic notions of dignity and humanity. If applied to determine whether the death penalty was a form of torture, treatment or punishment which is cruel, inhuman or degrading it also involves making value choices, as was held *per* Gubbay CJ in *Catholic Commission for Justice and Peace, Zimbabwe v Attorney-General, Zimbabwe*, 1993(4) SA 239(ZS) at 241. In order to guard against what Didcott J, in his concurring judgement terms the trap of undue subjectivity, the interpretation clause prescribes that courts seek guidance in international norms and foreign judicial precedent, reflective of the values which underlie an open and democratic society based on freedom and equality. By articulating rather than suppressing values which underlie our decisions, we are not being subjective. On the contrary, we set out in a transparent and objective way the foundations of our interpretive choice and make them available for criticism. Section 35 seems to acknowledge the paucity of home-grown judicial precedent upholding human rights, which is not surprising considering the repressive nature of the past legal order. It requires courts to proceed to public international law and foreign case law for guidance in constitutional interpretation, thereby promoting the ideal and internationally accepted values in the cultivation of a human rights jurisprudence for South Africa. However, I am of the view that our own (ideal) indigenous value systems are a premise from which we need to proceed and are not wholly unrelated to our goal of a society based on freedom and equality. This, in my view too, is the relevance of the submissions of Adv. Davids, appearing as *amicus curiae* on behalf of the Black Advocates' Forum, albeit that these submissions were inappropriately presented.

[305] In *Dudgeon v United Kingdom* (1982) 4 EHRR 149, the European Court of Human Rights, per

¹ Act No 12 of 1979.

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Walsh J, expressed the view that:

“... in a democracy the law cannot afford to ignore the moral consensus of the community. If the law is out of touch with the moral consensus of the community, whether by being either too far below it or too far above it, the law is brought into contempt” (at 184).

Although this view was expressed in relation to the legislative process, in as far as courts have to comply with the requirements of Section 35 of the Constitution the approach it embodies is not wholly inapplicable in constitutional adjudication. Enduring values, however, are not the same as fluctuating public opinion. In his argument before the court, the Attorney General submitted that:

“... the overwhelming public opinion in favour of the retention of the death sentence is sufficiently well-known to be accepted as the true voice of the South African society. This opinion of the South African public is evidenced by newspaper articles, letters to newspapers, debates in the media and representations to the authorities...”

The described sources of public opinion can hardly be regarded as scientific. Yet even if they were, constitutional adjudication is quite different from the legislative process, because “the court is not a politically responsible institution”² to be seized every five years by majoritarian opinion. The values intended to be promoted by Section 35 are not founded on what may well be uninformed or indeed prejudiced public opinion. One of the functions of the court is precisely to ensure that vulnerable minorities are not deprived of their constitutional rights.

² See Jesse Choper quoted in *Rights and Constitutionalism; The New South African Legal Order; Van Wyk D. et al, Juta, 1994 p. 9*. The suggestion is that the judiciary is not wholly removed from the political process, where it plays a supervisory role, restraining the majority will through judicial review.

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[306] In support of her main contention, Adv. Davids quite appropriately expressed concern for the need to consider the value systems of the formerly marginalised sectors of society in creating a South African jurisprudence. However, for reasons outlined in the concurring opinion of Sachs J, the issue was regrettably not argued. Indeed even if her submissions might not have influenced the final decision of the court, the opportunity to present and argue properly adduced evidence of those undistorted values historically disregarded in South African judicial law-making would have created an opportunity of important historical value, injecting such values into the mainstream of South African jurisprudence. The experience would, in my view, also have served to emphasise that the need to develop an all-inclusive South African jurisprudence is not only incumbent upon the judiciary, let alone the Constitutional Court. The broad legal profession, academia and those sectors of organised civil society particularly concerned with public interest law, have an equally important responsibility and role to play by combining efforts and resources to place the required evidence in argument before the courts. It is not as if these resources are lacking; what has been absent has been the will, and the acknowledgment of the importance of the material concerned.

[307] In interpreting the Bill of Fundamental Rights and Freedoms, as already mentioned, an all-inclusive value system, or common values in South Africa, can form a basis upon which to develop a South African human rights jurisprudence. Although South Africans have a history of deep divisions characterised by strife and conflict, one shared value and ideal that runs like a golden thread across cultural lines, is the value of ubuntu - a notion now coming to be generally articulated in this country. It is well accepted that the transitional Constitution is a culmination of a negotiated political settlement. It is a bridge between a history of gross violations of human rights and humanitarian principles, and a future of reconstruction and reconciliation. The post-amble of the Constitution expressly provides,

“... there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu* but not for victimisation...”

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Not only is the notion of *ubuntu* expressly provided for in the epilogue of the Constitution, the underlying idea and its accompanying values are also expressed in the preamble. These values underlie, first and foremost, the whole idea of adopting a Bill of Fundamental Rights and Freedoms in a new legal order. They are central to the coherence of all the rights entrenched in Chapter 3 - where the right to life and the right to respect for and protection of human dignity are embodied in Sections 9 and 10 respectively.

[308] Generally, *ubuntu* translates as *humaneness*. In its most fundamental sense, it translates as *personhood* and *morality*. Metaphorically, it expresses itself in *umuntu ngumuntu ngabantu*, describing the significance of group solidarity on survival issues so central to the survival of communities. While it envelops the key values of group solidarity, compassion, respect, human dignity, conformity to basic norms and collective unity, in its fundamental sense it denotes humanity and morality. Its spirit emphasises respect for human dignity, marking a shift from confrontation to conciliation.³ In South Africa *ubuntu* has become a notion with particular resonance in the building of a democracy. It is part of our “rainbow” heritage, though it might have operated and still operates differently in diverse community settings. In the Western cultural heritage, respect and the value for life, manifested in the all-embracing concepts of *humanity* and *menswaardigheid* are also highly prized. It is values like these that Section 35 requires to be promoted. They give meaning and texture to the principles of a society based on freedom and equality.

[309] In American jurisprudence, courts have recognised that the dignity of the individual in American society is the supreme value. Even the most evil offender, it has been held, “remains a human being possessed of a common human dignity” (*Furman v Georgia* 408 US 238 at 273 (1972)), thereby making the calculated process of the death penalty inconsistent with this basic, fundamental value. In Hungarian jurisprudence, the right to life and the right

³ Mbigi, L., with J. Maree, *UBUNTU - The Spirit of African Transformation Management*, Knowledge Resources, 1995, pp. 1-16.

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to human dignity are protected as twin rights in Section 54(1) of that Constitution⁴. They are viewed as an inseparable unity of rights. Not only are they regarded as a unity of indivisible rights, but they also have been held to be the genesis of all rights. In international law, on the other hand, human dignity is generally considered the fountain of all rights. The International Covenant on Civil and Political Rights (1966) G.A. Res 2200 (XXI), 21 U.N. GAOR, SUPP. (No, 16) at 52, U.N. DOC. A/6316(1966), in its preamble, makes references to “the inherent dignity of all members of the human family” and concludes that “human rights derive from the inherent dignity of the human person”. This, in my view, is not different from what the spirit of *ubuntu* embraces.

[310] It is common cause, however, that the legal system in South Africa, and the socio-political system within which it operated, has for decades traumatised the human spirit. In many ways, it trampled on the basic humanity of citizens. We cannot in all conscience declare, as did a United States Supreme Court justice in *Furman v Georgia* 408 US 238, at 296 (1972) with reference to the American context, that respect for and protection of human dignity has been a central value in South African jurisprudence. We cannot view the death penalty as fundamentally inconsistent with our harsh legal heritage. Indeed, it was an integral part of a system of law enforcement that imposed severe penalties on those who aspired to achieve the values enshrined in our Constitution today.

[311] South Africa now has a new constitution however, which creates a constitutional state. This state is in turn founded on the recognition and protection of basic human rights, and although this constitutes a revolutionary change in legal terms, the idea is consistent with the inherited traditional value systems of South Africans in general - traditional values which hardly found the chance to bring South Africa on par with the rest of the world.

⁴ See analysis in the English translation of Decision No 23/1990 (X31) AB of the Hungarian Constitutional Court.

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As this constitution evolves to overcome the culture of gross human rights violations of the past, jurisprudence in South Africa will simultaneously develop a culture of respect for and protection of basic human rights. Central to this commitment is the need to revive the value of human dignity in South Africa, and in turn re-define and recognise the right to and protection of human dignity as a right concomitant to life itself and inherent in all human beings, so that South Africans may also appreciate that “even the vilest criminal remains a human being” (*Furman v Georgia, supra*). In my view, life and dignity are like two sides of the same coin. The concept of *ubuntu* embodies them both.

[312] In the past legal order, basic human rights in South Africa, including the right to life and human dignity, were not protected in a Bill of Fundamental Rights and Freedoms, in a supreme constitution, as is the case today. Parliament then was sovereign, and could pass any law it deemed fit. Legislation was supreme, and due to the absence of judicial review, no court of law could set aside any statute or its provision on grounds of violating fundamental rights. Hence, Section 277 of the Criminal Procedure Act, 51 of 1977, could survive untested to this day.

[313] Our new Constitution, unlike its dictatorial predecessor, is value-based. Among other things, it guarantees the protection of basic human rights, including the right to life and human dignity, two basic values supported by the spirit of *ubuntu* and protected in Sections 9 and 10 respectively. In terms of Section 35, this Constitution now commits the state to base the worth of human beings on the ideal values espoused by open democratic societies the world over and not on race colour, political, economic and social class. Although it has been argued that the currently high level of crime in the country is indicative of the breakdown of the moral fabric of society, it has not been conclusively shown that the death penalty, which is an affront to these basic values, is the best available practical form of punishment to reconstruct that moral fabric. In the second place, even if the end was desirable, that would not justify the means. The death penalty violates the essential content of the right to life embodied in Section 9, in that it extinguishes life itself. It instrumentalises the offender for the objectives of state policy. That is dehumanising. It is degrading and it violates the rights to respect for and protection of human dignity embodied in Section 10 of the Constitution.

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- [314] Once the life of a human being is taken in the deliberate and calculated fashion that characterises the described methods of execution the world over, it constitutes the ultimate cruelty with which any living creature could ever be treated. This extreme level of cruel treatment of a human being, however despicably such person might have treated another human being, is still inherently cruel. It is inhuman and degrading to the humanity of the individual, as well as to the humanity of those who carry it out.
- [315] Taking the life of a human being will always be reprehensible. Those citizens who kill deserve the most severe punishment, if it deters and rehabilitates and therefore effectively addresses deviance of this nature. Punishment by death cannot achieve these objectives. The high rate of crime in this country is indeed disturbing and the state has a duty to protect the lives of all citizens - including those who kill. However, it should find more humane and effective integrated approaches to manage its penal system, and to rehabilitate offenders.
- [316] The state is representative of its people and in many ways sets the standard for moral values within society. If it sanctions by law punishment for killing by killing, it sanctions vengeance by law. If it does so with a view to deterring others, it dehumanises the person and objectifies him or her as a tool for crime control. This objectification through the calculated killing of a human being, to serve state objectives, strips the offender of his or her human dignity and dehumanises, such a person constituting a violation of Section 10 of the Constitution.
- [317] Although the Attorney General placed great reliance on the deterrent nature of the death penalty in his argument, it was conceded that this has not been conclusively proven. It has also not been shown that this form of punishment was the best available option for the rehabilitation of the offender. Retaining the death penalty for this purpose is therefore unnecessary. Section 277(1) which authorises the death penalty under these unnecessarily inhuman and degrading circumstances is inconsistent with the right to life and human dignity embodied in Sections 9 and 10 of the Constitution, respectively, and

is in direct conflict with the values that Section 35 aims to promote in the interpretation of these sections. Taking the life of a person under such deliberate and calculated circumstances, with the methods already described in the judgement of Chaskalson P, is cruel, inhuman or degrading treatment or punishment. It is inconsistent with Section 11(2) of the Constitution. In my view, therefore, the death penalty is unconstitutional. Not only does it violate the right not be subjected to cruel, inhuman or degrading treatment or punishment, it also violates the right to life and human dignity.

[318] **O'REGAN J:** I have read the judgment of Chaskalson P and I agree with the order that he proposes. However, although I agree that the death sentence constitutes a breach of section 11(2) of the Constitution that is not justified in terms of section 33, it is my view that it also constitutes a breach of section 9 (the right to life) and section 10 (the right to dignity) for the reasons that are given in this judgment.

[319] The crimes of which the two prisoners whose case has been referred to this court have been convicted were committed during a robbery from a bank security vehicle which was delivering monthly wages to the Coronation Hospital in Johannesburg. It appears from the judgment of the Appellate Division that the two prisoners were part of a group of robbers who had cold-bloodedly planned the robbery. All the robbers had been armed with AK-47s and had opened fire on the security vehicle and the accompanying vehicle when they had driven into the hospital parking area. As a result of the shooting, two policemen and two bank security officials were shot dead.

[320] There is no doubt that the crimes committed by the two prisoners were abhorrent. Our society cannot and does not condone brutal murder or robbery. Perpetrators of crimes such as these must be punished severely according to our system of criminal justice. In this case, the prisoners have been tried, convicted and sentenced. The question that this court must answer is not whether the prisoners committed these crimes, nor whether they should be punished. It has been established by the proper courts that they did commit crimes, and for that they must be punished. What this court must consider is whether the form of punishment that has been imposed is constitutional. Does our constitution permit any

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convicted criminal, however heinous the crime, to be put to death by the government as punishment for that crime?

[321] The Constitution entrenches certain fundamental rights. Included amongst these are the right to life (section 9), the right to the respect for and protection of dignity (section 10) and the right not to be subjected to cruel, inhuman or degrading punishment (section 11(2)). The prisoners allege that the death penalty is in conflict with each of these. The language of each of these rights is broad and capable of different interpretations. How is this court to determine the content and scope of these rights? This question is at least partially answered by section 35(1) of the constitution which enjoins this court in interpreting the rights contained in the Constitution to 'promote the values which underlie an open and democratic society based on freedom and equality'.

[322] No-one could miss the significance of the hermeneutic standard set. The values urged upon the court are not those that have informed our past. Our history is one of repression not freedom, oligarchy not democracy, apartheid and prejudice not equality, clandestine not open government. As the epilogue to the constitution states:

'This constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.'

[323] In interpreting the rights enshrined in chapter 3, therefore, the court is directed to the future: to the ideal of a new society which is to be built on the common values which made a political transition possible in our country and which are the foundation of its new constitution. This is not to say that there is nothing from our past which should be retained. Of course this is not so. As Kentridge AJ described in the first judgment of this court (*S v Zuma* unreported judgment of this court, 5 April 1995), many of the rights entrenched in section 25 of the constitution concerning criminal justice are longstanding principles of our law, although eroded by statute and judicial decision. In interpreting the rights contained in section 25, those common law principles will be useful guides.

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But generally section 35(1) instructs us, in interpreting the constitution, to look forward not backward, to recognise the evils and injustices of the past and to avoid their repetition.

[324] Section 9 of the Constitution provides that:

'Every person shall have the right to life.'

This formulation of the right to life is not one which has been used in the constitutions of other countries or in international human rights conventions. In choosing this formulation, the drafters have specifically avoided either expressly preserving the death penalty, or expressly outlawing it. In addition, they have not used the language so common in other constitutions, which provides that no-one may be deprived of life arbitrarily or without due process of law.¹ To the extent that the formulation of the right is different from that adopted in other jurisdictions, their jurisprudence will be of less value. The question is thus left for us to determine whether this right, or any of the others enshrined in chapter 3, would *prima facie* prohibit the death penalty.

[325] In giving meaning to section 9, we must seek the purpose for which it was included in the

¹ The Universal Declaration of Human Rights contains an unconditional form of the right: article 3 provides that 'Everyone has the right to life, liberty and security of the person.' On the other hand, many other international rights instruments contain qualified protections of the right to life. Article 6(1) of the International Convention on Civil and Political Rights stipulates that 'Every human being has the inherent right to life. This right shall be protected by law. No-one shall be arbitrarily deprived of his life.' Subsections 2 - 5 of article 6 then provide for minimum standards for countries which have not abolished the death penalty, and article 6(6) provides that: 'Nothing in this article shall be invoked to delay or prevent the abolition of capital punishment by any state party to the present covenant.' In addition in 1989 an optional protocol was adopted by the General Assembly of the United Nations, article 1 of which provides that 'No-one within the jurisdiction of state parties to the present optional protocol shall be executed'.

Article 4 of the Banjul Charter on Human and People's Rights (African Charter) provides that 'Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of the person. No one may be arbitrarily deprived of this right.'

Article 2(1) of the European Convention on Human Rights provides that 'Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.' But in 1983 a protocol to the Convention was adopted which provided that capital punishment should be abolished. The protocol has been widely ratified. See Van Dijk and Van Hoof *Theory and Practice of the European Convention on Human Rights 2nd ed (1990)* pp 502 -3.

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Constitution.² This purposive or teleological approach to the interpretation of rights may at times require a generous meaning to be given to provisions of chapter 3 of the Constitution, and at other times a narrower or specific meaning. It is the responsibility of the courts, and ultimately this court, to develop fully the rights entrenched in the Constitution. But that will take time. Consequently any minimum content which is attributed to a right may in subsequent cases be expanded and developed.

[326] The right to life is, in one sense, antecedent to all the other rights in the Constitution. Without life in the sense of existence, it would not be possible to exercise rights or to be the bearer of them. But the right to life was included in the Constitution not simply to enshrine the right to existence. It is not life as mere organic matter that the Constitution cherishes, but the right to human life: the right to live as a human being, to be part of a broader community, to share in the experience of humanity. This concept of human life is at the centre of our constitutional values. The constitution seeks to establish a society where the individual value of each member of the community is recognised and treasured. The right to life is central to such a society.

[327] The right to life, thus understood, incorporates the right to dignity. So the rights to human dignity and life are entwined. The right to life is more than existence, it is a right to be treated as a human being with dignity: without dignity, human life is substantially diminished. Without life, there cannot be dignity. This was recognised by the Hungarian constitutional court in the case in which it considered the constitutionality of the death

² See *S v Zuma* (unreported judgment of the Constitutional Court, 5 April 1995) para 15 in which Kentridge AJ referred to the judgment of Dickson J in *R v Big M Drug Mart Ltd* (1985) 18 DLR (4th) 321 at 395 - 6 with approval. See also *Law Society of British Columbia and another v Andrews and another* (1989) 36 CRR 193 (SCC) at 224 - 225.

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penalty:

'It is the untouchability and equality contained in the right to human dignity that results in man's right to life being a specific right to human life (over and above animals' and artificial subjects' right to being); on the other hand, dignity as a fundamental right does not have meaning for the individual if he or she is dead. ... Human dignity is a naturally accompanying quality of human life.' (Decision No 23/1990, (X.31.) AB, George Feher translation)

[328] The right to dignity is enshrined in our Constitution in section 10:

'Every person shall have the right to respect for and protection of his or her dignity'.

The importance of dignity as a founding value of the new Constitution cannot be overemphasised. Recognising a right to dignity is an acknowledgement of the intrinsic worth of human beings: human beings are entitled to be treated as worthy of respect and concern.³ This right therefore is the foundation of many of the other rights that are specifically entrenched in chapter 3. As Brennan J held when speaking of forms of cruel and unusual punishments in the context of the American constitution:

'The true significance of these punishments is that they treat members of the human race as non-humans, as objects to be toyed with and discarded. They are thus inconsistent with the fundamental premise of the Clause that even the vilest criminal remains a human being possessed of common human dignity.' (*Furman v Georgia* 408 US 238 at 272,3 (1972))

[329] Respect for the dignity of all human beings is particularly important in South Africa. For apartheid was a denial of a common humanity. Black people were refused respect and dignity and thereby the dignity of all South Africans was diminished. The new constitution rejects this past and affirms the equal worth of all South Africans. Thus recognition and protection of human dignity is the touchstone of the new political order and is fundamental to the new constitution.

³See, for discussion of the right to dignity and the death penalty, the judgment of Solyom J in the Hungarian case concerning the constitutionality of the death penalty (Decision no 23/1990 (X.31.) AB, George Feher translation).

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[330] But human dignity is important to all democracies. In an aphorism coined by Ronald Dworkin 'Because we honour dignity, we demand democracy'.⁴ Its importance was recognised too by Cory J in *Kindler v Canada* (1992) 6 CRR (2nd) 193 (SCC) at 237 in which he held that '[i]t is the dignity and importance of the individual which is the essence and the cornerstone of democratic government'.⁵

[331] The Attorney-General argued that the prisoners, and others like them, who are convicted of crimes for which the death penalty is currently competent, have forfeited their right to life and dignity. This cannot be correct. It is a fundamental premise of our constitution that the rights in chapter 3 are available to all South Africans no matter how atrocious their conduct. As Gubbay CJ held in *Catholic Commission for Justice and Peace, Zimbabwe v Attorney-General, Zimbabwe* 1993 (4) SA 239 (ZS) at 247 g -h:

'It cannot be doubted that prison walls do not keep out fundamental rights and protections. Prisoners are not, by mere reason of a conviction, denuded of all the rights they otherwise possess. No matter the magnitude of the crime, they are not reduced to non-persons. They retain all basic rights, save those inevitably removed from them by law, expressly or by implication.'

[332] It must be emphasised that the entrenchment of a Bill of Rights, enforceable by a judiciary, is designed, in part, to protect those who are the marginalised, the dispossessed and the outcasts of our society. They are the test of our commitment to a common humanity and cannot be excluded from it.

⁴See Ronald Dworkin *Life's Dominion: An argument about abortion and euthanasia* (1993) at 239.

⁵ See also *S v Ncube* 1988 (2) SA 702 (ZS) at 717 B - D.

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- [333] Are the rights to life and dignity breached by the death penalty? The death sentence has been part of South African law since the colonial era. Not only has the law permitted the death sentence, but it has been regularly imposed by courts and carried out by the government. For many years, South Africa had the doubtful honour of being a world leader in the number of judicial executions carried out. Although there is some uncertainty about the statistics, it appears that between 1981 and 1990 approximately 1100 people were executed in South Africa, including the Transkei, Ciskei, Bophuthatswana and Venda.⁶ The death sentence was imposed sometimes for crimes that were motivated by political ideals. In this way the death penalty came to be seen by some as part of the repressive machinery of the former government. Towards the end of the 1980s there were several major public campaigns to halt the execution of people who were perceived to be political opponents of the government. There is no doubt that these campaigns to prevent the execution of amongst others, the 'Sharpeville Six' and the 'Upington 26' were partly responsible for the government's decision in 1990 to suspend the implementation of sentences of death.
- [334] The purpose of the death penalty is to kill convicted criminals. Its very purpose lies in the deprivation of existence. Its inevitable result is the denial of human life. It is hard to see how this methodical and deliberate destruction of life by the government can be anything other than a breach of the right to life.
- [335] The implementation of the death penalty is also a denial of the individual's right to dignity. The execution of the death penalty was described by Professor Chris Barnard as follows:

'The man's spinal cord will rupture at the point where it enters the skull, electrochemical discharges will send his limbs flailing in a grotesque dance, eyes and tongue will start from the facial apertures under the assault of the rope and his bowels and bladder may simultaneously void themselves to soil the legs and drip on the floor....' (*Rand Daily Mail* 12 June 1978, cited in Appellants' heads)

⁶ See Murray 'Hangings in Southern Africa: The last ten years' (1990) 6 *SAJHR* 439 - 441; Keightley 'Hangings in Southern Africa: the last ten years' (1991) 7 *SAJHR* 347 - 349; 'The Death Penalty in SA: Statistics' (1989) 2 *SACJ* 251; Amnesty International 'When the State Kills... The Death Penalty vs Human Rights' (1989) 204 - 207.

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This frank description of the execution process leaves little doubt that it is one which is destructive of human dignity. As Cory J held in *Kindler v Canada* (1992) 6 CRR (2nd) 193 (SCC) at 241:

'The death penalty not only deprives the prisoner of all vestiges of human dignity, it is the ultimate desecration of the individual as a human being. It is the annihilation of the very essence of human dignity.'

[336] But it is not only the manner of execution which is destructive of dignity, the circumstances in which convicted criminals await the execution of their sentence also constitutes a breach of dignity. These circumstances have been amply and aptly described by Gubbay CJ in *Catholic Commission for Justice and Peace, Zimbabwe v Attorney-General, Zimbabwe* 1993(4) SA 239 (ZS) at 268-9. Although little evidence has been placed before us to describe the experience of condemned prisoners in South Africa, it seems all too probable that it resembles the conditions described by Gubbay CJ. Indeed, the moratorium on the implementation of the death sentence described by Chaskalson P has probably aggravated the conditions of condemned prisoners considerably.

[337] Section 277 of the Criminal Procedure Act is therefore not only a breach of section 11(2) of the Constitution as held by Chaskalson P, but it is also a breach of section 9 (the right to life) and section 10 (the right to dignity). It is unnecessary and would be inappropriate to consider the further scope of these rights.

[338] The Constitution does recognise in section 33 that the rights it entrenches may be limited by law of general application if a law is reasonable and justifiable (and in some circumstances, necessary) in an open and democratic society based on freedom and equality. The infringement of the rights to life and dignity occasioned by section 277 of the Criminal Procedure Act needs to be measured against this test. In this regard, it should be noted that a law which infringes the right to dignity must be shown to be a reasonable, justifiable and necessary limitation, whereas a law which contains a limitation upon the right to life need only be shown to be reasonable and justifiable.

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[339] The purpose of the bifurcated levels of justification need not detain us here. What is clear is that section 33 introduces different levels of scrutiny for laws which cause an infringement of rights. The requirement of reasonableness and justifiability which attaches to some of the section 33 rights clearly envisages a less stringent constitutional standard than does the requirement of necessity. In both cases, the enquiry concerns proportionality: to measure the purpose, effects and importance of the infringing legislation against the infringement caused. In addition, it will need to be shown that the ends sought by the legislation cannot be achieved sufficiently and realistically by other means which would be less destructive of entrenched rights. Where the constitutional standard is necessity, the considerations are similar, but the standard is more stringent.

[340] In determining whether the breaches of sections 9 and 10 are justified in terms of section 33, the relevant considerations are the same as those traversed by Chaskalson P at paragraphs 116 - 131 of his judgment albeit only in the context of a breach of section 11(2). The Attorney-General argued that the purpose of section 277 was the deterrence and prevention of crime, and retribution. Although deterrence is an important goal, as Chaskalson P has described, the deterrent effect of the death penalty remains unproven, perhaps unprovable.

[341] The question of retribution is a more complex one. I agree with Chaskalson P that in a democratic society retribution as a goal of punishment should not be given undue weight. Indeed, I am unconvinced that, where the punishment is held to constitute a breach of a fundamental right, retribution would ever, on its own, be a sufficient ground for justification. As Marshall J noted in *Furman v Georgia* 408 US 238 at 344-5 (1972):

'To preserve the integrity of the Eighth Amendment, the Court has consistently denigrated retribution as a permissible goal of punishment. It is undoubtedly correct that there is a demand for vengeance on the part of many persons in a community against one who is convicted of a particularly offensive act. At times a cry is heard that morality requires vengeance to evidence society's abhorrence of the act. But the Eighth Amendment is our insulation from our baser selves. The 'cruel and unusual' language limits the avenues through which vengeance can be channelled. Were this not so, the language would be empty and a return to the rack and other tortures would be possible in a given case.'

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[342] It remains then to balance the purposes of section 277 with the infringement of sections 9 and 10 it causes. In this exercise, it is undeniable that sections 9 and 10 are rights which lie at the heart of our constitutional framework and that section 277 grievously infringes the ambit of these rights. They weigh very heavily in the scales of proportionality. On the other hand, while the goals of deterrence and prevention which are the purpose of section 277 are important legislative purposes, it has not been satisfactorily demonstrated that they could not be sufficiently and realistically achieved by other means. After a careful consideration of the nature of the rights, the extent of the infringement of those rights, and the purposes of section 277, I remain unpersuaded that section 277 is a constitutionally acceptable limitation upon the rights to life and dignity.

[343] Section 33(1)(b) provides that, in addition to being reasonable and justifiable (and where appropriate, necessary) a limitation upon a right should not negate the essential contents of the right in question. As section 277 does not meet the requirements of reasonableness, justifiability and necessity, it is not necessary and it would be inadvisable to consider whether it negates the essential contents of the rights in question.

[344] In conclusion, then, the death penalty is unconstitutional. It is a breach of the rights to life and dignity that are entrenched in sections 9 and 10 of our Constitution, as well as a breach of the prohibition of cruel, inhuman and degrading punishment contained in section 11(2). The new Constitution stands as a monument to this society's commitment to a future in which all human beings will be accorded equal dignity and respect. We cannot postpone giving effect to that commitment.

[345] **SACHS J:** I agree fully with the judgment of the President of the court, and wish merely to elaborate on two matters, both of emphasis rather than substance, which I feel merit further treatment.

[346] The first relates to the balance between the right to life and the right to dignity. The judgment appropriately regards the two rights as mutually re-enforcing, but places greater reliance on the prohibition against cruel, inhuman or degrading punishment than it does on the

right to life. For reasons which I will outline, I think the starting-off point for an analysis of capital punishment should be the right to life.

[347] Secondly, I think it important to say something about the source of values which, in terms of section 35 of the Constitution, our interpretation is required to promote.

The Right to Life and Proportionality

[348] Decent people throughout the world are divided over which arouses the greatest horror: the thought of the State deliberately killing its citizens, or the idea of allowing cruel killers to co-exist with honest citizens. For some, the fact that we cold-bloodedly kill our own kind, taints the whole of our society and makes us all accomplices to the premeditated and solemn extinction of human life. For others, on the contrary, the disgrace is that we place a higher value on the life and dignity of the killer than on that of the victim. A third group prefer a purely pragmatic approach which emphasises not the moral issues, but the inordinate stress that capital punishment puts on the judicial process and, ultimately, on the Presidency, as well as the morbid passions it arouses in the public; from a purely practical point of view, they argue, capital punishment appears to offer an illusory solution to crime, and as such actually detracts from really effective measures to protect the public.

[349] We are not called upon to decide between these positions. They are essentially emotional, moral and pragmatic in character and will no doubt occupy the attention of the Constitutional Assembly. Our function is to interpret the text of the Constitution as it stands. Accordingly, whatever our personal views on this fraught subject might be, our response must be a purely legal one.

[350] This court is unlikely to get another case which is emotionally and philosophically more elusive, and textually more direct. Section 9 states: "Every person shall have the right to life." These unqualified and unadorned words are binding on the State (sections 4 and 7) and,

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on the face of it, outlaw capital punishment. Section 33 does allow for limitations on fundamental rights; yet, in my view, executing someone is not limiting that person's life, but extinguishing it.

[351] Life is different. In the vivid phrase used by Mahomed J in the course of argument, the right to life is not subject to incremental invasion. Life cannot be diminished for an hour, or a day, or 'for life'. While its enjoyment can be qualified, its existence cannot. Similarly, death is different. It is total and irreversible. Just, as there are no degrees of life, so there are no degrees of death (though, as we shall see, there were once degrees of severity in relation to how the sentence of death should be carried out). A level of arbitrariness and the possibilities of mistake that might be inescapable and therefore tolerable in relation to other forms of punishment, burst the parameters of constitutionality when they impact on the deliberate taking of life. The life of any human being is inevitably subject to the ultimate vagaries of the due processes of nature; our Constitution does not permit it to be qualified by the unavoidable caprices of the due processes of law.¹

[352] In the case of other constitutional rights, proportionate balances can be struck between the exercise of the right and permissible derogations from it. In matters such as torture, where no derogations are allowed, thresholds of permissible and impermissible conduct can be established. When it comes to execution, however, there is no scope for proportionality, while the only relevant threshold is, tragically, that to eternity.

[353] Even if one applies an objective approach in relation to the enjoyment of the right to life, namely, that the State is under a duty to create conditions to enable all persons to enjoy

¹The issue, of course, is whether inescapable caprice prevents the process from being 'due' when the consequences are so drastic.

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the right, in my view this cannot mean that the State's function can be extended to encompass complete, intentional and avoidable obliteration of any person's subjective right. Subject to further argument on the matter, my initial view is that the objective approach can be used to qualify the subjective enjoyment of the right, but not to eliminate it completely, and certainly not to eliminate the subject. It can provide the basis for limiting enjoyment of other subjective rights - to dignity, personal freedom, movement - for a period, or in relation to a concrete situation, or in respect of a physical space, if the requirements of section 33 are met. Yet, life by its very nature cannot be restricted, qualified, abridged, limited or derogated from in the same way. You are either alive or dead.

[354] In my view, section 33 permits limitations on rights, not their extinction. Our Constitution in this sense is different from those that expressly authorise deprivation of life if due process of law is followed, or those that prohibit the arbitrary taking of life. The unqualified statement that 'every person has the right to life', in effect outlaws capital punishment. Instead of establishing a constitutional framework within which the State may deprive citizens of their lives, as it could have done, our Constitution commits the State to affirming and protecting life. Because section 33 is not concerned with creating circumstances in which the right of any person may be disregarded altogether, nor with establishing exceptions which qualify the nature of the right itself, or exclude its operation, it cannot be invoked as an authorization for capital punishment.

[355] A full conceptualization of the right to life will have to await examination of a multitude of complex issues, each of which has its own contextual setting and particularities. In contrast to capital punishment, there are circumstances relating to the right to life where proportionality could well play an important role in balancing out competing interests. Whether or not section 33 would be applicable in each case, or whether proportionality will enter into the definition of the ambit of the right itself, or whether it relates simply to competition between two or more people to exercise the right when it is under immediate threat, need not be decided here. Thus, the German Constitutional Court has relied heavily on the principle of proportionality in relation to the question of when person-

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hood and legally protected life begin and, in particular of how to balance foetal rights as against the rights of the woman concerned.² Force used by the State in cases of self-defence or dealing with hostage-takers or mutineers, must be proportionate to the danger apprehended; the issue arises because two or more persons compete for the right to life; for the one to live, the other must die. The imminence of danger is fundamental: to kill an assailant or hostage-taker or prisoner of war after he or she has been disarmed, is regarded as murder.

[356] Executing a trussed human being long after the violence has ended, totally lacks proportionality in relation to the use of force, and does not fall within the principles of self-defence. From one point of view capital punishment, unless cruelly performed, is a contradiction in terms. The 'capital' part ends rather than expresses the 'punishment', in the sense that the condemned person is eliminated, not punished. A living being held for years in prison is punished; a corpse cannot be punished, only mutilated. Thus, execution ceases to be a punishment of a human being in terms of the Constitution, and becomes instead the obliteration of a sub-human from the purview of the Constitution.

[357] At its core, constitutionalism is about the protection and development of rights, not their extinction. In the absence of the clearest contextual indications that the framers of the Constitution intended that the State's sovereignty should be so extended as to allow it deliberately to take of the life of its citizens, Section 9 should be read to mean exactly what it says: Every person shall have the right to life. If not, the killer unwittingly achieves a final and perverse moral victory by making the state a killer too, thus reducing social abhorrence at the conscious extinction of human beings.

The Source of Values

²88 BVerfGE 203 (2nd Abortion Case).

SS LS

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- [358] The second issue that caused me special concern was the source of the values that we are to apply in assessing whether or not capital punishment is a cruel, inhuman or degrading punishment as constitutionally understood. The matter was raised in an amicus brief and argued orally before us by Ms. Davids on behalf of the Black Advocates Forum.
- [359] Her main contention was that we should not pronounce on the subject of capital punishment until we had been apprised by sociological analysis of the relevant expectations, sensitivities and interests of society as a whole. In the past, she stated, the all-white minority had imposed Eurocentric values on the majority, and an all-white judiciary had taken cognisance merely of the interests of white society. Now, for the first time, she added, we had the opportunity to nurture an open and democratic society and to have due regard to an emerging national consensus on values to be upheld in relation to punishment.
- [360] Many of the points she made had a political rather than a legal character, and as such should have been directed to the Constitutional Assembly rather than to the Constitutional Court. Nevertheless, much of her argument has a bearing on the way this court sees its functions, and deserves the courtesy of a reply.
- [361] To begin with, I wish firmly to express my agreement with the need to take account of the traditions, beliefs and values of all sectors of South African society when developing our jurisprudence.
- [362] In broad terms, the function given to this court by the Constitution is to articulate the fundamental sense of justice and right shared by the whole nation as expressed in the text of the Constitution. The Constitution was the first public document of legal force in South African history to emerge from an inclusive process in which the overwhelming majority were represented. Reference in the Constitution to the role of public international law [sections 35(1) and 231] underlines our common adherence to internationally accepted principles. Whatever the status of earlier legislation and jurisprudence may be, the Constitution speaks for the whole of society and not just one

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section.

- [363] The preamble, postamble and the principles of freedom and equality espoused in sections 8, 33 and 35 of the Constitution, require such an amplitude of vision. The principle of inclusivity shines through the language provisions in section 3, and underlies the provisions which led to the adoption of the new flag and anthem, and the selection of public holidays.
- [364] The secure and progressive development of our legal system demands that it draw the best from all the streams of justice in our country. This would include benefiting from the learning of those judges who in the previous era managed to articulate a sense of justice that transcended the limits of race, as well as acknowledging the challenging writings of academics such as the late Dr. Barend van Niekerk, who bravely broke the taboos on criticism of the legal system.³
- [365] Above all, however, it means giving long overdue recognition to African law and legal thinking as a source of legal ideas, values and practice. We cannot, unfortunately, extend the equality principle backwards in time to remove the humiliations and indignities suffered by past generations, but we can restore dignity to ideas and values that have long been suppressed or marginalized.
- [366] Redressing the balance in a conceptually sound, methodologically secure and functionally efficient way, will be far from easy. Extensive research and public debate will be required. Legislation will play a key role; indeed, the Constitution expressly acknowledges situations where legal pluralism based on religion can be recognised [14(3)], and where indigenous law can be applied (s.181). Constitutional Principle XIII declares that "..... *Indigenous law, like common law, shall be recognised and applied by*

³Cf. 1969 SALJ 455 and 1970 SALJ 60; S v Van Niekerk 1970 (3) SA 655.

55 LS

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the courts, subject to the fundamental rights contained in the Constitution and to legislation dealing specifically therewith".

[367] Yet the issue raised by Ms Davids goes beyond the question of achieving recognition of different systems of personal law.

[368] In interpreting Chapter 3 of the Constitution, which deals with fundamental rights, all courts must promote the values of an open and democratic society based on freedom and equality [s.35(1)]. One of the values of an open and democratic society is precisely that the values of all sections of society must be taken into account and given due weight when matters of public import are being decided. Ms. David's concern is that when it comes to interpreting Chapter 3, and in particular, the concept of punishment, the values of only one section of the community are taken into account.

[369] Paul Sieghart points out that "*the hallmarks of a democratic society are pluralism, tolerance and broad-mindedness. Although individual interests must on occasion be subordinated to those of a group, democracy does not mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position*".⁴ The principle that cognisance must be taken of minority opinions should apply with at least equal force to majority opinions; if one of the functions of the Constitution is to protect unpopular minorities from abuse, another must surely be to rescue the majority from marginalization.

[370] In a democratic society such as we are trying to establish, this is primarily the task of Parliament, where the will of the majority can be directly expressed within the framework of a system of fundamental rights. Our function as members of this court - as I see it - is, when interpreting the Constitution, to pay due regard to the values of all sections of society, and not to confine ourselves to the values of one portion only,

⁴The International Law of Human Rights, Oxford 1983, reprinted 1992, at p. 93 referring to James. Young and Webster v U.K. Judgment of the European Court of Human Rights on 13/08/81.

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however, exalted or subordinate it might have been in the past.

[371] It is a distressing fact that our law reports and legal textbooks contain few references to African sources as part of the general law of the country. That is no reason for this court to continue to ignore the legal institutions and values of a very large part of the population, moreover, of that section that suffered the most violations of fundamental rights under previous legal regimes, and that perhaps has the most to hope for from the new constitutional order.

[372] Appropriate source material is limited and any conclusions that individual members of this court might wish to offer would inevitably have to be tentative rather than definitive. We would certainly require much fuller research and argument than we had in the present case. The paucity of materials, however, is a reason for putting the issue on the agenda, not a justification for postponing it.

[373] The evolution of core values in all sections of the community is particularly relevant to the characterization of what at any moment are regarded as cruel, inhuman and degrading punishments [s.11(2)]. In my view, s.35(1) requires this court not only to have regard to public international law and foreign case law, but also to all the dimensions of the evolution of South African law which may help us in our task of promoting freedom and equality. This would require reference not only to what in legal discourse is referred to as 'our common law' but also to traditional African jurisprudence.

[374] I must stress that what follows relates to matters not properly canvassed in argument. The statements I make should not be regarded as an attempt on my part to 'lay down the law' on subjects that might well be controversial. Rather, the materials are presented for their possible relevance to the search for core and enduring values consistent with the text and spirit of the Constitution. It is unfortunate they were not placed before us to enable their reliability and their merits to be debated; they are intended to indicate that, speaking for myself, these are the kinds of scholarly sources which I would have regarded as helpful in determining questions such as the present one, if Ms. Davids had presented them to us

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rather than complain about their absence. I might add that there is nothing to indicate that had these sources been properly presented and subjected to the rigorous analysis which our judicial procedure calls for, the decision of this Court would have been different. There does not appear to be any foundation for her plea that we postpone the matter. On the contrary, the materials that I will refer to point to a source of values entirely consistent with the overall thrust of the President's judgment, and, in particular, with his reference to the constitutionally acknowledged principle of *ubuntu*.⁵

[375] Our libraries contain a large number of studies by African and other scholars of repute, which delineate in considerable detail how disputes were resolved and punishments meted out in traditional African society. There are a number of references to capital punishment and I can only repeat that it is unfortunate that their import was never canvassed in the present matter.

⁵See the postamble, also referred to as the epilogue or afterword, where reference is made to the "need for *ubuntu*".

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[376] In the first place, the sources indicate that it is necessary to acknowledge that systems of law enforcement based on rational procedures were well entrenched in traditional society. In his classic study of the Tsonga-speaking people, Henri Junod observes that "... *the Bantus possess a strong sense of justice. They believe in social order and in the observance of the laws, and, although these laws were not written, they are universal and perfectly well known*".⁶ The Cape Law Journal, in a long and admiring report on what it refers to as a Kafir Law Suit, declares that in a typical trial 'the Socratic method of debate appears in all its perfection.'⁷ John Henderson Soga points out that offences were considered to be against the community or tribe rather than the individual, and punishment of a constructive or corrective nature was administered for disturbing the balance of tribal life.⁸

[377] More directly for our purposes, the materials suggest that amongst the Cape Nguni, the death penalty was practically confined to cases of suspected witchcraft, and was normally spontaneously carried out after accusation by the diviners.⁹ Soga says that the death penalty was never imposed, the reasoning being as follows: 'Why sacrifice a second life for one already lost?'¹⁰ Professor Z.K. Mathews is in broad agreement.¹¹ The Cape Law Journal notes that summary executions were usually inflicted for assault on the wives of chiefs or aggravated cases of witchcraft, but otherwise the death sentence 'seldom followed even murder, when committed without the aid of supernatural powers; and as banishment, imprisonment and corporal punishment are all unknown in (African) jurisprudence, the property of the people constitutes the great fund out of which debts of justice are paid'.¹²

⁶Junod, Henri A - *The Life of a South African Tribe* 2nd Edition published Macmillan 1927 at p. 436.

⁷1889 CLJ 87 - Extracts from Maclean's Handbook.

⁸John Henderson Soga - *The Ama-Xosa: Life and Customs*, published Lovedale Press, South Africa; London, Kegan Paul, at p. 46.

⁹Hammond-Tooke D: *The 'other side' of frontier history: a model of Cape Nguni political process*, in *African Societies in Southern Africa* ed. Leonard Thompson, London 1969, at p. 255.

¹⁰Soga supra at p. 46.

¹¹Bantu Law and Western Civilisation in South Africa - a study in the clash of cultures (1934 Yale University MA Thesis).

¹²1889 CLJ 89, 1890 CLJ 23 at 34.

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[378] Similar approaches were apparently followed in other African communities. The Sotho King Moshoeshe was said to be well known for his opposition to capital punishment, even for supposed witchcraft,¹³ as was Montshiwa during his long reign as King of the Barolong.¹⁴ The absence of capital punishment among the Zulu people apparently angered Shepstone, Lieutenant Governor of Natal. Donald Morris writes as follows:

[379] *'Hearken to Shepstone on November 25, 1850, substituting capital punishment for the native system of cattle fines in the case of murder:*

¹³J M Orpen: *History of the Basutus of South Africa*, Cape Argus 1857, Reprinted UCT 1955.

¹⁴Molema SM: *Montshiwa (1815 - 1896) Barolong Chief and Patriot* (published C. Struik 1966).

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- [380] *"... Know ye all a man's life has no price : no cattle can pay for it. He who intentionally kills another, whether for Witchcraft or otherwise, Shall die himself."¹⁵*
- [381] Thus, if these sources are reliable, it would appear that the relatively well-developed judicial processes of indigenous societies did not in general encompass capital punishment for murder. Such executions as took place were the frenzied, extra-judicial killings of supposed witches, a spontaneous and irrational form of crowd behaviour that has unfortunately continued to this day in the form of necklacing and witch-burning. In addition, punishments by military leaders in terms of military discipline were frequently of the harshest kind and accounted for the lives of many persons. Yet, the sources referred to above indicate that, where judicial procedures were followed, capital punishment was in general not applied as a punishment for murder.
- [382] In seeking the kind of values which should inform our broad approach to interpreting the Constitution, I have little doubt as to which of these three contrasted aspects of tradition we should follow and which we should reject. The rational and humane adjudicatory approach is entirely consistent with and re-enforcing of the fundamental rights enshrined in our Constitution; the exorcist and militarist concepts are not.
- [383] We do not automatically invoke each and every aspect of traditional law as a source of values, just as we do not rely on all features of the common law. Thus, we reject the once powerful common law traditions associated with patriarchy and the subordination of servants to masters, which are inconsistent with freedom and equality, and we uphold and develop those many aspects of the common law which feed into and enrich the fundamental rights enshrined in the Constitution. I am sure that there are many aspects and values of traditional African law which will also have to be discarded or developed in order to ensure compatibility with the principles

¹⁵Donald R Morris: *The washing of the Spears - A History of the Rise of the Zulu Nation under Shaka and its Fall in the Zulu war of 1879.* Jonathan Cape 1965, Random House 1995, p. 174-5.

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of the new constitutional order.

[384] It is instructive to look at the evolution of values in the colonial settlement as well as in African society. In the Dutch settlement, as yet unaffected by the changes sweeping Europe, torture was used until the end of the 18th century as an integral part of the judicial process.¹⁶ Persons were not only condemned to death, the judges specified in detail gruesome modes of execution designed to produce maximum pain and greatest indignity over the longest period of time. The concept of a dignified execution was seen as a contradiction in terms. The public was invited to witness the lingering death, the mutilation and the turning of human beings into carrion for the birds. This is logical. If executions are to deter, they should receive the maximum publicity, and the killers should undergo an agony equal to that to which they subjected their victims.

[385] Yet the British colonial administration that took over at the time of the Napoleonic wars, adopted a different position. Torture was abolished. The multiple degrees of severity of capital punishment were replaced by the single relatively swift mode of hanging. The reason for this was that torture and cruel modes of execution were regarded as barbaric in themselves and degrading to the society which practised them. The incumbent judges protested that whatever might have been appropriate in Britain, in the conditions of the Cape to rely merely on hangings, corporal punishment and prison was to invite slave uprisings and mayhem. The public executioner was so distressed that he hanged himself. All this is a matter of record.¹⁷

¹⁶C. Graham Botha 1915 SALJ 319. More generally, see footnote 15. These matters were referred to but not developed in Applicants' written argument.

¹⁷Sir John Barrow, FRS: *Travels into the Interior of Southern Africa* Volume 2 p. 138 -9. London 1806 quoted in C. Graham Botha 1915 SALJ 322, also by E. Kahn, *the Death Penalty* 1970 THRHR, p. 110. Letter by British Commander to Cape Court of Justice quoted by C. Graham Botha 1913 SALJ 294; reply by Court quoted in 1915 SALJ 327; see also, V. de Kock - *Those in Bondage, an account of the life of the slave at the Cape*, George Allen and Unwin, London 1950 p 158-60. For punishments generally see de V Roos 1897 CLJ 11-23, C.H. van Zyl 1907 SALJ 352, 370; 1908 SALJ 4, 264.

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[386] Two centuries have passed since then, and it would not be surprising if the framers of the Constitution felt that a further qualitative evolution had taken place. Current practices in the Southern African region as a whole with regard to capital punishment, testify to such an evolution. Information placed before this court¹⁸ showed that of six countries sharing a frontier with South Africa, only one has carried out executions in recent years (Zimbabwe). The last judicial execution in Lesotho was in 1984, in Swaziland in 1983 and in Botswana in 1986, although capital punishment still remains on the statute books and people have in fact been sentenced to death in these countries. Mozambique and Namibia both expressly outlaw capital punishment in their constitutions.

[387] The positions adopted by the framers of the Mozambican and Namibian constitutions were not apparently based on bending the knee to foreign ideas, as was implicit in Ms. David's contention, but rather on memories of massacres and martyrdom in their own countries. As Churchill is reputed to have said, the grass never grows green under the gallows.¹⁹ Germany after Nazism, Italy after fascism, and Portugal, Peru, Nicaragua, Brazil, Argentina, the Philippines and Spain all abolished capital punishment for peacetime offences after emerging from periods of severe repression. They did so mostly through constitutional provisions.²⁰

[388] It is not unreasonable to think that similar considerations influenced the framers of our Constitution as well. In avoiding any direct or indirect reference to the death sentence, they were able to pay due regard to the fact that one of this country's greatest assets was the passion for freedom, democracy and human rights amongst the generation of persons who fought hardest against injustice in the past. Included in this was a deep respect, amounting to veneration, for life. The emerging nation could squander this precious asset at its peril. The framers could not

¹⁸Applicants' heads of argument, taken from *When the State Kills - The Death Penalty v. Human Rights*, Amnesty International, London 1989.

¹⁹This is confirmed by South African experience ranging from Slachters Nek to the Cape Rebels to the 1922 Strike leaders to Vuyisile Mini and Solomon Mahlangu in recent times.

²⁰Amnesty International op cit. There has also been a marked move away from capital punishment in the countries of Eastern Europe after the ending of authoritarian one-party rule there.

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have been unaware of the fact that the time to guard against future repression was when memories of past injustice and pain were still fresh. If they chose sweeping language in favour of life, this could well in part have been because of a realisation that this was the moment to remove any temptation in coming years to attempt to solve grave social and political problems by means of executing opponents.

- [389] Historically, constitutionalism was a product of the age of enlightenment. It was associated with the overthrow of arbitrary power and the attempt to ensure that government functioned according to established principles and processes and in the light of enduring values. It came together with the abolition of torture and the opening up of dungeons. It based itself on the twin propositions that all persons had certain inherent rights that came with their humanity, and that no one had a God-given right to rule over others.
- [390] The second great wave of constitutionalism after World War II, was also a reaction to gross abuse of power, institutionalised inhumanity and organised disrespect for life. Human rights were not merely declared to exist: against the background of genocide and crimes against humanity committed in the name of a racial ideology linked to state sovereignty, firm constitutional limits were placed on state power. In particular, the more that life had been cheapened and the human personality disregarded, the greater the entrenchment of the rights to life and dignity.
- [391] Constitutionalism in our country also arrives simultaneously with the achievement of equality and freedom, and of openness, accommodation and tolerance. When reviewing the past, the framers of our Constitution rejected not only the laws and practices that imposed domination and kept people apart, but those that prevented free discourse and rational debate, and those that brutalised us as people and diminished our respect for life.
- [392] Accordingly, the idealism that we uphold with this judgment is to be found not in the minds of the judges, but in both the explicit text of the Constitution itself, and the values it enshrines. I have no doubt that even if, as the President's judgment suggests, the framers subjectively intended to keep the issue open for determination by this court, they effectively closed the door

by the language they used and the values they required us to uphold. It is difficult to see how they could have done otherwise. In a founding document dealing with fundamental rights, you either authorize the death sentence or you do not. In my view, the values expressed by section 9 are conclusive of the matter. Everyone, including the most abominable of human beings, has the right to life, and capital punishment is therefore unconstitutional.

CASE NO : CCT/3/94

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CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 110/11
[2012] ZACC 16

In the matter between:

MINISTER OF HOME AFFAIRS First Applicant

DIRECTOR-GENERAL, DEPARTMENT OF HOME AFFAIRS Second Applicant

GEORGE MASANABO, ACTING DIRECTOR OF DEPORTATIONS Third Applicant

ANN MOHUBE, ACTING DEPUTY DIRECTOR LINDELA HOLDING FACILITY Fourth Applicant

JOSEPH SWARTLAND, ASSISTANT DIRECTOR LINDELA HOLDING FACILITY Fifth Applicant

and

EMMANUEL TSEBE First Respondent

JERRY OFENSE PITSOE (PHALE) Second Respondent

SOCIETY FOR THE ABOLITION OF THE DEATH PENALTY IN SOUTH AFRICA Third Respondent

BOSASA (PTY) LTD T/A LEADING PROSPECTS TRADING Fourth Respondent

MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT Fifth Respondent

LS
SS

MINISTER OF INTERNATIONAL RELATIONS
AND CO-OPERATION

Sixth Respondent

GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

Seventh Respondent

and

AMNESTY INTERNATIONAL

Amicus Curiae

and

Case CCT 126/11
[2012] ZACC 16

In the matter between:

MINISTER OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT

First Applicant

GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

Second Applicant

and

EMMANUEL TSEBE

First Respondent

JERRY OFENSE PITSOE (PHALE)

Second Respondent

SOCIETY FOR THE ABOLITION OF THE DEATH
PENALTY IN SOUTH AFRICA

Third Respondent

MINISTER OF HOME AFFAIRS

Fourth Respondent

DIRECTOR-GENERAL, DEPARTMENT OF
HOME AFFAIRS

Fifth Respondent

GEORGE MASANABO, ACTING DIRECTOR OF
DEPORTATIONS

Sixth Respondent

ANN MOHUBE, ACTING DEPUTY DIRECTOR
LINDELA HOLDING FACILITY

Seventh Respondent

LS
SS

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JOSEPH SWARTLAND, ASSISTANT DIRECTOR
LINDELA HOLDING FACILITY

Eighth Respondent

BOSASA (PTY) LIMITED T/A LEADING PROSPECTS
TRADING

Ninth Respondent

MINISTER OF INTERNATIONAL RELATIONS
AND CO-OPERATION

Tenth Respondent

and

AMNESTY INTERNATIONAL

Amicus Curiae

Heard on : 23 February 2012

Decided on : 27 July 2012

JUDGMENT

ZONDO AJ (Mogoeng CJ, Cameron J (except for [55], [56] and [60] to [62]), Froneman J (except for [55], [56] and [60] to [62]), Jafta J, Khampepe J, Maya AJ, Nkabinde J, Skweyiya J (except for [55], [56] and [60] to [62]) and Van der Westhuizen J (except for [55], [56] and [60] to [62]) concurring):

Introduction

[1] The applicants¹ for leave to appeal are the Minister of Justice and Constitutional Development (Justice Minister), the Minister of Home Affairs (Home Affairs Minister),

¹ In this Court, although the Minister of Justice and Constitutional Development and the Minister of Home Affairs and officials under the latter's control brought separate applications, this is one matter. There seems to be confusion in the Notice of Motion and the Founding Affidavit of the Minister of Home Affairs' application to this Court as to whether it was direct access or direct appeal under Rule 19, but it will be treated as an application for direct appeal under Rule 19.

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the Government of the Republic of South Africa (Government), the Director-General of the Department of Home Affairs and various officials of that Department. The respondents include Mr Emmanuel Tsebe and Mr Jerry Ofense Pitsoe (Phale).² The applicants were some of the respondents in two applications that were brought separately by Mr Tsebe and Mr Phale in the South Gauteng High Court (High Court) but were later consolidated into one matter.³

[2] The primary purpose⁴ of Mr Tsebe's and Mr Phale's applications was to obtain an order restraining the Government, the Home Affairs Minister, certain officials of the Department of Home Affairs, as well as the Justice Minister and others from extraditing or deporting the applicant in each case to the Republic of Botswana (Botswana) in the absence of a written assurance from Botswana that, if convicted of murder, the death penalty would not be imposed, or, if imposed, it would not be executed (requisite assurance). Mr Tsebe also sought an order declaring that, in the absence of the requisite assurance, his extradition or deportation would be unlawful and unconstitutional.

[3] The Justice Minister and the Government brought a counter-application in the High Court in which they sought an order declaring in effect that, where the Government

² At some stage in Mr Pitsoe's life he used the surname Phale and later used the surname Pitsoe. Phale is the surname of his stepfather and Pitsoe is his mother's cousin's surname which he used from the time when he lived with his mother's cousin in former Bophuthatswana.

³ In the High Court, Lamont J granted an order consolidating the Tsebe and Phale matters.

⁴ This refers to the purpose of the two applications as at the hearing of the applications before the High Court where some orders that had been asked for in the Notices of Motion were abandoned.

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has been requested to extradite a person to a foreign State to face a criminal charge which could lead to the imposition and execution of a death sentence and the Government has asked that State to give the requisite assurance but that State has refused, the Government is then entitled to extradite or deport the person concerned to that State.

[4] The applications were heard by a Full Court.⁵ The High Court granted Mr Tsebe's and Mr Phale's applications and dismissed the Justice Minister's and the Government's counter-application.⁶

[5] The applicants now apply for leave to appeal directly to this Court against the Full Court's judgment and order. Before the applications can be considered, it is necessary to set out the factual background to the matter.

⁵ The Full Court consisted of Mojapelo DJP, Claassen J and Bizos AJ.

⁶ The order that was made by the High Court in both cases 27682/10 and 51010/10 was in the following terms:

1. Declaring the deportation and/or extradition and/or removal of the applicant to the Republic of Botswana unlawful and unconstitutional, to the extent that such deportation and/or extradition and/or removal be carried out without the written assurance from the Government of Botswana that the applicant will not face the death penalty there under any circumstance.
2. Prohibiting the respondents from taking any action whatsoever to cause the applicant to be deported, extradited or removed from South Africa to Botswana until and unless the Government of the Republic of Botswana provides a written assurance to the respondents that the applicant will not be subject to the death penalty in Botswana under any circumstances.
3. Directing the first and second respondent and any other party who opposed the relief sought herein to pay the applicants' costs inclusive of the cost of two counsel.
4. The counter-applications are dismissed with costs which are to include the costs of two counsel."

The judgment of the Full Court has been reported as *Tsebe and Another v Minister of Home Affairs and Others; Pitsoe v Minister of Home Affairs and Others* 2012 (1) BCLR 77 (GSJ) (The High Court judgment).

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Background

[6] In July 2008 Mr Tsebe, a national of Botswana, was accused of murdering his wife or romantic partner in Botswana. A similar accusation was made against Mr Phale in relation to his girlfriend or wife in October 2009. It is not necessary to give details of how they are alleged to have murdered their partners but it suffices to say that, if the allegations about how they killed their partners are true, the killings were brutal. When the police in Botswana tried to arrest Mr Tsebe and Mr Phale in separate incidents and at separate times, they fled to South Africa.

[7] It is common cause that Mr Tsebe's entry into South Africa was illegal. Mr Phale disputes the contention that his entry into South Africa was illegal. He says that he is a South African citizen and was issued a South African identity document. The Department of Home Affairs says that he is not a South African citizen and that he obtained the South African identity document fraudulently. After Mr Tsebe's and Mr Phale's flight from Botswana, the authorities in Botswana issued warrants of arrest against them. Botswana also requested South Africa to extradite the men to Botswana to face murder charges.

[8] On or about 27 July 2008 Mr Tsebe was arrested. He was initially detained at Tomberg Police Station and Polokwane Prison from 28 July 2008 to 25 August 2009, and later at Lindela Holding Facility from 26 August 2009 onwards. The detention at Tomberg Police Station was effected pending the outcome of extradition proceedings.

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The detention at Lindela Holding Facility was effected pending a final decision whether he would be extradited to Botswana to face the murder charge. He appeared in the Mokopane Magistrate's Court a number of times in connection with his extradition proceedings.

[9] An extradition inquiry was initiated in the Mokopane Magistrate's Court, in terms of the Extradition Act⁷ (EA), to establish whether Mr Tsebe was liable for extradition. The then Justice Minister, Mr Surty, wrote to his counterpart in Botswana and informed him that South Africa would not extradite Mr Tsebe unless Botswana gave South Africa the requisite assurance. Botswana's response was that it would not give the requisite assurance because there was no provision for it in its domestic law and in its extradition treaty with South Africa.

[10] A meeting between the current Justice Minister and his counterpart from Botswana was held without success on 14 July 2009 to try and resolve the impasse between the two countries. Botswana's Justice Minister then suggested that South Africa should put Mr Tsebe on trial in South Africa for the murder. The Justice Minister subsequently wrote to the Justice Minister of Botswana and informed him that South Africa had not passed legislation that would give the South African courts jurisdiction to try people for crimes committed outside its borders. On 11 March 2009 the extradition inquiry in the

⁷ Act 67 of 1962.

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Mokopane Magistrate's Court was completed. The Magistrate found that Mr Tsebe was liable for extradition.

[11] On 25 August 2009 the Justice Minister issued an order in terms of section 11(b)(iii) of the EA⁸ to the effect that Mr Tsebe should not be surrendered to Botswana to face the charge of murder. The Justice Minister's order in this regard was based on internal legal advice given to him in the light of the provisions of section 11(b)(iii) of the EA and the decision of this Court in *Mohamed and Another v President of the RSA and Others*⁹ (*Mohamed*).

[12] Mr Tsebe was subsequently transferred to the Lindela Holding Facility pending deportation to Botswana despite the Justice Minister's order that he should not be surrendered to Botswana. Mr Tsebe was transferred because certain officials of the Department of Home Affairs, despite the Justice Minister's order, took the view that

⁸ In so far as it is relevant, section 11 of the EA reads as follows:

"The Minister may—

...

(b) order that a person shall not be surrendered:

...

(iii) at all, or before the expiration of a period fixed by the Minister, if he or she is satisfied that by reason of the trivial nature of the offence or by reason of the surrender not being required in good faith or in the interest of justice, or that for any other reason it would, having regard to the distance, the facilities for communication and to all the circumstances of the case, be unjust or unreasonable or too severe a punishment to surrender the person concerned."

⁹ [2001] ZACC 18; 2001 (3) SA 893 (CC); 2001 (7) BCLR 685 (CC). As to what was decided in *Mohamed*, see below at [25].

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Mr Tsebe should be deported since he was an illegal foreigner and in terms of the Immigration Act¹⁰ (IA) he was required to be deported. For quite some time officials of the Department of Justice and officials of the Department of Home Affairs took contradictory positions on whether Mr Tsebe should be deported, with officials of the Department of Justice saying he should not and officials of the Department of Home Affairs saying he should be deported.

[13] Although the Justice Minister had issued a non-extradition order in respect of Mr Tsebe, he subsequently deposed to an affidavit opposing Mr Tsebe's and Mr Phale's applications. He made an about-turn saying that he had not applied his mind to all the issues when he took the decision to issue the non-extradition order. He contended that, since Botswana had refused to give the requisite assurance, the Government was entitled to extradite Mr Tsebe to Botswana. He said this despite the fact that the extradition may have posed a risk for the imposition of the death penalty if Mr Tsebe was convicted. The Justice Minister said that South Africa would use other forums under the auspices of the Southern African Development Community (SADC) to try and get Botswana not to execute the death penalty. The Justice Minister did not say what would prevent Botswana from executing the death penalty if South Africa's efforts in the SADC failed, since Mr Tsebe would have already been extradited by the time those efforts failed.

¹⁰ Act 13 of 2002. Section 32(2) of the IA reads: "Any illegal foreigner shall be deported."

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[14] Ultimately, the Home Affairs Minister took the decision that Mr Tsebe should be deported. It would appear that she based her decision, at least in part, on the legal opinions given to her by certain internal legal advisors in the Department of Home Affairs. One reason for the Home Affairs Minister's decision to deport Mr Tsebe to Botswana, despite the fact that Botswana had refused to give the requisite assurance, was that, even after Mr Tsebe's deportation, South Africa could still continue to put pressure on Botswana not to execute the death penalty if Mr Tsebe was convicted of the murder and sentenced to death. The Home Affairs Minister also did not say what would happen if Botswana did not give in to the pressure at a time when Mr Tsebe was already in Botswana. Another reason was that Mr Tsebe remained an illegal foreigner and the IA required that he be deported.

[15] To prevent his imminent deportation, Mr Tsebe brought an urgent application in the High Court for an interim interdict to restrain the Home Affairs Minister, certain officials of the Department of Home Affairs, the Justice Minister and the Government from extraditing or deporting him to Botswana in the absence of the requisite assurance. Victor J granted an interim interdict pending the outcome of an application by Mr Tsebe for the review and setting aside of the decision of the Home Affairs Minister that he be deported. After Mr Tsebe had launched his application in the High Court, he was charged with contraventions of the IA and taken to Krugersdorp Prison where he was detained as an awaiting trial prisoner. Mr Tsebe passed away on 27 November 2010 before the High Court could hear his application.

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[16] After his arrest in Limpopo, Mr Phale was detained by the South African Police Service. He subsequently appeared in the Mankweng Magistrate's Court. His last appearance there was on 2 March 2010. On that day he was told that the criminal case against him had been withdrawn.

[17] The withdrawal of the case against Mr Phale occurred because an official of the Department of Justice had advised the National Prosecuting Authority (NPA) that, in the light of the non-extradition order in Mr Tsebe's matter, the Justice Minister would not order the extradition of Mr Phale in the absence of the requisite assurance and the NPA had then shared this information with the Director of Public Prosecutions in Botswana. After consultation with the Executive in Botswana, the Director of Public Prosecutions in Botswana advised the NPA that Botswana would not give the requisite assurance in Mr Phale's case either. It seems that, as a result of these communications, the NPA decided not to pursue extradition proceedings in regard to Mr Phale and that is why the "criminal case" was withdrawn against him. All this happened without the Justice Minister having taken any decision with regard to extradition proceedings concerning Mr Phale and Botswana's request for Mr Phale's extradition.

[18] Mr Phale was informed that he was to be deported to Botswana. In December 2010 he launched his application in the High Court. After this, the Department of Home Affairs had criminal charges initiated against him in the Rustenburg

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Magistrate's Court. One of the charges was a charge of fraud. It was alleged that he had fraudulently obtained a South African identity document. Other charges related to contraventions of the IA.

The decision of the High Court

[19] There was only one issue for determination by the High Court. That was whether or not the Government had the power to extradite or deport Mr Tsebe and Mr Phale to Botswana to face their respective murder charges even though Botswana had refused to give the requisite assurance.¹¹ If the answer to this question was in the affirmative, that would be the end of the matter and Mr Tsebe's and Mr Phale's applications would fall to be dismissed. If the answer was in the negative, Mr Tsebe and Mr Phale would be entitled to the declaratory order and interdict they sought.

[20] In a very thorough judgment the Full Court considered the issue and concluded that it was bound by the decision of this Court in *Mohamed* and that there was no basis on which the present case could be distinguished from *Mohamed*.¹² In the light of this the Court concluded that, if the Government extradited, deported or removed Mr Tsebe and Mr Phale to Botswana, the extradition or deportation would subject them to the risk of the imposition of the death penalty and would be unlawful.¹³ The Full Court held that the

¹¹ High Court judgment above n 6 at para 3.

¹² Id at para 98.

¹³ Id at paras 99-100.

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respondents before it would also be in breach of their constitutional obligations under section 7(2) of the Constitution¹⁴ if they extradited or deported or in any way removed Mr Phale to Botswana without the requisite assurance.

Jurisdiction of this Court

[21] There can be no doubt that this Court has jurisdiction over this matter because the matter concerns the constitutionality of the deportation or extradition by the State of a person to a country in which the death penalty is a competent sentence for the offence for which he will stand trial in circumstances where that country has refused to give the requisite assurance. The questions are whether in effecting an extradition or deportation of a person in such a case the State will be acting in breach of its obligations provided for in section 7(2) of the Constitution and whether such an extradition or deportation would violate Mr Tsebe's and Mr Phale's right to life, right to human dignity and right not to be treated or punished in a cruel, inhuman or degrading way.¹⁵

Condonation

[22] The applicants were late in lodging their applications. They have applied for condonation. Having regard to the explanation that they have given and the importance of the issues raised, there can be no doubt that it is in the interests of justice that condonation be granted.

¹⁴ See below at [28].

¹⁵ See below at [30].

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Is it in the interests of justice to grant leave to appeal to this Court?

[23] It is clear that there is much uncertainty within the Executive as to the effect of the Constitution and this Court's decision in *Mohamed*. Between the parties there are no substantive disagreements on the facts. There is no reason why this Court should first have the views of the Supreme Court of Appeal before it can entertain this matter. The matter raises important constitutional issues. There is also some urgency in the need to ensure that the Executive knows exactly what is expected of it in cases of extradition and deportation involving persons in the position of Mr Tsebe and Mr Phale. Furthermore, the Justice Minister and the Home Affairs Minister are faced with, on the one hand, the decision of this Court in *Mohamed*, which, if applicable to this case, would preclude the extradition or deportation of Mr Phale in the absence of the requisite assurance and, on the other, the provisions of the IA which require that an illegal foreigner be deported. In my view it is in the interests of justice that this Court should grant the applicants leave to appeal directly to it.

The merits of the appeal

[24] The issue for determination is whether or not the Government has the power to extradite or deport or in any way surrender a person, including an illegal foreigner, to another country to stand trial on capital charges if the death penalty is a competent sentence in that country and that country is not prepared to give the requisite assurance. Within the context of an appeal the question is whether the High Court's decision that the

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Government had no power to extradite, deport or surrender Mr Tsebe or Mr Phale to Botswana in the absence of the requisite assurance and interdicting the Government from extraditing or deporting them and the decision dismissing the Justice Minister's and Government's counter-application were correct.

[25] The approach taken by this Court in *Mohamed* was that, when South African authorities hand someone over to another country to stand trial on a charge which, to the knowledge of the South African authorities, could lead to the imposition and execution of the death penalty on such person if he is found guilty, they facilitate the imposition of the death penalty and that is a breach of their obligations contained in section 7(2) of the Constitution.¹⁶ In *Mohamed* this Court held that the conduct of the South African authorities in handing Mr Mohamed over to the authorities of the United States of America (US) to stand trial in that country, in the full knowledge¹⁷ that, if convicted, he could be sentenced to death, without obtaining the requisite assurance from the US government, violated Mr Mohamed's constitutional right to life, right to human dignity and right not to be treated or punished in a cruel, inhuman or degrading way.¹⁸

[26] If the correctness of *Mohamed* is not challenged, the answer to this question before us will depend on two further questions. One will be whether the present case is

¹⁶ *Mohamed* above n 9 at paras 58 and 60.

¹⁷ *Id* at para 60.

¹⁸ *Id* at paras 37, 58 and 60.

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distinguishable from *Mohamed*. If it is, the Court will then deal with the matter in the light of that distinction. If it is not, the next question will be whether or not, if extradited or deported, Mr Phale would face a sufficient risk of the imposition and execution of the death penalty to justify this Court holding that his extradition or deportation would constitute a violation of the Constitution or a facilitation by South Africa of the imposition of the death penalty on him in Botswana if he is convicted.

The Constitution

[27] This country is founded on, among others, the following values:¹⁹

- (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.
- (b) Supremacy of the Constitution and the rule of law.

Our Constitution is the supreme law of the Republic. Law or conduct inconsistent with it is invalid and the obligations imposed by it must be fulfilled.²⁰

¹⁹ Section 1 of the Constitution.

²⁰ Section 2 of the Constitution.

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[28] Section 7(1) of the Constitution provides that our Bill of Rights, which covers sections 7 to 39, is a cornerstone of our democracy. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

Section 7(2) reads:

“The state must respect, protect, promote and fulfill the rights in the Bill of Rights.”

[29] Section 7(3) provides that the rights in the Bill of Rights are subject to the limitations contained or referred to in section 36 or elsewhere in the Bill of Rights. Section 8(1) of the Constitution provides that the Bill of Rights “applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.” Section 9(1) provides that everyone is equal before the law and has the right to equal protection and benefit of the law.

[30] Sections 10, 11 and 12 of the Constitution deal, respectively, with the right to human dignity, the right to life and the right to freedom and security of the person.

Section 10 reads:

“Everyone has inherent dignity and the right to have their dignity respected and protected.”

Section 11 reads:

“Everyone has the right to life.”

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Section 12(1) reads:

“Everyone has the right to freedom and security of the person, which includes the right—

- (a) not to be deprived of freedom arbitrarily or without just cause;
- (b) not to be detained without trial;
- (c) to be free from all forms of violence from either public or private sources;
- (d) not to be tortured in any way; and
- (e) not to be treated or punished in a cruel, inhuman or degrading way.”

The provisions which this matter directly raises for consideration are those relating to the values upon which the democratic South Africa is founded, sections 2, 7(1) and (2), 10, 11 and 12 of the Constitution.

International law

[31] It is necessary also to refer to some instruments or treaties relating to extradition and the fight against crime to which both South Africa and Botswana are parties. In 1969 South Africa and Botswana concluded a treaty on extradition (Extradition Treaty). In terms of that treaty Botswana and South Africa agreed that they may refuse to extradite a person for a crime punishable by death. That treaty is still in operation. Article 6 reads:

“Capital Punishment

Extradition may be refused if under the law of the requesting Party the offence for which extradition is requested is punishable by death and if the death penalty is not provided for such offence by the law of the requested Party.”

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[32] Furthermore, South Africa and Botswana and certain other SADC countries are also parties to the Protocol on Extradition concluded under the auspices of the SADC (SADC Extradition Protocol). Article 5(c) of the Protocol allows a State which is being requested to extradite a person to refuse to do so—

“if the offence for which extradition is requested carries a death penalty under the law of the Requesting State, unless that State gives such assurance, as the Requested State considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out.”

This article goes on to say:

“Where extradition is refused on this ground, the Requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person for the offence for which extradition had been requested”.

[33] This is the second instrument, to which both South Africa and Botswana are parties, that allows one of them to refuse extradition of a suspect charged with a capital offence in the absence of the requisite assurance. From this it is clear that South Africa has acted in accordance with the Extradition Treaty between itself and Botswana and in accordance with the SADC Extradition Protocol in insisting on the requisite assurance before it could extradite Mr Tsebe.

[34] Article 5(c) of the SADC Extradition Protocol goes even further because it obliges the requested State (South Africa in the present case), if the requesting State (Botswana

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in the present case) so requests, to take steps to have the person whom it refuses to extradite put on trial before its own courts for the crime for which extradition was sought. Under the SADC Extradition Protocol South Africa has agreed that, if so requested by, for example Botswana, to do so, it will put persons in the position of Mr Phale on trial before the South African courts. South Africa and Botswana are also signatories to other SADC treaties and protocols in terms of which they have bound themselves to work together and with other SADC countries to combat crime in the SADC region.²¹

The death penalty in Botswana

[35] It is also necessary to have regard to the statutory provisions governing the imposition of the death penalty for murder in Botswana. Section 203 of the Penal Code of Botswana reads as follows:

- “(1) Subject to the provisions of subsection (2), any person convicted of murder *shall be sentenced to death.*
 - (2) Where a court in convicting a person of murder is of the opinion that there are extenuating circumstances, the court may impose any sentence other than death.
 - (3) In deciding whether or not there are any extenuating circumstances the court shall take into consideration the standards of behaviour of an ordinary person of the class of the community to which the convicted person belongs.”
- (Emphasis added.)

²¹ For example, the Protocol on Combating Illicit Drugs which came into operation on 20 March 1999; the Protocol on Politics, Defence and Security Co-operation which came into force on 2 March 2004; the Protocol on the Control of Firearms, Ammunition and Other Related Materials, which came into force on 8 November 2004; the Protocol on Mutual Legal Assistance in Criminal Matters which came into force on 1 March 2007; and the SADC Mutual Defence Pact which came into force on 17 August 2008.

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This provision makes the imposition of the death sentence on those convicted of murder in Botswana mandatory where there are no extenuating circumstances. The Penal Code of Botswana also provides that, where a person has been sentenced to death, he shall be hanged by the neck until he dies.²²

Statutory framework

[36] It is also necessary to refer to provisions of the EA and the IA which may have a bearing on the dispute between the parties. In part, section 11(b)(iii) of the EA²³ gives the Justice Minister the power to order that a person should not be surrendered to another State if the offence for which he is wanted is of a trivial nature or if his surrender is not required in the interests of justice or if, for any other reason and having regard to all the circumstances of the case, it would be unjust, unreasonable or if the punishment would be too severe. In other words, the EA recognises that there are circumstances in which South Africa should refuse to extradite a person and sets out those situations in section 11(b)(iii). Such situations include a situation where the Justice Minister considers the punishment or sentence that the person will or may face, if he is extradited, to be severe. The Justice Minister has stated in his affidavit that it was on the basis of the provisions of section 11(b)(iii), read with *Mohamed*, that he issued the non-extradition order in Mr Tsebe's case. There are also provisions of the IA which need to be referred to but these will be referred to later in this judgment.

²² Section 26(1) of the Penal Code of Botswana.

²³ See above n 8.

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[37] Mr Tsebe's and Mr Phale's cases were based on the provisions of the Constitution as interpreted and given effect to by this Court in both *Makwanyane*²⁴ and *Mohamed*. The decision of the High Court in the present matter also sought to give effect to the decision of this Court in *Mohamed*. In the light of this a word or two on these two decisions is necessary.

Makwanyane

[38] In *Makwanyane*²⁵ this Court held that the death penalty was inconsistent with provisions of the interim Constitution and declared it unconstitutional.²⁶ In his judgment, which enjoyed the broad support of a number of the other Justices, Chaskalson P pointed out that, by committing ourselves to a society founded on the recognition of human rights, we were required to give particular value to the rights to life and dignity and that "this must be demonstrated by the State in everything it does".²⁷

²⁴ *S v Makwanyane and Another* [1995] ZACC 3; 1995 (3) SA 391 (CC); 1995 (6) BCLR 665 (CC) (*Makwanyane*).

²⁵ The position adopted by the first democratically elected South African government towards the death penalty at the hearing of the *Makwanyane* case was that the death penalty was unconstitutional and should be declared invalid. See para 11 of Chaskalson P's judgment in *Makwanyane*.

²⁶ Section 9 of the interim Constitution provided: "Every person shall have the right to life." Section 10 of the interim Constitution provided: "Every person shall have the right to respect for and protection of his or her dignity." Section 11(2) of the interim Constitution read thus: "No person shall be subject to torture of any kind, whether physical, mental or emotional, nor shall any person be subject to cruel, inhuman or degrading treatment or punishment."

²⁷ *Makwanyane* above n 24 at para 144.

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Mohamed

[39] Mr Mohamed was a Tanzanian national who, after allegedly taking part in the bombing of two US embassies in Nairobi and Dar es Salaam, entered South Africa illegally. In the full knowledge that, if taken to the US, Mr Mohamed would stand trial for multiple murders arising from the bombings and that, if convicted, he could be sentenced to death, the South African authorities handed him over to US officials without making any acceptable arrangement to ensure either that the death penalty would not be imposed on him if he was convicted or that, if imposed, it would not be executed.

[40] One of the questions in *Mohamed* was whether the South African authorities were in the above circumstances entitled to hand Mohamed over to the US authorities. This Court found that Mr Mohamed's deportation from South Africa to the US was unlawful. This finding must be understood within the context of the fact that in *Makwanyane* this Court had already held that the death penalty was unconstitutional because it violated the right to life, the right to human dignity and constituted cruel, inhuman and degrading punishment.²⁸ In *Mohamed* this Court held that the provisions of section 7(2) of the Constitution oblige the State to respect, protect, promote and fulfil the rights in the Bill of Rights. This includes the right to life, the right to human dignity and the right not to be subjected to cruel, inhuman and degrading punishment or treatment.

²⁸ Id at para 95.

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[41] This Court's conclusion that Mr Mohamed's deportation was unlawful was based in part on *Makwanyane*, section 7(2) of the Constitution, the knowledge of the South African authorities of the risk of the imposition of the death penalty that Mr Mohamed would face in the US if he was removed from South Africa and taken to the US and the fact that the removal or deportation in the circumstances in which it happened violated Mr Mohamed's right to life, right to human dignity and right not to be subjected to cruel, inhuman or degrading punishment.²⁹

[42] In *Mohamed* this Court stated that under our Constitution there are no exceptions to the protection of the right to life, the right to human dignity and the right not to be treated or punished in a cruel, inhuman or degrading way.³⁰ However, the Court said that it must be remembered that, like all the rights in the Bill of Rights, these rights are subject to limitation as provided for in section 36 of the Constitution.³¹ This Court also said:

“Where the removal of a person to another country is effected by the State in circumstances that threaten the life or human dignity of such person, sections 10 and 11 of the Bill of Rights are implicated.”³²

The Court went on to say in the next sentence that there was no doubt that “the removal of Mohamed to the United States of America posed such a threat.” It found that “[t]he

²⁹ *Mohamed* above n 9 at paras 48, 54, and 58-60.

³⁰ *Id* at para 52.

³¹ *Id* at para 48.

³² *Id* at para 52.

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fact that Mohamed is now facing the possibility of a death sentence is the direct result of the failure by the South African authorities to secure” an undertaking from the US that the death penalty would not be imposed or, if imposed, would not be executed.³³

[43] The question that arises is: What is the principle that *Mohamed* established? The principle is that the Government has no power to extradite or deport or in any way remove from South Africa to a retentionist State³⁴ any person who, to its knowledge, if deported or extradited to such a State, will face the real risk of the imposition and execution of the death penalty.³⁵ This Court’s decision in *Mohamed* means that if any official in the employ of the State, without the requisite assurance, hands over anyone from within South Africa, or under the control of South African officials, to another country to stand trial knowing that such person runs the real risk of a violation of his right to life, right to human dignity and right not to be treated or punished in a cruel, inhuman or degrading way in that country, he or she acts in breach of the duty provided for in section 7(2) of the Constitution.

³³ Id at para 53.

³⁴ A retentionist State is a State that has retained the death penalty.

³⁵ The proposition that the test is a real risk is supported by the fact that, after quoting from *Soering v United Kingdom* (1989) 11 EHRR 439 (*Soering*); *Hilal v United Kingdom* (2001) 33 EHRR 31 (*Hilal*); and *Chahal v United Kingdom* (1996) 23 EHRR 413 (*Chahal*), all of which referred to “a real risk”, this Court in *Mohamed* went on to say at para 58:

“These cases are consistent with the weight that our Constitution gives to the spirit, purport and objects of the Bill of Rights and the positive obligation that it imposes on the State to ‘protect, promote and fulfil the rights in the Bill of Rights’.” (Footnotes omitted.)

See *Mohamed* above n 9 at paras 55-9.

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[44] In *Mohamed* this Court discussed a number of foreign cases³⁶ dealing with how various courts and other tribunals have dealt with the question under consideration in this case. It is not necessary to repeat that discussion in this judgment even though parties have referred to such cases in their argument. We are not called upon to reconsider the correctness of this Court's decision in *Mohamed*. Accordingly, unless the present case is distinguishable from *Mohamed* we are bound to decide it in accordance with the principle established in that case.

[45] The principle established in *Mohamed* has a direct connection with the provisions of sections 7(2), 10, 11 and 12 of the Constitution and the values upon which our new constitutional democracy is based. When the first democratically elected Parliament adopted our Constitution we, as a nation, turned our back on a very ugly past which had caused untold suffering to many in our society. We committed ourselves to the building of a new society founded on the values of human dignity, the achievement of equality and the advancement of human rights and freedoms, non-racialism, non-sexism and the supremacy of the Constitution and the rule of law. We sought to create a society whose cornerstone³⁷ is our Bill of Rights which enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

³⁶ The foreign cases included *United States v Burns* [2001] 1 RCS 283; *Kindler v Canada (Minister of Justice)* [1991] 2 RCS 779; *Reference re Ng Extradition (Canada)* (1991) 6 CRR (2d) 252; *Halm v Canada (Minister of Employment and Immigration)* (TD) 1996 1 F.C. 547; *R v Brixton Prison (Governor), ex parte Soblen* (1962) 3 All ER 641 (CA); *Soering* above n 35; *Hilal* above n 35; and *Chahal* above n 35.

³⁷ Section 7 of the Constitution.

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[46] One of the values of our Constitution on which our new society is based is the advancement of human rights. The effect of our commitment to a society based on, among others, this value is that, as a nation, we have committed ourselves to advancing human rights in all that we do. Furthermore, the State is enjoined by section 7(2) of the Constitution not only to respect, protect and fulfil all the rights in the Bill of Rights but, very importantly in the context of this case, also to promote all rights in the Bill of Rights. Accordingly, it is in this context that the principle established in *Mohamed* must be seen. In *Kaunda and Others v President of the Republic of South Africa*³⁸ this Court also emphasised in effect the centrality of the advancement of human rights and freedoms in our society. It said:

“The advancement of human rights and freedoms is central to the Constitution itself. It is a thread that runs throughout the Constitution and informs the manner in which government is required to exercise its powers. To this extent the provisions of section 7(2) are relevant, not as giving our Constitution extraterritorial effect, but as showing that our Constitution contemplates that government will act positively to protect its citizens against human rights abuses.”³⁹

This passage applies also when the Government deals with foreigners who are within the borders of this country who face the real risk of the abuse of their human rights if they were to be extradited, deported or in any way surrendered to another country in which they would be exposed to such violations.

³⁸ [2004] ZACC 5; 2005 (4) SA 235 (CC); 2004 (10) BCLR 1009 (CC).

³⁹ Id at para 66.

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Is Mohamed distinguishable?

[47] It is important to record that at the hearing of this matter neither counsel for the Justice Minister nor counsel for the Home Affairs Minister argued that *Mohamed* was wrongly decided and should be revisited. On the contrary counsel for the Justice Minister informed the Court that he embraced⁴⁰ this Court's decision in *Mohamed*. For his part, counsel for the Home Affairs Minister indicated that, on the facts of the *Mohamed* case and on the correct application of the relevant legal principles to the facts in *Mohamed*, no court could have reached any conclusion other than the conclusion that was reached by this Court.

[48] Although counsel for the Justice Minister initially announced that he would not seek to distinguish the present case from *Mohamed*, he later sought to do so. He pointed out that in *Mohamed* there was no possibility of Mr Mohamed going free whereas in the present case there was a possibility that Mr Phale could go free if he could not be extradited or deported. What counsel was referring to was that, if Mr Phale cannot be deported, he will have to be freed from detention because he cannot be detained indefinitely. The fact that there was no possibility of Mr Mohamed going free is not a basis to distinguish the present case from *Mohamed*. One need only go back to the principle established in *Mohamed* to appreciate this because the decision was not dependent upon whether Mr Mohamed could or could not go free.

⁴⁰ That was the term used by counsel in argument.

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[49] The Justice Minister also submitted in his affidavit that the present case was distinguishable from *Mohamed* because in that case the Court did not have to consider the provisions of the EA whereas in this case the Court has to consider the provisions of the EA. We do not agree. The submission ignores the fact that in *Mohamed* this Court made it clear that the obligation of the Government to secure the requisite assurance could not depend on whether the removal is by extradition or deportation. This Court said that the constitutional obligation depends on the facts of the particular case and the provisions of the Constitution, not on the provisions of the empowering legislation or extradition treaty under which the deportation or extradition is carried out.⁴¹

[50] Counsel for the Justice Minister also submitted that, when the Justice Minister performs his statutory extradition duties, he performs an act of State. This submission seems to suggest that in such a case the Justice Minister is not obliged to respect, protect, promote, or fulfil the rights in the Bill of Rights as required by section 7(2) of the Constitution. I am unable to agree with this submission. Section 7(2) is not qualified in any way. Accordingly, the obligations it places upon the State apply to everything that the State does. This Court has already made it clear in *Mohamed* that there are no exceptions to the right to life, the right to human dignity and the right not to be subjected

⁴¹*Mohamed* above n 9 at para 42.

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to treatment or punishment that is cruel, inhuman or degrading.⁴² These are the rights that the State must respect, protect, promote and fulfil in a case such as the present one.

[51] Counsel for the Justice Minister also submitted that the Court should find that to require that the Government should ask Botswana to give the requisite assurance would constitute interference with the prosecutorial independence of the prosecuting authority of Botswana and with the independence of the Judiciary of Botswana. One answer to this is that it is not an essential requirement of the assurance that the death penalty will not be asked for by the prosecutorial authorities of Botswana nor is it an essential requirement that the trial Judge in Botswana will not impose the death penalty. What is of critical importance is the giving of the assurance that, if the death penalty is imposed, it will not be executed. Accordingly, this does not in any way affect the independence of the courts of Botswana or the prosecutorial independence of the Director of Public Prosecutions in Botswana. The execution of the death penalty falls within the authority of the Executive. It is up to the Executive whether it is prepared to provide the requisite assurance. The Constitution of Botswana gives the President of that country power to intervene and substitute a term of imprisonment for the death penalty.⁴³ Another answer is that in terms of the SADC Extradition Protocol, to which both Botswana and South Africa are parties, Botswana has agreed that South Africa may request it to provide the requisite assurance in a case such as Mr Tsebe's and Mr Phale's.

⁴² Id at para 52. It was accepted in *Mohamed* (at paras 47 and 52) that, like all rights in the Bill of Rights, these rights are also subject to the limitation contained in section 36 of the Constitution.

⁴³ Section 53 of the Constitution of Botswana.

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[52] Counsel for the Justice Minister also submitted that the Executive must be given an opportunity to resolve the dispute between South Africa and Botswana politically through the Organ of Politics, Defence and Security under the auspices of the SADC. This is correct and a resolution in that forum is desirable. Although one has some understanding of the Justice Minister's concern in this regard, the fact of the matter is that Mr Phale has a dispute with the Government that can be resolved by the application of law and he has a right in terms of section 34 of the Constitution to have that dispute resolved through the application of law by the courts.⁴⁴ Once he has brought the dispute to the courts, the courts must decide the dispute. If this Court comes to the conclusion that the Government cannot extradite or deport Mr Phale to Botswana in the absence of the requisite assurance without being in breach of the Constitution, this will not mean that the Executive may not pursue a political solution to the problem through some or other structures of the SADC. That may be done and, indeed, is to be encouraged. However, to avoid a breach of the Constitution, it is necessary to protect the rights of Mr Phale pending the exhaustion of those avenues. Accordingly, this Court cannot uphold the Justice Minister's contention.

⁴⁴ Section 34 of the Constitution reads:

"Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum."

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[53] In the affidavits delivered by the Department of Home Affairs one of the bases upon which the judgment of the High Court was criticised was that it approached the *Mohamed* case as if it laid down an absolute rule that precluded the consideration of each case on its merits. It seems that this criticism may have been based on the statement in *Mohamed* that the Government's obligation to secure the requisite assurance depended "on the facts of the particular case and the provisions of the Constitution".⁴⁵ The reference to the facts of the particular case in *Mohamed*⁴⁶ was nothing more than a reference to the facts relating to whether or not it could be said that there was a real risk that, if the person concerned was extradited or deported, he would face the imposition and execution of a death penalty or he would face treatment or punishment that would be cruel, inhuman or degrading. What was meant was that, once it was accepted that the facts established such a risk, the principle in *Mohamed* applies. That statement did not mean that there were exceptions to the principle established. The position is, therefore, that, if the extradition or deportation of a person will expose him to a real risk of the imposition and execution of the death penalty, the State may not extradite or deport that person. There is no exception to this principle. If the requisite assurance is given, there is, as a general proposition, no such real risk and the person may be deported or extradited.

⁴⁵ *Mohamed* above n 9 at para 42.

⁴⁶ *Id.*

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[54] The Justice Minister also suggested in his affidavit that the decision of the High Court was based upon an excessive concern about the rights of Mr Tsebe and Mr Phale and a complete disregard for the rights of the rest of the people of South Africa who are also entitled to the protection of their rights contained in the Bill of Rights and the obligation which the Government has of protecting the rest of the population against people who may have committed violent crimes. The implication of the Justice Minister's suggestion was that, if the Court below had also paid attention to the rights of people other than Mr Tsebe and Mr Phale, it would have concluded that the Government was entitled to extradite or deport Mr Phale. In support of this contention reference was made to *Carmichele v Minister of Safety and Security*.⁴⁷

[55] Part of the answer to this is that neither Mr Tsebe nor Mr Phale had been convicted of murder. In terms of our law anyone who is charged with a crime or who is suspected of the commission of a crime is presumed to be innocent until proven guilty. That principle applies to persons in the position of Mr Phale as well. In any event there are many citizens of our own country who are not in jail or detention and who are out in society even though they face serious charges like murder. We do not say that they must never get bail merely because they are charged with serious crimes. After all, the obligation to protect the population, which the Government has, requires nothing more than that the Government must put in place reasonable measures to discharge that obligation. The decision of this Court in *Carmichele* is not necessarily inconsistent with

⁴⁷ [2001] ZACC 22; 2001 (4) SA 938 (CC); 2001 (10) BCLR 995 (CC) (*Carmichele*).

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the non-extradition or non-deportation of a person in Mr Phale's position. Finally, as *Carmichele* was relied upon without any elaboration, no further consideration thereof is warranted.

[56] In any event the approach taken by this Court in *Mohamed* in consequence of sections 7(2), 10, 11 and 12(1) of the Constitution is one that many progressive societies in the world adopt. As indicated earlier, section 11(b)(iii) of the EA also contemplates that the Justice Minister may order that someone wanted for a crime in another country shall not be surrendered to that country. In this regard it needs to be pointed out that section 11(b)(iii) is not a pre-democracy provision. Although the EA was enacted before 1994, section 11(b)(iii) was introduced into the EA after 1994.⁴⁸ Furthermore, the SADC Extradition Protocol contemplates that a State that is party to that Protocol may refuse to extradite a person in Mr Tsebe's and Mr Phale's position.

[57] The allegations against Mr Phale are very serious. He should, indeed, face justice. The question is how to reconcile the need to bring him to justice with the protection the Constitution affords him against the death penalty. The reconciliation, as I have suggested elsewhere, lies in the sphere of inter-governmental relations because it is clear that, under international law, Botswana is able to give the requisite assurance and South Africa is entitled to decline to surrender Mr Phale until that has happened.

⁴⁸ Section 9 of the Extradition Amendment Act 77 of 1996.

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[58] All the complaints which the Justice Minister, the Home Affairs Minister, the Director-General of Home Affairs and various officials of the Department of Home Affairs have articulated about the implications or difficulties which they perceive will arise if the legal position is that Mr Phale may not be surrendered, extradited or deported to Botswana are implications that would arise in any event if the Justice Minister were to decide, as he decided in the case of Mr Tsebe, that he would use his powers under section 11(b)(iii) of the EA to order that Mr Phale or anybody in Mr Phale's or Mr Tsebe's position for that matter, should not be extradited despite the fact that he is wanted for a serious crime in another country. That is a power which the Justice Minister already had before this Court's decision in *Mohamed*. The Justice Minister has had the power since the coming into effect of section 9 of the Extradition Amendment Act 77 of 1996. This Court's decision in *Mohamed* was handed down in 2001.

[59] The concerns which both the Home Affairs Minister as well as the Director-General of Home Affairs raise concerning the obligations that they have under the IA to ensure the deportation of illegal foreigners and the question of what such a person's status in the country would be if he was not deported or extradited are concerns which would also arise if the Justice Minister were to use his powers under section 11(b)(iii) of the EA even if this Court's decision in *Mohamed* had not been made. This does not detract from the fact that these are legitimate concerns. However, the provision of the

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IA⁴⁹ relating to the obligation to deport an illegal foreigner must be read consistently with the Constitution. It cannot be read to require the deportation of a person in circumstances in which the deportation would be a breach of the Constitution. It is true that the continued presence of Mr Phale in the country, an alleged illegal foreigner who is wanted by another country for a crime as serious as murder, would be a continuing concern for the Government and the people of South Africa in general. However, it needs to be pointed out that the IA defines “deport” in wide terms which include the Director-General ordering an illegal foreigner to leave South Africa, but if such foreigner thereafter remains in the country, he is guilty of an offence punishable by imprisonment in terms of the IA.⁵⁰ Having said this, I am of the view that the preferable solution to the problem lies, as already pointed out, in inter-governmental interaction and an acceptance by Botswana that South Africa’s conduct is not in breach of but is in accordance with the Extradition Treaty between and in accordance with the SADC Extradition Protocol.

[60] The Justice Minister also referred in his affidavit to the fact that his department is working on revised draft extradition legislation. The purpose of that draft legislation is to give the South African courts jurisdiction to try crimes that have been committed outside the borders of this country in cases such as Mr Tsebe’s and Mr Phale’s because ordinarily the South African courts do not have jurisdiction to try such cases. The Justice Minister

⁴⁹ Section 32(2) of the IA. See above n 10.

⁵⁰ Section 1 of the IA defines “deport” or “deportation” as “the action or procedure aimed at causing an illegal foreigner to leave the Republic” in terms of the IA. Section 49(1)(b) of the IA provides that:

“Any illegal foreigner who fails to depart when so ordered by the Director-General, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding nine months.”

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revealed that there are instances where South Africa has already put in place legislation that gives the South African courts jurisdiction to try certain specified offences despite the fact that they were committed outside South Africa. He gave two examples of pieces of legislation that have been passed in this regard, namely, the Prevention and Combating of Corrupt Activities Act⁵¹ and the Implementation of the Rome Statute of the International Criminal Court Act.⁵²

[61] It seems that, if South Africa could pass legislation to give its courts jurisdiction to try crimes which have been committed outside South Africa, there is no reason why similar legislation cannot or should not be put in place to ensure that persons in Mr Tsebe's and Mr Phale's position can be tried by the South African courts when countries in which they allegedly committed the crimes are not prepared to give the requisite assurance. Such legislation would prevent persons in the position of Mr Tsebe or Mr Phale not being put to trial at all because South Africa will not extradite or deport them in the absence of the requisite assurance and cannot also put them on trial and the other State cannot try them because they are not there and will also not give South Africa the requisite assurance. In doing so, South Africa would also be discharging its obligations under the SADC Extradition Protocol to put on trial before its courts persons in Mr Tsebe's and Mr Phale's position where the SADC country requesting extradition

⁵¹ Act 12 of 2004.

⁵² Act 27 of 2002.

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refuses to give South Africa the requisite assurance and requests it to put such person on trial before its own courts.

[62] The Justice Minister has indicated that there will be difficulties in bringing foreign witnesses to South Africa to testify in trials relating to crimes committed outside South Africa. We do not see this as an insurmountable difficulty. Obviously, such trials will need the co-operation of the country which would have sought the extradition of the person concerned. It is unlikely that such countries would prefer that such persons should not be put on trial at all if they cannot be put on trial in those countries. It is likely that they would rather have them tried in South Africa and hope that they will get long terms of imprisonment instead of not being punished at all. For that reason it is likely that such countries will co-operate with South Africa to put such persons on trial in South Africa. In this case Botswana did suggest to the Justice Minister that Mr Tsebe be put on trial in South Africa but South Africa could not accede to the request because it had not passed the necessary legislation to give the South African courts jurisdiction. It seems to me that Botswana would have taken whatever steps were necessary to ensure that the state witnesses who would have been used in Botswana are brought to South Africa at the time of the trial to give evidence.

[63] The Justice Minister has also expressed the concern that the Government does not want our country to be perceived as a safe haven for illegal foreigners and fugitives from justice wanted for serious crimes in other countries. This concern was discussed by the

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High Court.⁵³ Although it is a legitimate concern, it will not arise if countries seeking an extradition of someone in Mr Phale's position would be prepared to give the requisite assurance. Furthermore, our concern about that perception cannot override the need for us as a nation to stay on course on the path we have chosen for ourselves to respect, protect, promote and fulfil human rights, to observe our Constitution and deepen the values upon which we have chosen to create our new society. Those values include human dignity, the achievement of equality and the advancement of human rights and freedoms.

[64] It also seems implied in the Justice Minister's statements in the affidavit that he or the Government may also be concerned that, if the Government cannot deport or extradite persons in Mr Tsebe's and Mr Phale's position, this may be seen as undermining its obligations under treaties concluded with other states in terms of which they must cooperate to fight crime, particularly in the SADC region. This Court regards these concerns as legitimate because it is true that the Government must not only fight crime but it must also be seen to be sparing no effort in fighting crime. However, it must be remembered that our Constitution is our supreme law and in section 7(2) it places on the State the obligation to respect, protect, promote and fulfil, among others, the right to life, the right to human dignity and the right not to be treated or punished in a cruel, inhuman or degrading way. In addition the SADC Extradition Protocol entitles the signatories to it to refuse to extradite suspects if the requesting State does not furnish the requisite

⁵³ High Court judgment above n 6 at paras 102-9.

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assurance. Accordingly, among the SADC countries South Africa's conduct will not be perceived negatively because the SADC Extradition Protocol contemplates South Africa's conduct. So, the Government will not be doing anything wrong if it refuses to extradite or deport Mr Phale. In terms of the SADC Extradition Protocol it will be within its rights to do so. In any event, the obligations South Africa incurs in terms of treaties concluded with other countries are required to be consistent with its constitutional obligations.

[65] The human rights provided for in sections 10, 11 and 12 of our Constitution are not reserved for only the citizens of South Africa. Every foreigner who enters our country – whether legally or illegally – enjoys these rights and the State's obligations contained in section 7(2) are not qualified in any way. Therefore, it cannot be said that they do not extend to a person who enters our country illegally. In the light of this the question then would be: How does the Government discharge its section 7(2) obligations in respect of such a person if it extradites, deports or surrenders him to a State where, to its knowledge, he runs the real risk of the imposition and execution of the death penalty if he is convicted of the crime for which he is wanted?

[66] The question in the preceding paragraph leads one to the counter-application for an order that would allow the Government to extradite, deport or surrender persons in Mr Tsebe's and Mr Phale's position after the Government has asked the State concerned to give the requisite assurance and that State has refused. That application was correctly

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dismissed by the High Court. What would be the value of South Africa's request for the requisite assurance if its rejection would have no consequences for the other State? The other side of every legal obligation is a legal right. In this context the State has section 7(2) obligations and the person who has the legal right to the State's protection, promotion and fulfilment of his right to life, right to human dignity and right not to be subjected to cruel, inhuman or degrading punishment is the person sought by the other State for extradition. If the position was that, after South Africa has asked such a State for the requisite assurance and such State has refused, South Africa may extradite, deport or surrender such person to such State, that person would be entitled to say: The right to life, the right to human dignity and the right not to be subjected to cruel, inhuman or degrading punishment and the State's obligations under section 7(2) are not worth anything. That would be untenable.

[67] We as a nation have chosen to walk the path of the advancement of human rights. By adopting the Constitution we committed ourselves not to do certain things. One of those things is that no matter who the person is and no matter what the crime is that he is alleged to have committed, we shall not in any way be party to his killing as a punishment and we will not hand such person over to another country where to do so will expose him to the real risk of the imposition and execution of the death penalty upon him. This path that we, as a country, have chosen for ourselves is not an easy one. Some of the consequences that may result from our choice are part of the price that we must be prepared to pay as a nation for the advancement of human rights and the creation of the

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kind of society and world that we may ultimately achieve if we abide by the constitutional values that now underpin our new society since the end of apartheid.

[68] If we as a society or the State hand somebody over to another State where he will face the real risk of the death penalty, we fail to protect, respect and promote the right to life, the right to human dignity and the right not to be subjected to cruel, inhuman or degrading treatment or punishment of that person, all of which are rights our Constitution confers on everyone. This Court's decision in *Mohamed* said that what the South African authorities did in that case was not consistent with the kind of society that we have committed ourselves to creating. It said in effect that we will not be party to the killing of any human being as a punishment – no matter who they are and no matter what they are alleged to have done.⁵⁴

[69] Counsel for the Home Affairs Minister also submitted at some stage during argument that the matter should be remitted to the High Court for that Court to assess whether the risk to which Mr Phale would be exposed if he was deported to Botswana was real. Later counsel submitted that the Home Affairs Minister must be given an opportunity to assess that risk. In my view there is no need to do so because there is enough before this Court to make the assessment of the risk.

⁵⁴ This does not necessarily include a war situation: see *Makwanyane* above n 24 at para 149.

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[70] In their affidavits, the Justice Minister and Mr Modiri Matthews of the Department of Home Affairs advanced various other bases upon which they contended that the present case should be distinguished from *Mohamed*. In our view those bases were not material and cannot be relied upon to distinguish the present case from *Mohamed*.

Application of the Mohamed principle to the facts

[71] The dispute between the parties is whether the Government has the power to deport or extradite Mr Phale to Botswana to face a trial for murder in that country in the absence of the requisite assurance. In the light of the fact that in oral argument no party argued that *Mohamed* was wrongly decided, and no basis exists to distinguish the present case from *Mohamed*, the only question that requires determination in order to decide whether the decision of the High Court was right is whether it can be said that, if Mr Phale was to be extradited or deported to Botswana, he would, if convicted of the alleged murder, face a real risk of the imposition and execution of the death penalty.

Would Mr Phale face the real risk of a death penalty if extradited or deported?

[72] Counsel for the Home Affairs Minister submitted that there was only a possibility and not a real risk or likelihood of the imposition and execution of the death penalty on Mr Phale if he was deported. He submitted that a mere possibility of the imposition and execution of the death penalty was not enough. We do not agree that in this case there is only a mere possibility of the imposition and execution of the death penalty on Mr Phale if he is extradited or deported to Botswana and is thereafter convicted of murder. First,

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the alleged killing was brutal. Second, the law in Botswana is that for murder the death penalty is mandatory if there are no extenuating circumstances. Third, none of the parties placed before the Court any extenuating circumstances. Accordingly, this Court must assess the risk of the imposition of the death sentence on Mr Phale, if he is convicted, on the basis that he will have been found guilty of murder without any extenuating circumstances. In such a case the imposition of the death penalty will be mandatory. Accordingly, there can be no doubt that, if Mr Phale were deported or extradited to Botswana, he would face a real risk of the imposition of the death penalty if he were to be found guilty.

[73] Once the death penalty is imposed, there will be nothing to prevent the State of Botswana from executing the death penalty. Indeed, a study of the execution of the death penalty in Botswana conducted by the International Federation for Human Rights reveals that there has only been one case in which the death penalty was not executed. The evidence put before this Court showed that there were 32 executions between 1966 and 1998. According to my calculations, that amounts to an average of at least one execution per year. In any event, if Botswana did not intend to execute the death penalty on Mr Phale if one was imposed, there is no reason why it would not have given South Africa the requisite assurance. In the light of this, the conclusion is that, if Mr Phale were extradited or deported to Botswana, he will face a real risk of the imposition and execution of the death penalty if he is found guilty of the murder.

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[74] Accordingly, in terms of section 7(2) of the Constitution the Government is under an obligation not to deport or extradite Mr Phale or in any way to transfer him from South Africa to Botswana to stand trial for the alleged murder in the absence of the requisite assurance. Should the Government deport or extradite Mr Phale without the requisite assurance, it would be acting in breach of its obligations in terms of section 7(2), the values of the Constitution and Mr Phale's right to life, right to human dignity and right not to be subjected to treatment or punishment that is cruel, inhuman or degrading. In my view no grounds exist upon which the judgment of the High Court can be faulted.

[75] The appeals fall to be dismissed. With regard to costs there is no reason why the applicants should not be ordered to pay the costs of the Society for the Abolition of the Death Penalty in South Africa and Mr Phale, including the costs consequent upon the employment of two counsel. As indicated earlier, Mr Tsebe died before his application could be heard by the High Court. I note that an attorney from Lawyers for Human Rights deposed to an affidavit in opposition of the applicants' application before this Court and indicated in that affidavit that she was doing so "on behalf of" Mr Tsebe. She indicated that she was doing so because all the parties were of the view that it was in the public interest that Mr Tsebe's matter should also be heard. It seems to me that there is no basis for making an order of costs in respect of Mr Tsebe's matter in the proceedings before this Court since Mr Tsebe died prior to the hearing in the High Court. In any event, the issues raised in respect of Mr Phale's matter were in substance the same issues

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as those raised in respect of Mr Tsebe. That being the case, I am of the view that if only Mr Phale's matter was proceeded with, it would not have been necessary also to oppose the applicants' application "on behalf of" the late Mr Tsebe. Accordingly, I propose to confine the order of costs to Mr Phale and the Society for the Abolition of the Death Penalty in South Africa.

[76] In the result the following order is made:

1. Condonation is granted.
2. Leave to appeal is granted.
3. The appeals are dismissed.
4. The applicants are ordered to pay the costs of Mr Phale, and the Society for the Abolition of the Death Penalty in South Africa, including the costs consequent upon the employment of two counsel.

CAMERON J (Froneman J, Skweyiya J and Van der Westhuizen J concurring):

[77] I concur in the judgment of Zondo AJ, except for [55], [56] and [60] to [62], which in my view are not necessary for the decision.

YACOOB ADCJ

YACOOB ADCJ:

[78] I have read the judgment of Zondo AJ and cannot agree that leave to appeal should be granted. I would refuse leave to appeal.

[79] This is an application for leave to appeal against a decision of the Full Court of the South Gauteng High Court⁵⁵ (High Court) in effect holding that the extradition or deportation of Mr Jerry Ofense Phale⁵⁶ (second respondent), a Botswana national, to Botswana to face capital charges in that country was unconstitutional. The High Court reached its decision on the basis of the judgment of this Court in *Mohamed*⁵⁷ which held that our Constitution did not allow a Tanzanian national to be deported or extradited to the United States of America to face capital charges there without first receiving an assurance that the death penalty would not be imposed, or, if imposed, that it would not be executed.

[80] The High Court had two applications before it, which were consolidated and heard together. The one was by Mr Emmanuel Tsebe⁵⁸ (first respondent) and the Society for

⁵⁵ *Tsebe and Another v Minister of Home Affairs and Others; Phale v Minister of Home Affairs and Others* 2012 (1) BCLR 77 (GSI).

⁵⁶ Mr Phale apparently used the surname Pitsoe after he came to South Africa.

⁵⁷ *Mohamed and Another v President of the Republic of South Africa and Others (Society for the Abolition of the Death Penalty in South Africa and Another Intervening)* [2001] ZACC 18; 2001 (3) SA 893 (CC); 2001 (7) BCLR 685 (CC) (*Mohamed*).

⁵⁸ Regrettably, Mr Tsebe died before the application was heard but Lawyers for Human Rights who were Mr Tsebe's attorneys, along with the Society for the Abolition of the Death Penalty in South Africa decided to proceed

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the Abolition of the Death Penalty in South Africa and the other by Mr Phale against the Minister of Home Affairs (Home Affairs Minister) and the Minister of Justice and Constitutional Development (Justice Minister). They both sought the following order:

- “1. Declaring the deportation and/or extradition and/or removal of the applicant to the Republic of Botswana unlawful and unconstitutional, to the extent that such deportation and/or extradition and/or removal be carried out without the written assurance from the Government of Botswana that the applicant will not face the death penalty there under any circumstance;
2. Prohibiting the respondents from taking any action whatsoever to cause the applicant to be deported, extradited or removed from South Africa to Botswana until and unless the Government of the Republic of Botswana provides a written assurance to the respondents that the applicant will not be subject to the death penalty in Botswana under any circumstances;
3. Directing the first and second respondent and any other party who opposes the relief sought herein to pay the applicants’ costs inclusive of the cost of two counsel.”

[81] The Justice Minister, in a counter-application, asked for an order declaring that:

“[T]he Minister for Justice and Constitutional Development is authorised by the Constitution of the Republic of South Africa 1996, read with the provisions of the Extradition Act 67 of 1962 (more particularly section 11 thereof) to order any person, accused of an offence included in an extradition agreement and committed within the jurisdiction of a foreign State party to such agreement, and who has been committed to prison under section 10 of the said Act, to be surrendered to any person authorised by such foreign State to receive him or her, notwithstanding that the extraditable offence for which extradition has been requested carries a death penalty under the law of that State, in circumstances where:

because of the public importance of the issues raised in this case and its relevance for people like Mr Tsebe and Mr Phale.

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- (a) the Republic of South Africa has sought an assurance from the foreign State that the death penalty will not be imposed, or if imposed, would not be carried out; and
- (b) the foreign State has refused to provide such an assurance by virtue of provisions contained in its domestic law.”

[82] The High Court granted the order sought in both applications with costs and dismissed the Justice Minister’s counter-application, also with costs.

[83] The High Court handed down only one judgment. The application for leave to appeal by the Home Affairs Minister, Justice Minister and other government entities is against the whole of the judgment of the High Court. The submissions by the applicants for leave to appeal in both cases overlap considerably. I will therefore refer to the applicants jointly as the government and to the submissions as government submissions.

The relevant facts

[84] The relevant facts are common cause and it is not necessary to set them out in great detail. In brief:

- a. Mr Tsebe and Mr Phale fled to South Africa and were both charged with murder in Botswana in that they intentionally killed their partners.
- b. Botswana sought separately to have Mr Tsebe and Mr Phale extradited.
- c. Capital punishment remains alive in Botswana.

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- d. The Justice Minister requested an assurance from Botswana that, upon extradition, the death sentence would not be imposed on Mr Tsebe and that if it was, it would not be executed. This request was refused.
- e. With respect to Phale, it appears that Botswana refused to give the assurance that the death penalty would not be imposed and that it would not be executed if imposed.
- f. The Extradition Agreement between South Africa and Botswana provides, in effect, that South Africa is not obliged to extradite any person to Botswana in respect of an offence for which the death penalty is competent.

Application for leave to appeal

[85] This case is concerned with the lawfulness and constitutionality of the intended deportation of Mr Phale. The only issue that needs our attention is whether it is in the interests of justice to grant leave to appeal.

[86] It is true that there was initially a difference between the Home Affairs Minister and the Justice Minister on whether or not Mr Tsebe should be removed from the country.⁵⁹ The Justice Minister took the view, on the authority of *Mohamed*, that extradition was not competent without the requisite assurance while the Home Affairs Minister came to the conclusion that deportation was competent despite the decision in

⁵⁹ The initial positions of the Ministers with regard to Mr Phale are unclear. See High Court judgment above n 53 at paras 46-8.

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Mohamed and the threat of the death penalty. Indeed, the Home Affairs Minister would have deported Mr Tsebe and Mr Phale in the face of the reasoning in *Mohamed* without approaching any court! The Justice Minister's opinion has now changed as is apparent from the declarator applied for by him and by the fact that he did not request any assurance in relation to Mr Phale.⁶⁰ I do not think there is any uncertainty. Both the Justice Minister and the Home Affairs Minister are of the view that it is not unconstitutional or unlawful to extradite or deport Mr Phale to Botswana absent an assurance that the death penalty will not be imposed. It was on the basis of this conviction that the Home Affairs Minister opposed the application in the High Court and the Justice Minister sought the declarator there.

[87] It is worth re-emphasising that the Home Affairs Minister sought to remove Mr Tsebe and Mr Phale without approaching a Court despite the judgment in *Mohamed*.⁶¹ Having applied her mind to *Mohamed*, the Minister should have realised, that at best the deportation or extradition of Mr Tsebe and Mr Phale was far from straightforward and, potentially contrary to a judgment of this Court. Government should indeed be more careful and sensitive, especially where a decision to be taken is likely to have an impact on fundamental rights. In this case Mr Phale would have faced the likelihood of a death

⁶⁰ The request for the assurance in the case of Mr Tsebe was made at the time when Mr E Surty was the Justice Minister, whereas extradition issues in relation to Mr Phale were dealt with by the present Justice Minister, Mr JT Radebe. It would seem that the two Justice Ministers differed on the meaning and impact of *Mohamed*.

⁶¹ The Justice Ministry's stance on Mr Tsebe and Mr Phales's deportation was hardly positive either. Initially, at a time when the former Justice Minister was in office extradition was opposed. Later, in the face of the complaint of Mr Tsebe and Mr Phale's lawyers about their imminent deportation, the Justice Minister, currently in office took the stance that the matter was "out of his hands".

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sentence if the plans of the Home Affairs Minister were not rendered awry by the actions of Lawyers for Human Rights and the Society for the Abolition of the Death Penalty. We cannot expect that third parties will come to the aid of vulnerable people in the position of Mr Tsebe and Mr Phale at the last minute. One would have thought that at the very least, government would have approached the High Court for clarification before attempting to proceed with their removal in these circumstances. All the more so, since the relevant Ministries were not initially wholly in agreement as to the approach to be followed.

[88] If indeed there was any uncertainty, it was resolved by the detailed High Court judgment, which deals extensively and persuasively with many of the arguments re-advanced in this Court by reference to the provisions of our Constitution, international law, South African extradition law, and in particular *Mohamed*.

[89] I accept that the matter is of some importance but where, in a matter of public importance, the judgment of a High Court is detailed and convincing it will ordinarily be in the interests of justice to grant leave to appeal only if there is a reasonable prospect that the High Court was wrong. We cannot ordinarily grant leave to appeal where the criticisms of a High Court judgment do not amount to prospects of success.⁶² There may

⁶² See generally *De Lacy and Another v SA Post Office* [2011] ZACC 17; 2011 (9) BCLR 905 (CC) at para 50; *Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews and Another* [2009] ZACC 6; 2009 (4) SA 529 (CC); 2009 (6) BCLR 527 (CC) at para 22; *S v Boesak* [2000] ZACC 25; 2001 (1) SA 912 (CC); 2001 (1) BCLR 36 (CC) at para 12; *Member of the Executive Council for Development Planning and Local Government, Gauteng v Democratic Party and Others* [1998] ZACC 9; 1998 (4) SA 1157 (CC); 1998 (7) BCLR 855 (CC) at para 32; *Bruce and*

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be cases in which a High Court's reasoning is questionable even though the decision might be correct. I now turn to the contentions advanced by the government in order to determine whether it establishes reasonable prospects of success or whether there is any respect in which the reasoning of the High Court might be said to be wrong.

[90] The government accepted the correctness of *Mohamed* and that it remains valid law in our country. The contentions advanced were that the cases before us are distinguishable from *Mohamed* in certain respects. I deal with each of these separately.

[91] The first distinguishing feature relied upon by government is that Mr Mohamed was a Tanzanian national who had been deported to the United States of America, while Mr Phale was to be deported to his own country. This proposition is unarguable. How can it make any difference whether the person is sentenced to death in his own country rather than in some other country? The fact is that he will, if extradited or deported, be sent from this country and that creates a causal link between his extradition or deportation and the imposition of the death penalty. The notion that this difference is sufficiently material to distinguish these cases from *Mohamed* falls to be rejected. There is no prospect that this argument will succeed.

Another v Fleecytex Johannesburg CC and Others [1998] ZACC 3; 1998 (2) SA 1143 (CC); 1998 (4) BCLR 415 (CC) at paras 6-7; and *S v Pennington and Another* [1997] ZACC 10; 1997 (4) SA 1076 (CC); 1997 (10) BCLR 1413 (CC) at paras 44 and 51.

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[92] The second purported distinction is that there is not a real risk, as was the case in *Mohamed*, that Mr Phale would be sentenced to death. This proposition too is untenable for two reasons. First, if the state's allegations are correct, Mr Phale committed a murder which may well attract the death sentence. Second, it is destroyed by the insistence of the Botswana government to not give the necessary assurance. Why refuse if there is no possibility that the death penalty would be imposed anyway?

[93] The third equally untenable distinguishing feature contended for was that there was a possibility that Mr Phale would go free in this case if not extradited while there was no such possibility in *Mohamed*. This implies that the Constitutional Court in *Mohamed* would, if Mr Mohamed had still been inside South Africa at the time the application was made, have allowed his deportation or extradition to go ahead even if there had been a real risk that the death penalty would have been imposed. In other words, this Court's decision on the unlawfulness of Mr Mohamed's removal was based on the fact that he was no longer in this country. This is an unacceptable contortion of *Mohamed* and has no prospect of acceptance by this Court.⁶³

[94] The final distinguishing feature relied upon was that *Mohamed* was not concerned with the Extradition Act.⁶⁴ This submission ignores the whole thrust of the decision to the effect that it did not matter whether Mr Mohamed was extradited or deported. An

⁶³ See *Mohamed* above n 53 at paras 60, 70-1 and 73.

⁶⁴ Act 67 of 1962.

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extradition occurs in terms of the Extradition Act. Again, the proposition is not worthy of consideration.

[95] Other arguments advanced before this Court were that:

- a. The Justice Minister performed his extradition function as an act of state and it should not be impinged upon;
- b. requiring the assurance impacted negatively on prosecutorial and judicial independence in Botswana;
- c. the Executive must be given the opportunity to negotiate delicate instances of this kind;
- d. the decision of the High Court precluded a consideration of the case before it on its particular facts and circumstances; and
- e. the High Court judgment showed excessive concern for people like Mr Tsebe and Mr Phale.

[96] These submissions have nothing to do with the contention that the cases before us are distinguishable from *Mohamed*. Rather, they are an attempt at criticisms of *Mohamed* and to seek its modification. This attempt cannot be entertained. *Mohamed* requires no modification.

[97] As is apparent from the judgment of the High Court, *Mohamed* is simply not capable of the construction that it is permissible to extradite someone if a request for the

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necessary assurance is refused. Nor is it capable of meaning that a deportation would be competent absent an assurance. The High Court was undoubtedly right and it is unnecessary, in my view, to cover the terrain so well traversed by the High Court in relation to the legal issues and their resolution all over again.

[98] In the circumstances it is not in the interests of justice to grant leave to appeal. Accordingly, I would refuse leave to appeal with costs.

[99] To the extent that uncertainty is the pivot for granting leave to appeal, I must point out in conclusion that this judgment leaves the government in no doubt that deportation, extradition or any form of removal under these circumstances is wholly unacceptable.

For the First to Fourth Applicants in CCT 110/11:

Advocate MTK Moerane SC and Advocate L Gcabashe SC instructed by the State Attorney.

For the First and Second Applicants in CCT 126/11:

Advocate M Donen SC and Advocate S Poswa-Lerotholi instructed by the State Attorney.

For the First and Second Respondents in CCT 110/11 and CCT 126/11:

Advocate A Katz SC, Advocate M du Plessis and Advocate N Lewis instructed by Lawyers for Human Rights.

For the Third Respondent in CCT 110/11 and CCT 126/11:

Advocate S Budlender and Advocate J Brickhill instructed by the Legal Resources Centre.

For the Amicus Curiae:

Advocate P Kennedy SC, Advocate D Simonsz and Advocate M Adhikari instructed by the Wits Law Clinic.



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**MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA**

Private Bag X463 PRETORIA 0001, Tel: (012) 393 2800, Fax: (012) 393 2819/20 • Private Bag X9080 CAPE TOWN 8000, Tel: (021) 467 7021, Fax: (021) 467 7033

To : Mr Sandile July
Werksmans Attorneys
Sandton

From : The Minister of Police

Date : 23 February 2015

Ref : INV/1/02/2015

Dear Mr July

Re: YOUR APPOINTMENT TO CONDUCT AN INVESTIGATION ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT; MAJOR GENERAL SHADRACK SIBIYA; AND OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES INVESTIGATION ("DPCI") IN THE ILLEGAL RENDITION OF THE ZIMBABWEAN NATIONALS IN 2010

1. Serious allegations of misconduct and possible criminal acts have been made against the Head of the Directorate for Priority Crime Investigations ("DPCI"), Lieutenant-General Dramat; the Provincial Head of DPCI, Gauteng, Major-General Shadrack Sibiyá, and other members of the DPCI. It has been reported

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in the media and elsewhere that these members of the DPCI have authorised, and participated in the illegal rendition of Zimbabwean nationals, i.e. Shepard Chuma; Maqhawe Sibanda; Prichard Chuma; Johnson Ndoni; Gugu Dube and Bongani Moyo.

2. Mr I H Khuba, who was the Provincial Head of Independent Police Investigative Directorate, Limpopo at the time, led a task team that was commissioned to conduct an investigation into these allegations. Mr Khuba and his team conducted an extensive investigation and produced a report which was signed by Mr Khuba on page 35 of the report with the following recommendations:

"1) *Based on the available evidence the Independent Police Investigative Directorate recommends that Lieutenant-General Dramat, Major-General Sibiya, Lieutenant Colonel M Maluleke, constable Radebe, Captain S E Nkosi and Warrant Officer Makoe be charged criminally for:*

- 1.1 *kidnapping;*
- 1.2 *defeating the end of justice;*
- 1.3 *assault and theft (only applicable to Captain M L Maluleke, Warrant Officer Makoe, Constable P M Radebe and Captain S E Nkosi)."*

3. The above mentioned report was submitted to the National Prosecuting Authority ("NPA") for a decision to prosecute. No decision was taken by the NPA to date. After Mr Khuba had submitted his report, another report surfaced, also signed by Mr Khuba. The said report is dated at the bottom by Mr M Sesoko and Mr R J McBride 9 April 2014. In this report the recommendation had been changed to the following:

"Based on the available evidence, the Independent Police Investigative Directorate recommends that no charges should be brought against Lieutenant-General Dramat and Major-General Sibiya. The investigation established that there is no prima facie case against them. However with regard to Lieutenant

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Colonel M Maluleke, there is a prima facie case to sustain charges of kidnaping and defeating the ends of justice."

4. In the report which purports to exonerate Lieutenant-General Dramat and Major-General Sibiya, there is also no longer any mention of Constable Radebe; Captain Nkosi and Warrant Officer Makoe and whether they have been exonerated as well or not.
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-General Dramat; Major-General Sibiya; and any other officers mentioned in the original report;
 - 5.4 the circumstances under which the 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 is relevant to your conclusions and findings.
6. In your investigation, you will interview the relevant witnesses at your own discretion and have access to all relevant documentation including the two reports, the docket and witness statements made so far.

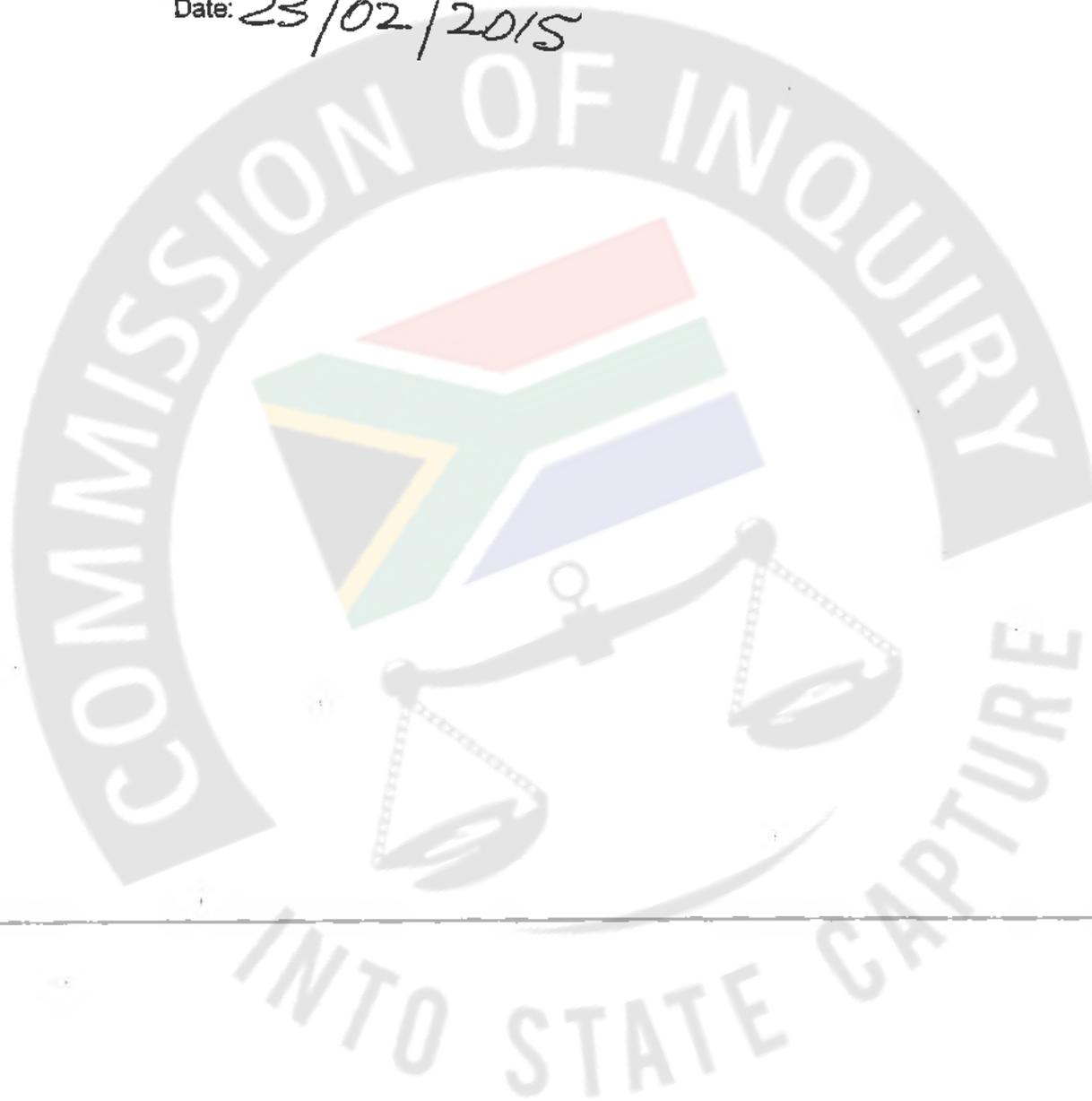
- 7. I require your report within two weeks from the date of your appointment, an extension may however be granted at your request.

Yours faithfully,



NP Mhleko
Minister of Police

Date: 23/02/2015



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We were provided with the following copies of the case docket:

- 1 **A1** Statement by Shepard Tshuma dated 4 April 2012.
- 1.1 Additional Statement by Shepard Tshuma dated 2012/07/20.
- 2 **A2** Statement by Maqhawe Sibanda dated 2012/05/04.
- 2.1 Additional Statement by Maqhawe Sibanda dated 2010/07/20.
- 3 **A3** Statement by Nelson Ndlovu dated 2012/08/02.
- 4 **A4** Statement by Bongani Yende dated 2012/05/02.
- 5 **A5** Statement by Petros Jawuke dated 2012/02/02.
- 6 **A6** Statement by Desmond Campbell dated 2012/05/02.
- 7 **A6** Additional statement by Desmond Campbell dated 2012/07/18.
- 8 **A6** Additional statement by Desmond Campbell dated 2012/07/18.
- 9 **A7** Statement Alfred Ndobe dated 2012/05/02.
- 10 **A7** Additional statement from Alfred Ndobe dated 2012/07/19.
- 11 Unnumbered statement from Bongani Moyo 02 December 2013.
- 12 **A12** Statement by Andrew Mark Sampson 2012/07/18.
- 13 **A20** Statement by Reason Mhlawumbe Sibanda dated 2012/08/07.
- 14 **A21** Statement by Rachel Ncube dated 2012/08/06.
- 15 **A22** Statement by Brightness Nka Ncube dated 2012/08/08.
- 16 **A23** Statement by Mandla Bhakisisa Nyoni dated 2012/08/22.
- 17 **A24** Statement by Sibongile Mpofu dated 2012/08/23.
- 18 **A25** Statement by Mthokozelwa Welcome Zangwa dated 10 January 2013.
- 19 **A26** Statement by Thomas Pixane Setagane dated 10 January 2013.
- 20 **A27** Statement by Padile Abrina Papo dated 10 January 2013.
- 21 **A28** Statement by Peter Ndwandwe dated 15 February 2013.
- 22 **A29** Statement by Nolwandle Qaba 15 February 2013.
- 23 **A30** Statement by Johannes Lodewickus dated 31 February 2013.
- 24 **A31** Statement by Patiswa Skosana dated 31 February 2013.
- 25 List of Zimbabwean inmates repatriated from Lindela Center: Date released Between 08 Dec 2010 to 08 Dec 2010.
- 26 Death Certificate of Witness Ndeya dated 23 October 2011.
- 27 Warrant of Detention of an Illegal Foreigner: Nelson Ndlovu dated 7 November 2010.
- 28 Warrant of Detention of an Illegal Foreigner: Shepard Tshuma dated 7 November 2010.
- 29 Warrant of Detention of an Illegal Foreigner: Dumisani Witness Ndeya dated 7 November 2010.

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- 30 Notification of the deportation of an illegal Foreigner: Shepard Tshuma dated 8 November 2010.
- 31 Notification of the deportation of an illegal Foreigner: Maqhawe Sibanda dated 8 November 2010.
- 32 Notification of the deportation of an illegal Foreigner: Nelson Ndlovu dated 8 November 2010.
- 33 **A37** Statement by Richard Peter Eiberg dated 25 February 2013.
- 34 Notification of the deportation of an illegal Foreigner: Mduuli Shiela Nokuthula dated 8 February 2013.
- 35 Statement by Major General Sibiya dated 22 November 2015.
- 36 Handwritten statement by Mdanduleni Richard Madilonga dated 30 November 2011.
- 37 **A39** Statement by Margaret Mohlahlo dated 26 February 2013.
- 38 **A80** Statement by Masocha Rodgers Ntlhamu dated 5 November 2011.
- 39 Statement by Jacob Makoe 22 November 2011.
- 40 Search results from Interpol in relation to Shepard Chuma.
- 41 Search results from Interpol in relation to Sibanda Maqhawe.
- 42 Search results from Interpol in relation to Nelson Ndlovu.
- 43 Search results from Interpol in relation to Dumisani Witness Ndeya.
- 44 **A51** Statement from Ndanduleni Richard Madilonga dated 8 April 2013.
- 45 **A52** Statement by Llot Nelson Marule dated 15 April 2013.
- 46 **A53** Statement by Joseph Makushu dated 16 April 2013.
- 47 **A54** Statement by Dovhani Sheron Radzilani dated 17 April 2013.
- 48 Handwritten Statement by Andre Neethling 1 December 2011.
- 49 **A55** Statement by Andre Neethling 27 June 2013.
- 50 **A56** Undated handwritten statement by Petros Selepe.
- 51 Copies of Extracts from Occurrence Book from the Alexander SAPS dated 22 November 2010, 30 November 2010, 23 November 2010 and 24 November 2010.
- 52 **A59** Undated statement from Giyani John Sambo.
- 53 **A60** Statement by Arnold Boonstra dated 28 June 2013.
- 54 **A61** Statement by Johannes Mpeki Moatshi dated 16 July 2013.
- 55 **A62** Statement by Desmond Takalani date 16 July 2013.
- 56 Photographs dated 26 January 2011.
- 57 **A63** Statement from Jacob Seletela dated 16 July 2013.
- 58 **A64** Statement by John Phaswana dated 16 July 2013.
- 59 **A65** Statement by Andrie Nxumalo dated 16 April 2013.
- 60 Copies of Extracts from Occurrence Book from the SAPS dated 26 November 2011 and 28 November 2011.

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- 61 **A67** Statement by Masingita Rikhotso dated 24 July 2013.
- 62 **A68** statement by Dinizulu Mkasibe dated 24 July 2013.
- 63 **A69** Statement by Plantinah Mokgobu dated 27 July 2013.
- 64 **A70** statement by Isaal Dlamini dated 26 July 2013.
- 65 Copies of Extracts from Occurrence Book from the SAPS dated 14 January 2011 and 12 January 2011.
- 66 **A72** Statement by Witness Rambuda dated 26 July 2013.
- 67 **A73** Undated and uncommissioned statement by Leon Meyer.
- 68 **A74** Statement by Dorcus Sombhane dated 31 July 2013.
- 69 **A75** Statement by Fortune Ngwenya dated 1 August 2013.
- 70 **A76** Statement by McIntosh Polela dated 2 August 2013.
- 71 **A77** Statement by Ernest Nkosi dated 29 August 2013.
- 72 **A78** Statement by Silas Mokoatlo dated 30 August 2013.
- 73 **A79** Statement by Albertus Gerhardus Brits dated 20 August 2013
- 74 Annexure A: Letter from the Zimbabwe Republic Police addressed to Colonel Ntenti dated 14 March 2011.
- 75 Annexure B Letter by Major General Toka: Crime Intelligence dated 6 April 2011, attaching the letter from Zimbabwe Republic Police.
- 76 Annexure C: letter from Lieutenant General M Petros dated 15 July 2011 regarding Appreciation of Employees of Pretoria Central CIG: Constable Rikhotso.
- 77 Annexure D: letter from Lieutenant General M Petros dated 15 July 2011 regarding Appreciation of Employees of Pretoria Central CIG: Constable PF Mgwenya.
- 78 Annexure E: letter from Lieutenant General M Petros dated 15 July 2011 regarding Appreciation of Employees of Pretoria Central CIG: Constable PR Mokgobu.
- 79 Annexure E: letter from Lieutenant General M Petros dated 15 July 2011 regarding Appreciation of Employees of Pretoria Central CIG: Constable ED Mkasibe.
- 80 Report by Forensic Science Laboratory Questioned Document Unit of SAPS addressed to Mr Khuba dated 3 September 2013.
- 81 Consolidated success report addressed to Maj General Sibiya, Lt Gen Dramat and Lt Gen Toka dated 4 February 2011.
- 82 **A97** Statement from Godfrey Lebeya dated 5 November 2013.
- 83 Undated Request for warning statement by Major General Sibiya from Mr Khuba
- 84 Response from Major General Sibiya.
- 85 Letter from BDK attorneys addressed to Mr Khuba dated 21 February 2014
- 86 Statement from Maluleke dated 15 November 2011.
- 87 Statement by Paul Makhere Radebe dated 1 December 2011.
- 88 Statement by Willem Carel Stephanus Vorster dated 25 November 2011
- 89 **A33** Statement by Job Jackson dated 24 February 2013.

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- 90 Statement by Nhlanhla Sibusiso Mkhwanazi dated 21 December 2013.
- 91 Cell phone records in the matter.
- 92 Letter to Interpol: request for assistance on establishment whether the people are not wanted by another country; Directorate for Priority Crime Investigation.
- 93 Information note on the success by Tactical Operations Management Section Directorate for Priority Crime Investigation, dated 24 November 2010.
- 94 Information note on the success by Tactical Operations Management Section Directorate for Priority Crime Investigation, dated 18 November 2010.



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ANNEXURE HIK/W 5.



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Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X9026, Polokwane, 0700, 66 A Market Street, Ferris Building, 2nd Floor, Polokwane
Tel: (018) 291 6000 Fax: (018) 295 3400

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

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

Case Investigative Report

1. COMPLAINT IDENTIFICATION

- 1.1 GCN **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 **Diepaloof CAS 390/07/2012**
- 1.10 Suspect Identification **Lt Gen. Dramat and others**
- 1.11 Investigator **Task Team**
- 1.12 Assignment **Investigations**
- 1.13 Reporting Staff Member **Innocent Khuba**

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1. BACKGROUND

- 1.1 The Independent Police Investigative Directorate received a complaint of alleged rendition involving members of the DPCI headed by General Sibya. 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 Sibya and Lt General Dramat, conducted operations in Soweto and Diepsloot to trace Zimbabwean Nationals. The suspects were wanted in connection with the murder of a Zimbabwean police Colonel in Bulawayo. The members were accompanied by Zimbabwean Police. Five Zimbabweans were arrested in Diepsloot and detained at various stations as illegal immigrants and others for fictitious crimes. They were allegedly assaulted by SAPS members and Zimbabwean Police and transported to Beit Bridge where they were handed over to the Zimbabwean Authorities. Four of them were reported murdered in the hands of Zimbabwean Police.
- 2.2 According to the allegation, Major General Sibya was also part of the operation.

3. CONSTITUTIONAL AND STATUTORY MANDATE

- 3.1 Section 206(8) 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 06/11/2010 at 20h00 he was at 6854 John Malalje 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, Godl Dube, Prichard Chuma and John. He asked

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them whether they know such people but none of such names were known to them. The officer was wearing a cowboy hat and they heard other police officers calling him Cowboy. Few minutes later, Cowboy asked the other Police Officers about where to detain them. While they argued about the place to detain them, the other officer suggested that General 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.

Moghave Sibanda: He will state that on 06/11/2010 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/Deemond 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

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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.

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.

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 Ndoke 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.

Amoud 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 Sibya 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 Sibya.

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 Sibya. On 2010/11/05 Gen. Sibya 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 Sibya, Captain Cowboy and W/O Makoe. He will state that the four suspects were then detained at Orlando Police Station as illegal immigrants but not on the Zimbabwe murder case of the murdered Colonel.

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

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

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

Rachel Ncube: She will state that she is the wife of the deceased John Nyonl. It was on 28/11/2011 at 10h00 when she was in her shack with her husband Johnson Nyonl 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 Biko Nyonl, the brother of the deceased that Johnson Nyonl has died.

Brightness Nka Ncube: she will state that she is the sister-in-law of the late Johnson Nyonl. On the 6th or 6th of November while she was asleep she was woken up by the police who pretended to be Johnson Nyonl 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 Nyonl. The police freed them after they realized that Johnson was not amongst them. She learned later that Johnson Nyonl was murdered by the police in Zimbabwe.

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

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

Thomas Phene Setogana: 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 Wimbwe 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 Papp: 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 05h46 she reported on duty and she was posted at the cells. On the same day she was tasked by W/O Marula 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

Notwanda 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 Nohwandwe: 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 Makuleke 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. Makuleke that the signature does not belong to any of his people. The documents were copies and Mr. Makuleke 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.

Polwane Skoema: 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-1726) 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 Margaret Molehle: 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

Ndandakeni Richard Madlana: 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 Radziani 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 Makuleke 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 Makuleke and was with him at Paarl in Cape Town in 2005. When he said that he is Captain Makuleke, he remembered very well who he was. Captain Makuleke 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 Makuleke 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 Makuleke 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 Makuleke 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 Madlonga was one of his team members posted at Belt Bridge reporting under Colonel Radziani. He remembers receiving a call from Colonel Madlonga 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 Madlonga about the Zimbabwean Police.

Colonel Doreen Sharon Radziani: She will state that in 2010 she was the direct supervisor of Colonel Madlonga at the Belt Bridge Port of entry. She will further state that in 2010 Colonel Madlonga 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 Madlonga 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 Dlepsoot 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 Matuleke 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 Selape: 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 TJH568 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 Beit Bridge and Captain Maluleke came over to his car, released iron legs from the suspect and headed to the Community Service Centre. He then went back and slept over in Polokwane.

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

Ayhasroni 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 Npali Moutshu: 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 male 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 Mokopelo: 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.

Wendine Makrobu: 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 Sombhene who also gave them the number of Captain Maluleke. She also spoke to Maluleke over the phone while they were there. They then drove to the Hawks offices to meet with Captain Maluleke who told them that the suspect has murdered a police officer in Zimbabwe.

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

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

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

Emmanuel Dinkulu Mkhabe: His statement corroborates that of Plalimah 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 Poleko. 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 28/01/2011 he was called by his colleagues after the arrested Johnson Nyoni 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

Avhasel Witness Rambahda: 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.

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Isaac Dlamini: He will state that in January 2011 docket Diepsloot Cas 93/01/2011 was assigned to him for further investigation. The docket had three suspect arrested for possession of unlicensed firearm and ammunition. The names of the suspects were Menzi Dube, God Dube and Sidingumunzi Dumanl. He received a call from "Cowboy" Makuleke 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 Makuleke 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.

Leon Meyer: He will state that he was investigating several cases wherein Godl Dube was a suspect. The case were as follows, Wierdebrug CAS 631/12/2010, Wierdebrug CAS 220/02/2010, Wierdebrug CAS 147/11/2010, Wierdebrug CAS 1022/12/2010, Wierdebrug CAS 310/10/2010 and Diepsloot 93/01/2011. He was informed by Captain Makuleke from the Hawks that suspect Alfred Godl Dube was also wanted in Zimbabwe. According to Makuleke he was also wanted for murder as per Bulawayo CR 438/09/2010. He will further state that he booked out suspect Godl Dube and handed him to Captain Makuleke. Captain Makuleke informed him that suspect Gordon Dube will be handed over to the Zimbabwean government through immigration channels.

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

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

5. DOCUMENTARY EVIDENCE ACQUIRED FROM VARIOUS POLICE STATIONS

5.1.1. EXTRACTS FROM OCCURRENCE BOOKS & SAPS 14 REGISTERS

The investigation at Orlando Police Station uncovered the following:

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Specific reference to OB 276 to 279: The entries made from 04h10 of 06/11/2010 to 12h00 of the 08/11/2010 confirms that Captain M L Maluleke of the DPCI with force number 0822729618 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 Nkozi. However Nkozi 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 23/06/2010 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 Ball 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 28/01/11: Warrant Officer Johannes Mpati Moetsah booked in Johnson Nyoni by the instruction of Captain Maluleke for Fraud.

OB entry 28/01/11: Captain Maluleke booked out Johnson Nyoni to Ball 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 Witbank 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

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

Copies of dockets linking Gordon Dube: Wierdabrug CAS 531/12/2010, Wierdabrug CAS 22/02/2010, Wierdabrug CAS 147/11/2010, Wierdabrug CAS 1022/12/2010, Wierdabrug CAS 310/10/2010 and Diepsloot 83/01/2011. 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 DOCUMENTARY EVIDENCE ACQUIRED FROM DPCI OFFICES.

Success report dated 04/02/2011: The report was addressed to General Dramat, General Hlatshwayo and General Toke 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 Sekundu. Paragraph "4" 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 Beit Bridge (Limpopo) for investigation and claimed overtime. On 24/11/2010 he went to Beit Bridge and also claimed overtime. On 28/01/2011 he went to Beit Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.

5.3 EVIDENCE ACQUIRED FROM CAPTAIN MALULEKE'S SEIZED LAPTOP.

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

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

Emails by Captain Makuleke: 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 Eokaburg 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 Makuleke 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 Makuleke, 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 back 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 Beit Bridge by seven Zimbabwean police. He will further state that they were travelling in a white fortuner and he was handed to the South African Police at Beit bridge.

5.4 DOCUMENTARY EVIDENCE FROM HOME AFFAIRS

Warrant of Detention of Illegal Foreigners (BI-1726) – 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 Beit Bridge Border. However the form has been wrongly stamped and does not have finger prints of the deportees as required. The stamp number 20 belonging to Beit Bridge was used and such stamp is not for that purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was used was off duty and the stamp was locked in the safe, she is the only person in possession of the key to the safe.

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

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

5.6 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 Makuleke and sent 30 SMS to Major General Dramat (0826516311). 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.

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Cellphone records of Captain "Cowboy" Maluleke (0827728518): The interaction between Major General Sibya 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 Madlonga on 08/11/2010 at 19:10:47, when he was approaching Musha. The information is also corroborated by Colonel Madlonga.

Cellphone records of Lt Colonel Neebling (0824): 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 Madlonga: 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 Bell 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 Lebaya: 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 Sibya 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 Makufoko also known as Cowboy. According to the letter retrieved from Captain Makufoko'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 rendition 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 Madlonga 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 Madlonga's version is corroborated by Brigadier Makushu and Colonel Radzilani. The cellphone records of general Dramat and Belt bridge Telekom records (Col Madlonga's extension) show that General Dramat received a call from 015534 6300 at 20h56 on 04/11/2010. This corroborates the version of Madlonga, Lt Col Radzilani and Brigadier Makushu about the call made in connection with the Zimbabwean police. According to Lt Col Madlonga 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

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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 28/01/2011 and 31/01/2011 before it could be emailed to a female officer, Warrant Officer Thabiso Mafala 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 Gwelo late at night, leaving them with the opportunity to have the meeting with General Dramat in the morning of the 5th of November 2010.

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

Evaluation of the above findings: Despite the fact that General Dramat as an Accounting Officer did not sign any claim of Captain Maluleke, delegating responsibility to Major General Sibya 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 to 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.

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- o 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.
 - o He was kept informed of the developments in the operations that led to the arrest of wanted Zimbabwean Nationals: The cellphone records of General Sibya 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.
 - o 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 Chetkobo of Bulawayo on 18th September 2010. It goes further to state that there was a joint operation between South African Police and Zimbabwean police to trace and arrest the suspects.
- There is evidence and witnesses corroborate each other that General Sibya was both at the scene and planning venue. The meeting held between IPID and General Dramat on 2010/03/07 confirmed that General Sibya 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 Sibya show interaction between them at various milestones of the operation. Following suggest the involvement of General Sibya;
 - 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 Sibya during and shortly after the operation. Col Neethling also stated that he should have reported progress to General Sibya during the operation. However the cell phone records of General Sibya does not place him at the scene and planning venues as claimed by witnesses. It is also clear that some of the witness claim to have heard that General Sibya was in the car rather than seeing him personally.
 - o The meeting held in Zimbabwe wherein General Sibya 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 31/06/2011 to Provincial Head of Crime intelligence in Gauteng appreciating the good work that members of Crime

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

- The involvement of Captain Maluleke as a foot soldier in the operation has overwhelming evidence. The following evidence against Captain Maluleke 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-1688) 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

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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 Rammuda 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 hooked out Johnson Nyoni to Belt 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 Belt 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 Radeba, Captain S E Nkosi and Warrant Officer Makoe. They were involved in the assault of Zimbabwean Nationals during arrest.

RECOMMENDATION

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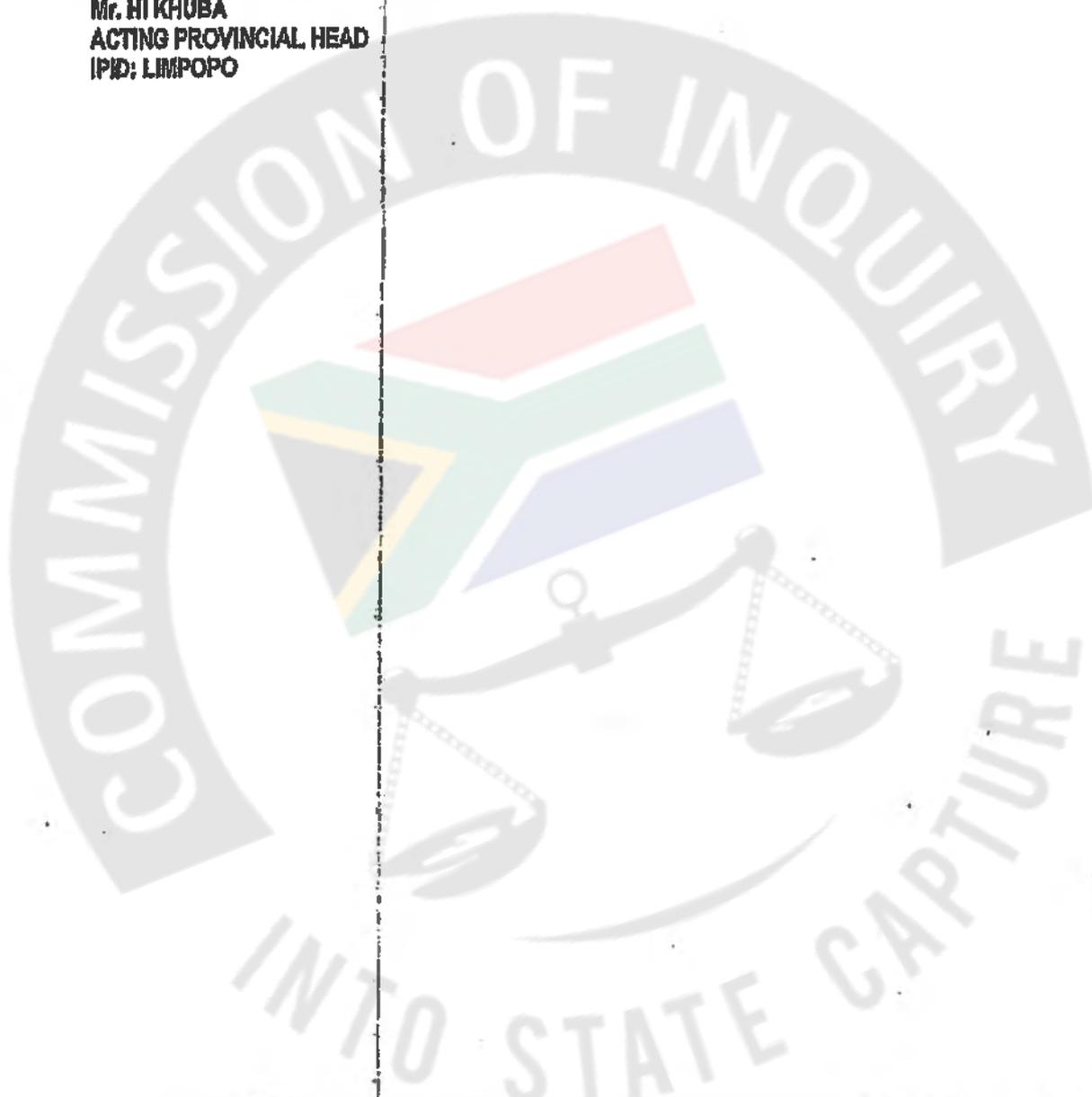
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Based on the available evidence, the Independent Police Investigative Directorate recommends that Lt General Dramat, Major General Sibye, Lt Col M Maluleke, Constable Radebe, Captain S E Nkosi and Warrant Officer Makoe be charged criminally of;

- 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)

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Mr. HIKHUBA
ACTING PROVINCIAL HEAD
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Eng: I H Khuba
Date: 2014/01/22

Case Investigative Report

COMPLAINT IDENTIFICATION

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

1. BACKGROUND

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

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

2. SUMMARY OF ALLEGATIONS

The following allegations were made:

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

3. CONSTITUTIONAL AND STATUTORY MANDATE

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

4. AVAILABLE EVIDENCE

4.1 STATEMENTS OBTAINED FROM INDEPENDENT WITNESSES

The following witnesses were interviewed and statements obtained.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.2 STATEMENTS OF MEMBERS AT ORLANDO POLICE STATION

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

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

Thomas Pixane Setagane A26: He is a member of SAPS stationed at Orlando. On 06/11/2010 Captain Maluleke came to the holding cells with four foreign national namely Dumisani Witness Ndeya, Nelson Ndlovu, 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 A27: She will state that she is a Constable and that during the time of incident she was still a trainee. On 2010/11/08 at 05h45 she reported on duty and she was posted at the cells. On the same day she was tasked by W/O Marule to write the Occurrence Book. She made entries as directed and not as she observed because she was a Trainee.

4.3 STATEMENTS OF HOME AFFAIRS OFFICIALS

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

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

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

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

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

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

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

Johannes Lodewickus A30: He will state that he is a Deputy Director in the Department of Home Affairs at Sowelo. 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 Sowelo.

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

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

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

4.4 STATEMENTS OF MEMBERS OF SAPS IN LIMPOPO

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

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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 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 Makuleke 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.

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

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

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

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

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

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

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

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

4.5 STATEMENTS OF TOMS MEMBERS IN GAUTENG AND PRETORIA

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

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was. Captain Maluleke walked towards him and briefed him, informing him that he is investigating a case of murder of a Zimbabwean police officer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATEMENTS OF DIEPSLOOT SAPS MEMBERS REGARDING GORDON DUBE

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

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

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

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

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

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

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

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

6. DOCUMENTARY EVIDENCE ACQUIRED FROM VARIOUS POLICE STATIONS

5.1.1. EXTRACTS FROM OCCURRENCE BOOKS & SAPS 14 REGISTERS

The investigation at Orlando Police Station uncovered the following:

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

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

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

The investigation at Alexandra Police Station uncovered the following:

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

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

The investigation at Silverton Police Station uncovered the following:

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

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

The investigation at Pretoria Moot Police station uncovered the following:

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

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

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

The investigation at Wierdabrug Police Station uncovered the following:

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

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

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

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Diepsloot Cas 93/01/2011:

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

Wierdabru Cas 531/12/2010:

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

Wierdabru Cas 220/02/2010:

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

Wierdabru Cas 43/10/2010:

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

Wierdabru Cas 147/10/2010

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

Wierdabru Cas 1022/12/2010:

No docket or copies could be found regarding this case.

Wierdabru Cas 310/10/2010:

This is house robbery case linked to Gordon.

5.2 DOCUMENTARY EVIDENCE ACQUIRED FROM DPCI OFFICES:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.4 DOCUMENTARY EVIDENCE FROM HOME AFFAIRS

Warrant of Detention of Illegal Foreigners (BI-1725) – This document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the docket does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.

It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on both documents clearly shows that whosoever completed the document used the old form already completed and deleted affiliated information to put the information of the three foreign nationals. The handwriting expert in her findings has indicated that the signature in each document does not resemble the sampled signature provided by members of Home Affairs.

Notification of The Deportation of an Illegal Foreigner (DHA-1689) documents were produced by SAPS as proof that the Nelson Ndlovu, Shepard Chuma and Maghawe Sibanda were deported through Beit Bridge Border. However the form has been wrongly stamped and does not have finger prints of the deportee as required.

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

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

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

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

5.5 EVIDENCE IN TERMS OF SECTION 205 OF THE CRIMINALPROCEDURE ACT.

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

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

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

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

5.7 STATEMENT ON HOW DIEPSLOOT Cas 390/07/2011 WAS INVESTIGATED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. ANALYSIS OF EVIDENCE AND FINDINGS.

The following findings were made;

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

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

- *Evaluation of the above findings:* In the entire cellphone records of Lt General Dramat requested for the period 20/10/2010 to 28/02/2011, the number 0155346300 only appear once which rules out any form of communication before 04/11/2010 and after the said date. This supports his version that he called Lt General Dramat in connection with the Zimbabwean police.
- o *He held a meeting on 05/11/2010 with Zimbabwean police planning the operation.* Success report dated 04/02/2011 addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT: MOST WANTED FUGITIVE: WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS. The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI offices about the Nationals who shot and killed one of their senior officers. He appointed Captain Maluleke to be a lead person during the operation.
 - *Evaluation of the above findings:* The success report signed by Leonie Verster was traced to Lt Col Maluleke's laptop as picked from the retrieved deleted data. The report was amended on 26/01/2011 and 31/01/2011 before it could be emailed to a female officer, Warrant Officer Thabiso Mafatla on 09/02/2011 at 14h32. There is no material difference between the document retrieved from the laptop and that found at the Hawks' offices during investigation. This proves that Leonie Verster did not generate success report but only signed the report drafted by Captain Maluleke. The date of the meeting between Zimbabwean Police and General Dramat which took place on 05/11/2010 coincide with the date of the 4th of November 2010 which according to cellphone records, General Dramat was called at 20h56 by Lt Col Madilonga seeking permission to allow Zimbabwean Police to enter into the country. Since the Zimbabwean Police were at Beit Bridge between 20h00 and 21h00, it is logical that they arrived in Gauteng late at night, leaving them with the opportunity to have the meeting with General Dramat in the morning of the 5th of November 2010 as stated in the Success Report.

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

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

- There is evidence and witnesses corroborate each other that General Sibiya was both at the scene and planning venue. The meeting held between IPID and General Dramat on 2013/03/07 confirmed that General Sibiya was appointed to be the Head of TOMS which he created to trace wanted suspects. The telephone records of both Captain Maluleke and Major General Sibiya show interaction between them at various milestones of the operation. Following suggest the involvement of General Sibiya;
 - Witness stated that he was seen during the operation that took place on 22/11/2010 which led to the arrest of Prichard Chuma
 - In other operations cellphone record of Warrant Officer Makoe, Captain Maluleke and Col Neethling clearly show continuous contacts with General Sibiya during and shortly after the operation. Col Neethling also stated that he should have reported progress to General Sibiya during the operation. However the cell phone records of General Sibiya does not place him at the scenes and planning venues as claimed by witnesses. It is also clear that some of the witness claim to have heard that General Sibiya was in the car rather than seeing him personally.
 - The meeting held in Zimbabwe wherein General Sibiya was appointed as a coordinator on cooperation matters involving the two countries suggests that the operation could not have been done without his knowledge more so because his Gauteng Team was involved in the operation. However this inference cannot provide prima facie case that he was involved.
- There is no evidence for the involvement of Former General Mzwandile Petros. However he addressed a letter dated 31/05/2011 to Provincial Head of Crime Intelligence in Gauteng appreciating the good work that members of Crime Intelligence have done when they arrested Zimbabwean Nationals involved in the murder of Senior Police Officer in Zimbabwe. The letter was as a result of a request made by Former General Toka of Crime Intelligence requesting General Mzwandile Petros to appreciate members of Crime Intelligence.
- There is also no evidence that suggest that Lt General Toka, Lt General Lebeya and Major General Hlatshwayo was involved except that they received communication regarding this matter.
- The involvement of Captain Maluleke as a foot soldier in the operation has overwhelming evidence. The following evidence against Captain Maluleke where uncovered;
 - The documents which the police claimed to be valid Home Affairs documents used in the deportation of the four Zimbabweans are forged and have employee number that does not exist in the Home Affairs Department. The Warrant of Detention of Illegal Foreigner (BI-1725) document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the documents does not belong to any member of Home Affairs in Gauteng and the appointment number 037162 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 2D 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 08 November 2010 shortly before he booked out the Zimbabwean Nationals out of Orlando Police station. It is doubtful that the permission was acquired given the time at which the Zimbabwean Nationals were booked out. In addition, he cited the DZP as a challenge in the deportation of Zimbabwean Nationals and he wanted assistance from Home Affairs. This does not only show that he was aware of the Dispensation for Zimbabwean Projects which gave Zimbabwean Nationals grace period, but also that there was ulterior motive way above deportation on the basis of being illegal immigrants.
- The request that Captain Maluleke made to Constable Meyer, Detective Constable Rambuda, Warrant Officer Dlamini in connection with the Gordon Dube demonstrate the extent to which he was ready to go in order

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

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

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

RECOMMENDATION

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

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


Mr. HI KHUBA
ACTING PROVINCIAL HEAD
IPID: LIMPOPO



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DISCIPLINARY ENQUIRY

In the matter between

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Employer

and

INNOCENT KHUBA

First employee

MATTHEW SESOKO

Second employee

AGREEMENT BETWEEN THE EMPLOYER AND INNOCENT KHUBA

INTRODUCTION

1. The First Employee, Innocent Khuba ("Khuba"), was charged with dishonesty and defeating the ends of justice as more fully set out in the charge sheet attached hereto marked "A".
2. Pursuant to the institution of disciplinary action against Mr Khuba, the parties have reached agreement on 23 September 2015.
3. The Parties wish to record in writing the terms of the agreement, which terms they record below.

TERMS OF AGREEMENT

4. Mr Khuba being legally represented, freely and voluntarily pleads guilty to the charges proffered against him as set out in annexure A.
5. The Employer will impose a sanction of a final written warning valid for 6 months against Mr Khuba.
6. Mr Khuba suspension will be uplifted and he will report for duty on Monday, 28 September 2015.

M. E. V.
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**IN THE DISCIPLINARY HEARING
(HELD AT PRETORIA)**

In the disciplinary enquiry between:

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Employer

and

INNOCENT KHUBA

1ST Employee

MATTHEWS SESOKO

2ND Employee

CHARGE SHEET

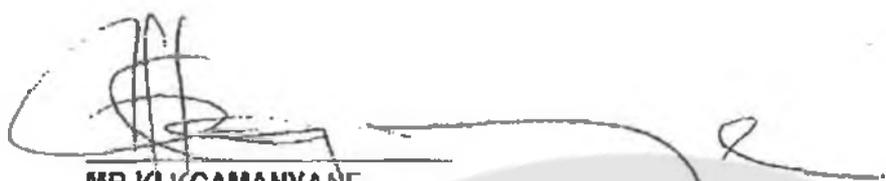
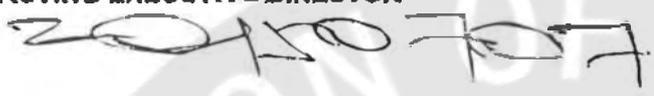
CHARGE 1

1. You, Mr Khuba ("first employee") are currently the Provincial Head of IPID in Limpopo. During 2012, you were appointment as the Lead Investigator in the matter relating to the illegal rendition of Zimbabwean nationals by certain members of the Directorate for Priority Crimes Investigation ("DPCI") which occurred during November 2010 and January 2011. The investigation was concluded on or about January 2014 and you submitted a final investigation report to the National Prosecuting Authority ("NPA") for a decision. In submitting the said report to the National Prosecuting Authority, you were accompanied among others by Matthews Sesoko, Head of Investigations at IPID, who provided legal assistance to you and your team during the investigation. In submitting your January 2014 report to the NPA, you met with

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- 7. If the enquiry holds that you are guilty of misconduct, you may present any relevant circumstances in determining the disciplinary sanction.
- 8. Attached hereto is a copy of the charge sheet.

Yours faithfully


MR KI KGAMANYANE
ACTING EXECUTIVE DIRECTOR


SIGNATURE OF MEMBER _____
DATE: _____



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ipid
Department
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

RECOMMENDATIONS

TO

NDPP

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RENDITIONS (DIEPSLOOT CAS 390/07/2012)

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ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X9928, Polokwane, 0700, 68 A Market Street, Ferric Building, 2nd Floor, Polokwane
Tel.: (015) 291 8900 Fax: (015) 293 3409

Case Investigative Report

COMPLAINT IDENTIFICATION

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

1. BACKGROUND

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

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RENDITIONS DIEPSLOOT CAS 990/07/2012

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 Mahuleke, Warrant Officer Makoe and Constable Radebe, through the direction of General Sibiya and LI General Dramal, 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 Bell Bridge where they were handed over to the Zimbabwean Authorities. Four of them were reported murdered in the hands of Zimbabwean Police.
- 2.2 According to the allegation, Major General Sibiya was also part of the operation.

3. CONSTITUTIONAL AND STATUTORY MANDATE

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

4. AVAILABLE EVIDENCE**4.1 STATEMENTS OBTAINED FROM INDEPENDENT WITNESSES**

The following witnesses were interviewed and statements obtained.

Shepard Chuma A1: He will state that on Friday 05/11/2010 at 20h00 he was at 6954 John Matalje 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 Mihelisi Sibanda, Godi Dube, Prichard Chuma and John. He asked them whether they know such people but none of such names were known to them. The officer was wearing a cowboy hat and they heard other police officers calling him Cowboy. Few minutes later, Cowboy asked the other Police Officers about where to detain them. While they argued about the place to detain them, the other officer suggested that General Sibiya be consulted to provide direction in the matter. A short while later General Sibiya alighted from a Black BMW. He will state that they were assaulted and when they arrived at Orlando Police Station one of the Officers called "Leburu" took his R300 which was in a wallet in his back pocket. They were detained

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

On Monday 2010/11/06 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.

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

Nelson Ndlovu A3: He will state that on 05/11/2010 at 20h00 he was at his younger brother's residential place in Diepsloot when he was approached by two Black Males who identified themselves as Police Officers. They ordered them to lie down and then started to assault them. He identified one of the Police Officer by the nickname Leburu. After their arrest the Police Officers argued about where they should detain them and one of them suggested Randburg. General 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.

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

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

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

Petros Jawuke A5: He will state that during October 2010 he was nominated to be part of a Task Team Called "TOMS" in Gauteng Province and that the team operated under the command of General 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 Makuleke 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 Prichard Chuma was found and arrested for murder of the Colonel in Zimbabwe.

Desmond Campbell A6: He will state that on 2010/11/05 General 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 Sibiyi being involved in the operation but that there was a person who was

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

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

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

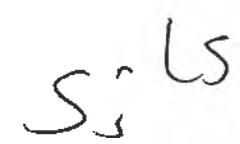
Desmond Campbell A11-Additional statement: He will state that he was based at Johannesburg Central Crime Intelligence before receiving a call up instruction from Gauteng Provincial DPCI Head, Major General Sibiya to report at Gauteng TOMS office. On 22/11/2010 of which he cannot remember the exact time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

Andrew Mark Semposon A12: He will state that he is a White Male self employed as a Project Manager of House Constructions. He knew Maghawe Sibanda as a sub-contractor on his building sites. He will state that Mr. Sibanda vanished for a week and resurfaced again. He was informed by Mr. Sibanda that his disappearance was as result of his arrest in connection with the alleged murder of a Zimbabwean Colonel. He was taken to Bell 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 Mofu A24: She will state that she is a neighbor of the deceased Johnson Nyoni. She will state that she witnessed a group of unknown Policemen assaulting the deceased who was lying down on the furrow of running water as it was raining. She will state that the deceased was assaulted by means of being kicked with booted feet. She will state that she cannot recall the exact date but it was during January 2011. She will state that the deceased was also pepper sprayed on his face and that he was having bloodied mucous coming out of his nostrils.

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





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

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

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

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

4.2 STATEMENTS OF MEMBERS AT ORLANDO POLICE STATION

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

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

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

Thomas Pixane Setogane A26: He is a member of SAPS stationed at Orlando. On 06/11/2010 Captain Maluleke came to the holding cells with four foreign national namely Dumisani Wilness Ndeya, Nelson Ndlovu, Maghabane Shanda 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 Pano A27: She will state that she is a Constable and that during the time of incident she was still a trainee. On 2010/11/08 at 05h45 she reported on duty and she was posted at the cells. On the same day she was tasked by W/O Marule to write the Occurrence Book. She made entries as directed and not as she observed because she was a Trainee.

4.3 STATEMENTS OF HOME AFFAIRS OFFICIALS

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

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

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

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

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

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

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

Richard Peter Elberg A37: 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 Margaret Mofahlo A39: 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 Madlona A51: He will state that he is a Police Officer in the South African Police Service holding a rank of Lieutenant Colonel stationed at Thohoyandou SAPS as a Commander of Crime Prevention.

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

Before he was transferred to Thohoyandou SAPS, he was working at 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

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Superintendent Ncube from the Homicks 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.

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 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.

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

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

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

4.5 STATEMENTS OF TOMS MEMBERS IN GAUTENG AND PRETORIA

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

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

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

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

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

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

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

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

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

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

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

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

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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.

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

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

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

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

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

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

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

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

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

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

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

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

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

Constable Hosea Tshabalala A83: He will state that on 28/11/2011 he was officially on duty posted at Diepsloot. While still on duty was requested together with his colleagues to assist them in tracing a suspect who was involved in the murder of Zimbabwean Colonel in Zimbabwe. Constable Rikhotso and his female co-worker briefed them that the suspect was with the informer. When they arrived at the exact place, they found the suspect standing in front of the luck-shop. They arrested him and took him to his room where they found a woman with a small baby. Constable Rikhotso and his female colleague search the room. The suspect was taken to Silverton at the DPCI offices where they found two Zimbabwean police officers. He will further state that the suspect informed him that some few weeks while he was in Zimbabwe he attended the funeral of his colleague who was killed by the Zimbabwean police and the same Zimbabwean police will kill him when he arrive in Zimbabwe. He was requested to detain the suspect at Moot police but he cannot remember the person who made the request.

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

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

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

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

In January 2011 they received information from CIAC at Wierdaburg regarding the wanted suspect John Nyoni. The person they liaised with at CIAC was Constable Sombhane who also gave them the number of Captain Maluleke. She also spoke to Maluleke over the phone while they were there. They then drove to the Hawks offices to meet with Captain Maluleke who told them that the suspect 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 a 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 the Zimbabwean government. He told them that they would be called by Provincial Commissioner Mzwandile Petros to meet with them as a result of their good work. She does not know what happened to John Nyoni thereafter.

Emmanuel Dinizulu Mkasibe A68: His statement corroborates that of Platnash 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 Polefo. They then

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gathered together and Captain Matuleke introduced General Dramat and the spokesperson. General Dramat addressed and thanked them for arresting the suspect. After he said that he left and Captain Matuleke told us that he was organizing a celebration braai. While they were busy enjoying themselves, a lady working at the Hawks offices with Captain Matuleke 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 Matuleke.

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 Pololo Fortune Mngwenya A75: He will state under oath that on the 29/01/2011 he was called by his colleagues after the arrest of Johnson Nyoni to join them at DPCI offices in Silverton for a braai. He will further state that when he arrived he found Zimbabwean police and some of his colleagues participating in a photo shoot. Shortly after the photo shoot Lt. General Dramat came and thanked them for the job well done.

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

STATEMENTS OF DIEPSLOOT SAPS MEMBERS REGARDING GORDON DUBE

Witness Rambuda A72: He will state that in January 2011 he was working Diepsloot as a Detective. There were three suspects who were arrested after they were involved in the shooting incident with the police. They recovered a firearm which was booked into SAPS 13 and received exhibit number SAPS 13/31/2011. He was involved in the charging of the suspects and they were attending court at Altridgville. After some few days he received a call from Captain Matuleke 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 Matuleke. Captain Matuleke 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 on his computer acknowledging the firearm but he does not remember where he put the letter.

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

Warrant Officer Isaac Dlamini A70: He will state that in January 2011 docket Diepsloot Cas 93/01/2011 was assigned to him for further investigation. The docket had three suspect arrested for possession of unlicensed firearm and ammunition. The names of the suspects were Menzi Dube, God Dube and Sidingumunzi Dumanl. 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.

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

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

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

5. DOCUMENTARY EVIDENCE ACQUIRED FROM VARIOUS POLICE STATIONS

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5.1.1. EXTRACTS FROM OCCURRENCE BOOKS & SAPS 14 REGISTERS**The Investigation at Orlando Police Station uncovered the following:**

Specific reference to OB 278 to 279 (A8): The entries made from 04h10 of 06/11/2010 to 12h00 of the 08/11/2010 confirm that Captain M L. Makuleke of the DPCI with force number 0622729518 arrested Dumisani Witness Ndeya, Nelson Ndlovu, Maghabane Sibanda and Shepard Chuma.

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

SAPS 14 (A10): The cell register dated 2010/11/05 to 2010/11/08 indicates that the following suspects were charged and detained, Dumisani Witness Ndeya, Nelson Ndlovu, Maghabane 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 Pixene Satage who also later confirmed this in a sworn statement.

The Investigation at Alexandra Police Station uncovered the following:

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

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

The Investigation at Silverton Police Station uncovered the following:

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

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

The Investigation at Pretoria Mpol Police station uncovered the following:

OB entry 28/01/11 (A56/1): Warrant Officer Johannes Mpall Moatshi booked in Johnson Nyoni by the instruction of Captain Makuleke for Fraud.

OB entry 28/01/11 (A56/2): Captain Makuleke booked out Johnson Nyoni to Bell Bridge for Fraud.

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

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The investigation at Wierdebrog Police Station uncovered the following:

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

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

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

Diepsloot Cas 93/01/2011:

The case docket was opened after Gordon Dube was found in possession of an unlicensed firearm. The original docket was handed to Captain Maluleke and a duplicate docket had to be constructed without some of the statements in the original docket. The suspect Gordon Dube was attending court in terms of admission detail report of Pretoria Central Correctional Services and the body receipt form both filed as per AB4/1 and AB4/2 respectively.

Wierdebrog Cas 531/12/2010:

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

Wierdebrog Cas 280/02/2010:

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

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Wierdabru Cas 43/10/2010:

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

Wierdabru Cas 147/10/2010:

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

Wierdabru Cas 1022/12/2010:

No docket or copies could be found regarding this case.

Wierdabru Cas 310/10/2010:

This is house robbery case linked to Gordon.

5.2 DOCUMENTARY EVIDENCE ACQUIRED FROM DPCI OFFICES.

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

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

Success report dated 11/11/2013 (A82/1-82/2): The report bears reference number 28/02/1 and again addressed to Deputy National Commissioner DPCI. The person to whom enquiries must be directed is Captain Maluleke whereas the signatory is Col P J Selundu. The report further stated the arrest of Dumisani Witness Vundla @ Ndeya and Shepard Chuma.

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

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

Success report ref: 26/2/1 and 14/02/01: They were generated in Captain Maluleke's laptop before being signed by Col L Versier 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 Diepsfontein Station Commander: The recovered letter states that the firearm which was found in Gordon Dube's possession and handed to Captain Maluleke after ballistic examination was taken to Zimbabwe permanently.

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

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

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

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

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

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

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then shot him on both knees. He was then taken to Central Hospital in Zimbabwe where he was treated before released to the hands of the Zimbabwean Police. After being release he was transported to Bell Bridge by seven Zimbabwean police. He will further state that they were travelling in a white Toyota Fortuner and he was handed to the South African Police at Bell 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, Wilness 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-1089) documents were produced by SAPS as proof that the Nelson Ndlovu, Shepard Chuma and Maqhawa Sibanda were deported through Bell 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 Bell Bridge was used and such stamp is not for that purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Moflahlo 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.

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

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

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

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

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

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

CELLPHONE RECORD OF LT GENERAL DRAMAT (0825515311)

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

CELLPHONE RECORD OF MAJOR GENERAL HLATSWAYO (0828051210)

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

CELLPHONE RECORD OF LT GENERAL LEBEYA (0825761899)

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

CELLPHONE RECORD OF CAPTAIN MALULEKE (082 7729518)

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

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CELLPHONE RECORD OF CAPTAIN NKOSI, W/O MAKOE AND CONSTABLE RADEBE (0834373227), (0723050697), (0824198303) AND (0737313608).

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

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

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

5.6 STATEMENTS OF SENIOR MEMBERS OF SAPS AND SECRETARIAT

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

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

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

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

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

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

Warning statement of Lt Col Mahlanou Maluleke A88: He exercised his right to remain silent.

5.7 STATEMENT ON HOW DIEPSLOOT Cas 390/07/2012 WAS INVESTIGATED

Innocent Humbulani Khuba A102: He will state that he is a member of Independent Police Investigative Directorate base in Limpopo. On 23 October 2012 he received a case docket from Mr. Sesoko and appointment letter to conduct investigation in all cases of alleged assault against Major General Sibya. The docket received is Diepsloot Cas 390/07/2012. He also received a copy of the letter which was sent to Mr Sesoko by Major General Sibya complaining about the conduct of North West Task Team which was tasked to investigate cases against him including Diepsloot Cas 390/07/2012. He was informed by Mr Sesoko who was the National head of IPID of investigation that the reason he was appointed to be the new Task Team Leader was that Major General Sibya complained against the North West Task Team. He was advised to assemble a team that would assist me in the investigation of these cases. The team assembled comprised of the following individuals, Mr Kenneth Ratshilal, Mr. L Maphetho, Mr N Mulaudzi and Mr T Mashaphu who are all investigators from Limpopo Provincial office. They worked under his guidance and took instructions directly from him as the team leader.

Upon his perusal of Diepsloot Cas 390/07/2012 and other accompanying documents, he discovered that the Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by Lt General Dramat from Civilian Secretariat. The case was reported as result of parliamentary

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question by Cope Member of Parliament and an article by Sunday Times. The docket had following statements obtained by members of South African Police Services, the statement of Shepard Chuma, Maghawe Sibanda, Nelson Ndlovu, Bongani Henry Yende, Petros Jawuke, Desmond Campbell, Alfred Ndoba, Andrew Mark Sampson, Reason Mhgwumbe Sibanda, Rachael Ncube, Brightness Nka Ncube, Madala Bhakisisa Nyoni and Sibongile Mpofo. There were also copies of Occurrence Book and cell Registers from Orlando police station regarding the detention and booking out of the following individuals, Dumisani Witness Ndeya, Nelson Ndlovu, Maghawe Sibanda and Shepard Tshuma. There were also four Detention Warrants, four Deportations Notifications and a copy of Witness Ndeya's death certificate.

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

On 13 November 2012, a letter requesting an interview with Home Affairs officials and documents regarding the movement of people at Musina Belt Bridge port of entry was e-mailed to Mr. Ndlovu of the Deportation section at Home Affairs Head Office in Pretoria. On 08/02/2013 the permission was granted after he had a meeting with Mr. M Mathews, the Chief Director responsible for deportation and mending of Ports of Entry. Prior to the interview with Home Affairs officials, he visited Orlando Police station on 10/01/2013 and interviewed Brigadier Zangwa and other members stationed at Orlando. He received copies of the Occurrence Book and cell registers include a color copy of the Sunday Newspaper regarding the incident.

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

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

During the investigation of the case he visited the office of LI General Dramat on 07/03/2013 and a meeting was held between LI General Dramat and him. He will further state that at that stage the investigation had not uncovered any evidence relating to the involvement of LI General Dramat or any other senior officer of DPCI. The meeting was held at LI General Dramat's office which is located at Silverton.

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During the meeting, Lt General Dramat was informed about the allegation of kidnapping and assault leveled against members of DCPCI most especially Captain Maluleke who is now a Lt Colonel. He said that he had sanctioned internal investigation in the matter and the outcome of the investigation cleared Lt Colonel Maluleke of any wrong doing. When I asked him whether they were any Zimbabwean police who visited the DPCI offices, he said that there were no Zimbabwean police who came into the country regarding the alleged matter and that all Zimbabwean Nationals were deported through Home Affairs for being illegal immigrants. Lt General Dramat was requested to provide statement with regard to the formation of TOMS, his knowledge about the DZP, source documents that informed the internal investigation, his report to parliament and knowledge about the involvement of Zimbabwean police in the operation of TOMS. He informed me that the request should be forwarded to Col Basi and he would hand all the necessary documents including his sworn statement to him.

On 07/03/2013, shortly after the meeting he generated and emailed a letter to Col Basi. On 19/04/2013 he met with Col Basi in front of the Interpol building on Pretorius Street in Pretoria. He handed to him a brown envelope containing following documents, cell phone records of Captain Maluleke, Lt Col Neethling and Major General Sibiya. There were also copies of sworn statements of, Willem Carel Stephanus Vorster, Andree Neethling, Captain Maluleke, Vincent Selotole, Major General Sibiya, Warrant Officer Makoe, Ndanduleni Madlonga and Warrant Officer Rodgers Nhlamu. Attached to the copy of the statement of Warrant Officer Nhlamu were copies of the following documents, Warrant of Detention (BI-1725) for the following individuals, Dumisani Witness Ndeya, Shepard Tshuma, Nelson Ndlovu and Maqhawe Sibanda. There were also four Notifications of the Deportation of an Illegal Foreigner (DHA-1889) for the following individuals, Nelson Ndlovu, Shepherd Chuma, Maqhawe Sibanda and Witness Ndeya. The Warrant of Detention and Notification of the Deportation forms attached to Warrant Officer Nhlamu statement appeared to be similar to the one received from Secretariat which were already part of the docket. The Warrants of Detentions and Notifications of Deportation received from Warrant Officer Nhlamu were the one sent to the Forensic Lab for analysis on 10/08/2013 and 21/08/2013. The documents given to him by Col Basi also include search result report from Interpol indicating that Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma were not in the wanted list. However there was no statement of Lt General Dramat in the envelope handed to him. The documents handed to him are filed in the docket as per A41-A50.

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

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On 08/04/2013 he interviewed Ndandufeni Madlonya and obtained his statement. On 15/04/2012 he went to Bell Bridge and interview Col Radziani and obtained her statement. The following day he interviewed Brigadier Makushu in Polokwane and obtained his statement.

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

On 10/07/2013 he met with Ms. L Verster at Protea-Coin for the interview. She gave information regarding the success reports resulting from the arrest of Witness Ndeya and other Zimbabwean Nationals. She also assisted him by phoning Supply Chain of DPCI and obtained the serial number of Captain Maluleke's laptop which he used during 2010 and 2011. On the same day he generated a letter to Col Mabuyela who was assigned by Brigadier Kadwa to assist him with documents or items needed from the DPCI offices for the purpose of investigation. He hand-delivered the letter to Col Mabuyela on 11/07/2013, requesting the following things, Dell Laptop with serial number CNOJF242486436BL3424 which was assigned to Lt Col Maluleke, approved overtime claims for Lt Col Maluleke for the following period 01/11/2010-31/01/2011, approved trip itineraries for Lt Col Maluleke for the period 01/11/2010-31/01/2011, Telkom call record for Lt Col Maluleke for the period 01/11/2010-31/03/2011, record regarding the disposal and if not yet disposed, the handset used by Lt Col Maluleke, record of successes of operations conducted between 01/11/2010-31/03/2011 and logbooks of vehicles used by Lt Col Maluleke for the period 01/11/2010-28/02/2011. On 12/07/2013 he went to meet with Col Mabuyela and he received success reports which are filed as per A82/1-A83/3.

The success report filed as per A82/3 contains names of officials who assisted in the arrest of Gordon Dube who are members of TRT and Crime Intelligence. On 18/07/2013 he went to Johannesburg Central Police Station and obtained the statements of members of TRT. One of the members by the name of Avhashoni Desmond Takalani (A82/2) had photos at home of Johnson Nyoni and Zimbabwean Police. He went to his house on the same day and collected the two photos which are filed as per A82/1. On 18/07/2013, he emailed a letter to the Commander of Crime Intelligent Pretoria Central, Col Ntonteni requesting interview with his members who are mentioned in success report dated 04/02/2011 (A82/3). On 25/07/2013 he went to Crime Intelligence offices in Pretoria and obtained the statements of the members. The interview with the members also revealed that the arrest of Gordon Dube and Johnson Nyoni was also known by Brigadier Britz. On 18/07/2013 a letter was generated and emailed to Brigadier Britz requesting a meeting for the purpose of interview and obtaining statement. He interview Brigadier Britz on 28/07/2013 and after the interview Brigadier Britz promised to write his own statement. He collected Brigadier Britz statement from his office on 22/08/2013 which is situated at Old Stock Exchange building in Johannesburg. He also received Report number GO-D-004-D which is admission details of Gordon Dube from Correctional Services which is filed as per A84/3 and SAPS 206 (body receipts) filed as per A81-A82.

He also discovered that Gordon Dube was facing number of charges in South Africa including murder. Statements of Isaac Dlamini and Avhashoni Rambau were obtained

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In connection with Diepsloot Cas 93/01/2011 which they were investigating (A70 and A72). Original SAP 10 (Occurrence Book) was uplifted from Wierdabrug Police Station and copies are filed as per A71. Statement of Constable Meyer from Wierdabrug was obtained in relation to cases he was investigating against Gordon Dube and how he booked him out of prison and handed him to Captain Makuleka to be transported to Bell Bridge. He also obtained copies of the following dockets which are cases against Gordon Dube Diepsloot Cas 93/01/2011, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 310/10/2010, Wierdabrug Cas 431/10/2010 and Wierdabrug Cas 531/12/2010. All the copies of the docket are filed under B22 (arch file).

On 16/07/2013, he received a Dell Laptop from Col Mabuyela and Warrant Officer Danie bearing serial number CNJF242884368L3424. The Laptop was handed to Precision Forensics on 31/07/2013 at 18h00. The report from Precision Forensic was received on 22/08/2013 and is filed as per A89 (arch file).

In October 2013 he approached the Head of DPCI accompanied by Mr. Sesoko who was an Acting Head of investigation for IPID requested his warning statement. He was advised to seek an assistance of a lawyer for the purpose of guiding him before the warning statements is obtained. He agreed and informed them that he will telephonically contact Mr. Khuba regarding the suitable date. He will further state that he received a call from a person who introduced himself to him as Adv. P Seleka representing Lt General Dramat. He requested questions in writing and summary of the allegation which was e-mailed to him. After he received the questions, he was informed via e-mail that Lt General Dramat is represented by a new company and they will continue to liaise with him. He emailed the questions and after two weeks he received a copy of his statement and is file as per A94.

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

In November 2013 he engaged Captain Boonsira to arrange for a meeting between him and the two officers, Constable Radebe and Warrant Officer Makoe. Captain Boonsira informed him telephonically that he informed Warrant Officer Makoe and that Constable Radebe was attending training at Hamanskraal. He tried to contact him on 0797313608 for a warning statement but he was not reachable. In late November 2013, he again requested Captain Boonsira to assist but he informed him that the members were informed and they do not want to cooperate.

On 02 December 2013 he requested Principal Investigator Mr Mdunge based at East London IPID office to obtain a statement of Bongani Moyo who is serving his sentence at Kokstad Correctional Services A98. On 21/12/2013 he requested Mandla Mahlangu who is a Principal Investigator based in Gauteng IPID office to obtain a statement of a former acting National Commissioner Lt General Mkhwanazi A99. On 17/02/2014 he obtained a statement of the Secretary of Police Ms J Irish-Chobosheane and is filed as

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per A100 with the attachments of her internal inquiry. I also obtained the results of Lt Col Madifonga's statement analysis from Precision Forensics.

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

6. ANALYSIS OF EVIDENCE AND FINDINGS.

The operation carried out by TOMS to arrest Zimbabwean foreign nationals in Diepsloot in connection with the murder of Zimbabwean police Colonel was led by Captain M L. Maluleke also known as Cowboy.

Captain Maluleke was appointed as the head of cross border desk at the DPCI office to assist in the coordination and apprehending of cross border crime fugitives. In this responsibility he mends the desk alone thereby forging very strong ties with the law enforcement agencies of the neighboring countries such as Zimbabwe and Mozambique. His unique role and the fact that he was based at DPCI head office gave him the respect that even officers at the ranks of colonels and captains carried out his request without questions. This is corroborated by Lt Colonel Neethling who stated that he was requested by Captain Maluleke to assist in both tracing of the Zimbabwean Nationals and providing escort for their transportation to Beit Bridge border. He further stated that he felt obligated to assist because Captain Maluleke was based at DPCI head office and responsible for Cross border desk. During the interview with Ms. Leonie Verster who was the direct commander of Captain Maluleke, she stated that Captain Maluleke carried out his responsibility on cross border desk without supervision from her and she did not know much of what was happening. Captain Boonstra who worked under the command of Lt Col Neethling also stated that the operation which led to the arrest of Zimbabwean Nationals was led by Captain Maluleke. He inquired about the case number which the Zimbabwean nationals were sought for and a Bulawayo case number was given to him. Captain Nkosi corroborates many of Gauteng TOMS members that his participation in the operation was as a result of Captain Maluleke's request.

However the important question to ask is whether a crime was committed in the arrest and deportation of Zimbabwean national. The documents sourced from Interpol clearly outline the procedures which are to be followed by any law enforcement agency of any country if they want suspect/s who are in another country. During the interview with Warrant Officer Kgomo of Interpol coupled with the search done on Interpol database, it was established that procedures were not followed since the Zimbabwean Nationals arrested were not on the list of wanted fugitives and no warrants were issued in their names. The following evidences were found and can be analyzed as follows,

- The arrest of Dumisani Witness Ndeya, Nelson Ndlovu, Maghawe Sibanda and Shepard Tshuma on 05/11/2010.

The operation that led to the arrest of Dumisani Witness Ndeya, Nelson Ndlovu, Maghawe Sibanda and Shepard Tshuma was led by Captain Maluleke with a backup of the Gauteng TOMS members and Crime Intelligence. None of the participants in the operation ever stated that a request was made by any senior official of the DPCI requesting them to assist Captain Maluleke. The statements of members of Crime Intelligence who participated in this operation corroborate each other in that the group firstly met at Fourways Shopping Centre. The TOMS AVL

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also confirms, backed by the cellphone records of Captain Matuleke and Warrant Officer Makoe. However the claims made by Bongani Henry Yende (A4), Petros Jawuke (A5) and Desmond Campbell (A6) that Major General Sibiyi was at the planning venue (Fourways Shopping Complex) could not be substantiated. The cellphone record of Major General Sibiyi were analyzed by an expert and indicated that at the time of the alleged planning, Major General Sibiyi was in Pretoria. None of the witnesses who claim that Major General Sibiyi was at Fourways ever saw him in person but allude that they were informed by Warrant Officer Makoe that Major General Sibiyi was in the blue BMW. This information highlights the depicting false picture that can be created by hearsay evidence. It is immaterial of how many people heard Warrant Officer Makoe saying that Major General Sibiyi was in a blue BMW at Fourways Shopping Center but the evidence from the analysis of his cellphone records proves otherwise.

After planning at Fourways shopping Centre, Captain Matuleke went Diepsloot where two Zimbabwean Nationals were arrested. Other members who assisted Captain Matuleke in the arrest of Zimbabwean Nationals cannot be charged of any crime of kidnapping because they were rendering assistance to a normal police operation without any prior knowledge whether Captain Matuleke followed the procedures required in the arrest of a fugitive wanted by the law enforcement agency of another country. It also need to be proven that Captain Matuleke knew that the Zimbabwean Nationals were wanted by the Zimbabwean police and deliberately arrested or requested assistance in their arrest without following the correct procedures as required in terms of the law.

Shepard Tshuma (1) stated that one of the officer known as 'Leburu' took his wallet which was in his back pocket and removed R300-00. Constable Radebe was identified by other members of Crime Intelligence as "Leburu" and together with Warrant Officer Makoe carried out assaults on Zimbabwean Nationals while they were lying down. There was nothing wrong for Constable Radebe known as 'Leburu' and Warrant Officer Makoe to provide assistance to a police operation but stealing money and carryout assault on anyone constitute both theft and assault. However it is important that the version of the victim be corroborated in order to sustain a prima facie case against Warrant Office Makoe and Constable Radebe. From the available evidence it is clear that there is corroboration that Zimbabwean nationals were assaulted, but there is no medical evidence to prove such. It is also noteworthy that members of the DPCI contradict members of Crime Intelligence who corroborates the victims. If the assault did take place, it could also have been witnessed by members of DPCI. If the members of Crime Intelligence witnessed the assault why did they not stop it, or even immediately report what they witnessed. Because they had legal duty to act, the credibility of their version becomes questionable.

There is also insufficient evidence to prove that Constable Radebe took money from Shepard Tshuma. In addition Maghawe Sibanda (A2) claim that the police took his R500-00 but the identity of the officer who took the money is unknown.

Shepherd Tshuma (A1) stated that at the time of their arrest, Major General Sibiyi alighted from the black BMW and came to where they were lying. This version is disapproved by the cellphone records of Major General Sibiyi which shows that at the time of the arrest he was not at the scene. It is also inconsistent with the evidence provided by Petros Jawuke (A5) and Desmond Campbell (A6) who stated that they heard that General Sibiyi was in a blue BMW and did not see him in person. Captain Boonstra and Lt Col Neethling corroborate each other in that

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while they were aware of the presence of Zimbabwean police at the scene, Major General Sibuya was not at the scene. After the four Zimbabwean Nationals were arrested, they were taken to Orlando police station where they were detained. With specific reference to OB 276 to 279 (A8), entries made from 04h10 of 08/11/2010 to 12h00 of the 08/11/2010 confirm that Captain M L Makuleke of the DPCI with force number 0622729516 arrested Dumisani Witness Ndeya, Nelson Ndlovu, Maghabe Sibanda and Shepard Chuma. Again with specific reference to OB 429 (A9), entry made at 11h00 of 08/11/2010 confirm that that Captain M L Makuleke of the DPCI with cell number 0827729516 booked out Dumisani Witness Ndeya, Nelson Ndlovu, Maghabe Sibanda and Shepard Chuma to Beit Bridge. The telephone records of Captain Makuleke also show his movement from Orlando Police station until Beit Bridge in Musina. The statement of LI Col Ndanduleni Madilonga and his cellphone records confirms that he received a call from Captain Makuleke when he was approaching Musina on 08/11/2010. According to LI Colonel Madilonga (A51) he assisted Captain Makuleke to cross the border and the two Zimbabwean Nationals who were in the vehicles were handed to the Zimbabwean police.

The documents used in the deportation of the Zimbabwean Nationals were part of the internal investigation conducted by Warrant Officer Nthlamu (A80). In his statement he outlined the documents received from Captain Makuleke as four warrants of detentions and four notices of deportations. The documents which the Captain Makuleke claimed to be valid Home Affairs documents used in the deportation of the four Zimbabweans appear to have been forged as they have employee number that does not exist in the Home Affairs Department. The Warrant of Detention of Illegal Foreigner (BI-1725) document was produced by Captain Makuleke as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu and Maghabe Sibanda were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the documents does not belong to any member of Home Affairs in Gaulteng and the appointment number 037152 does not exist.

Poliswa Skosana (A31) an Immigration Officer stated that BI-1725 used was discontinued in 2008 and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on four documents according to the handwriting expert, shows that whosoever completed the documents used an old form already completed and deleted affiliated information to put the new information of the four foreign nationals. The Notification of the Deportation of an Illegal Foreigner (DHA-1689) documents were produced by Captain Makuleke as proof that Witness Ndeya, Nelson Ndlovu, Shepard Chuma and Maghabe Sibanda were deported through Beit Bridge border. According to Peter Elberg (A37) the forms were wrongly stamped and do not have fingerprints of the deportees as required.

The stamp number 20 belonging to Beit Bridge was used and such stamp is not for deportation purpose. According to Immigration Officer Kobelo Margret Mohlalho (A39) the stamp is individualized and belong her and on 08/11/2010 she was off duty and the stamp was locked in the safe. This is confirmed by the duty roster which clearly shows that on the 7th and 8th of November 2010 Immigration Officer Kobelo Margret Mohlalho was off duty. The stamp could have been easily duplicated.

The letter retrieved from Captain Makuleke's laptop provides a vital clue that his engagement in the operation did not receive the blessing of his superior. The letter was addressed to the Director General of Home Affairs requesting assistance in

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the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police. Protocol dictates that a letter to such a senior person in the Home Affairs department could not have been signed off by an officer at a rank of Captain but could have needed the head of the DPCI. However the letter retrieved clearly shows that Captain Maluleke was the author and he also wrote his name as an approving authority of the request. In addition when the renditions issue hit the media at the end 2011, acting National Commissioner of the South African Police Services Lt General Mkhwanazi (A99) called the head of DPCI Lt General Dramat to explain what happened. Lt General Dramat attended the meeting with Captain Maluleke and for the entire duration of the meeting, Captain Maluleke explained why he arrested Zimbabwean Nationals. If Lt General Dramat had full knowledge of the purpose of the arrest, he could have provided explanation or justification during the meeting thereby convincing the acting National Commissioner that the operation was both lawful and necessary. It is in the same breath that Captain Maluleke provided a report to Lt General Dramat which was used as a basis to respond to a parliamentary question.

• The arrest of Prichard Chuma on 23/11/2010

On 23/11/2010 an operation led by Captain Maluleke was carried out at Diepsloot and Soweto in search of Prichard Chuma who was wanted in connection with a murder of Zimbabwean police Colonel. The investigation did not gather much in relation to the arrest of Prichard Chuma. However the statement of Lt Col Naethling, Captain Nkosi and Warrant Officer Selepe are at the center of the arrest and deportation of Prichard Chuma. In this operation Desmond Campbell (A6) and Petros Jawuke claim that Major General Sibuya was involved. Desmond Campbell stated that he saw a person seated in a BMW whom Warrant Officer Makoe referred as Major General Sibuya. It is clear that members of Crime Intelligence had been trying hard to pull Major General Sibuya 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 Sibuya" and "I heard that General Sibuya was in a blue BMW". These remarks justify the drawing of an inference that members of crime intelligence tried hard to implicate Major General Sibuya, most especially because his cellphone records provide concrete alibi that he was not at the crime scene.

The involvement of Captain Maluleke in the arrest and transportation of Prichard Chuma provide for a prima facie case of kidnapping. With specific reference to an OB entry dated 22/11/10 (A57/1) made on 22/11/2010 Captain Nkosi booked in Prichard Chuma at Alexandra Police Station. However Nkosi wrote the name and contact numbers of Captain Maluleke as the person who is the Investigating Officer of the case. In his statement he stated that he was personally requested by Captain Maluleke to detain Prichard Chuma at Alexandra Police station.

With specific reference to OB entry dated 23/11/2010 (A57/2) Warrant Officer Selepe booked out Prichard Chuma from Alexandra Police station for a Bulawayo case. He confirmed in his statement that he was requested by Lt Col Naethling to assist Captain Maluleke. Lt Col Naethling corroborates Warrant Selepe in that he was requested by Captain Maluleke to provide assistance and requested one of his members. Warrant Officer Selepe stated that he transported Prichard Chuma with Captain Maluleke on 24/11/2010 to Beil Bridge. The version of Warrant Officer Selepe is corroborated by cellphone records and itineraries of Captain Maluleke.

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• The arrest of Gordon Dube and Johnson Nyoni on 11/01/2011 and 26/01/2011.

The arrest of Gordon Dube and John Nyoni started when Constable Rikotso (A67) went to Wierdebrug police station at the CIAC office which is responsible for profiling and identification of crime hot spots. When he arrived, he found Constable Sombhane who gave him a list of wanted suspects and on top of the list was Gordon Dube who was wanted in connection with murder in Zimbabwe and robberies in South Africa. At that time the name of Captain Maluleke had not yet surfaced and members of Crime Intelligence were just carrying out the daily duties. Constable Rikotso is corroborated by Constable Sombhane and Constable Plantinah Mokgobu who stated that the information about the wanted Zimbabwean National initially surfaced when she visited CIAC office at Wierdebrug.

Gordon Dube was arrested on 11/01/2011 and was found in possession of an unlicensed firearm. Constable Rikotso later saw the same firearm with Captain Maluleke at the Hawks offices after it was returned from ballistics. It is also clear that the suspect Gordon Dube was facing many charges in South Africa including murder and robbery. Most of the cases against Gordon Dube were investigated by Constable Meyer except Diepsloot Cas 93/01/2011 which was investigated by Warrant Officer Dlamini. According to Constable Meyer the following cases were against Gordon Dube, Wierdebrug Cas 531/12/2010, Wierdebrug Cas 220/02/2010, Wierdebrug Cas 147/11/2010, Wierdebrug Cas 1022/12/2010, Wierdebrug Cas 310/10/2010 and Diepsloot 93/01/2011. He was informed by Captain Maluleke from the Hawks that suspect Alfred Gordon Dube was also wanted in Zimbabwe. According to Constable Meyer, Captain Maluleke informed him that Gordon Dube was also wanted for murder as per Bulawayo CR 438/09/2010. He stated that he booked out suspect Gordon Dube and handed him to Captain Maluleke. Captain Maluleke informed him that suspect Gordon Dube will be handed over to the Zimbabwean government through immigration channels. The request that Captain Maluleke made to Constable Meyer, Detective Constable Rambuda, Warrant Officer Dlamini in connection with the Gordon Dube demonstrate the extent to which he was ready to go in order to handover the suspect to the Zimbabwean police. The suspect was awaiting trial prisoner who was connected in five cases including murder. Statements of Constable Rambuda and Constable Meyer provide valuable evidence that Captain Maluleke took Gordon Dube to Zimbabwe even though he was facing serious charges (five cases including murder) in South Africa. Statements provided to Constable Meyer by Captain Maluleke states that Gordon Dube was handed to Zimbabwean police and was sentenced to life imprisonment. He also acknowledges in a letter retrieved from the laptop that he handed back the firearm to Zimbabwean Police. In January 2011 members of Crime Intelligence received information from CIAC at Wierdebrug regarding the wanted suspect John Nyoni. The person they talked with at CIAC was Constable Sombhane who also gave them the number of Captain Maluleke. She also spoke to Maluleke over the phone while they were there. They then drove to the Hawks offices to meet with Captain Maluleke who told them that the suspect murdered a police officer in Zimbabwe. The request to arrest John Nyoni was after a successful operation that led to the arrest of Gordon Dube. According to members of TRT, they received a call via two ways radio from the commander to go to Diepsloot police station. When they arrived they found the Station Commander of Diepsloot Police station who introduced them to Captain

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Maluleke. Captain Maluleke was with two male persons and a female who were introduced as members of Crime Intelligence. Captain Maluleke informed them that there was a person who committed serious cases in Zimbabwe and he is very dangerous. After the arrest of Johnson Nyoni, he was taken to DPCI head office in Silverton. At the DPCI offices photos were taken and members of TRT and Crime Intelligence corroborate each other in that regard. However Constable Mkasibe stated that Lt General Dramat came to house number 3 from house number 1 and addressed them. There were six members of TRT and none of them ever mentioned the incident. If it is true that he addressed them, other people could have had a recollection of the incident more so because Lt General Dramat is the head of the DPCI. According to Constable Mkasibe and Constable Mugwenya, Lt General Dramat was with Colonel Polelo when he addressed them but Colonel Polelo cannot remember such event. It is clear that the version Mugwenya and Mkasibe are not corroborated and therefore do not provide basis for a prima facie case against Lt General Dramat.

However there is corroboration in that Captain Maluleke was the driver of the operation that led to the arrest of Johnson Nyoni. He met with members of Crime Intelligence and tasked them to look for Johnson Nyoni after they successfully traced and arrested Gordon Dube. The OB book at Mool Police station clearly shows that John Nyoni was booked in by a member of TRT and booked out by Captain Maluleke.

The Zimbabwean Nationals were arrested and detained during DZP period which gave the Zimbabwean grace period of 90 days to apply for valid documents. During the DZP which is Dispensation for Zimbabwean Projects, all Zimbabweans were given 90 days to stay in the country in order to apply for legal documents and surrender illegally obtained South African ID's without consequence. The project according to Home Affairs started on 20 September 2010 and ended in 31 December 2010 with extension which ultimately ended in July 2011. The letter retrieved from Captain Maluleke's laptop addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police (dated 08/11/2010) was generated on 08 November 2010 shortly before he booked out the Zimbabwean Nationals out of Orlando Police station. It is doubtful that the permission was acquired given the time at which the Zimbabwean Nationals were booked out. In addition, he cited the DZP as a challenge in the deportation of Zimbabwean Nationals and he wanted assistance from Home Affairs. This does not only show that he was aware of the Dispensation for Zimbabwean Projects which gave Zimbabwean nationals a grace period, but also that there was ulterior motive way above deportation on the basis of being illegal immigrants.

The e-mails retrieved from Captain Maluleke's laptop also show communication with Zimbabwean police where he asked them about the trip going back home and that he would continue to trace remaining suspects. He also exchanged photographs with them of the suspects and the team involved in the operation.

The overtime claim of Captain Maluleke corresponds with the dates on SAP 10's from various stations regarding the booking out of the Zimbabwean nationals. On 08/11/2010 he transported Zimbabwean Nationals to Beit Bridge. The Itinerary shows that on 08/11/2010 he went to Beit Bridge and came back on 10/11/2010 and claimed a total of R1845-00. On 24/11/2010 he went to Beit Bridge and came back 26/11/2010 and claimed a total of R1845-00. On 28/01/2011 he went to Beit Bridge and claimed a total of R552-00. The records also correspond with his cellphone movement as depicted by towers recordings.

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7. FINDINGS

- The IPID investigation established that Captain Maluleke led the operation that resulted in the arrest of Zimbabwean nationals wanted in connection with the murder of a Zimbabwean senior police officer. The evidence gathered clearly shows that the Zimbabweans Nationals were not wanted in connection with ATM bombing as initially claimed and they were not deported for being illegal immigrants.
- There is overwhelming evidence that Captain Maluleke was not only the lead person but also used his position of being the only member of the "Cross Border Desk" to acquire cooperation in an operation he knew that it did not follow the legal procedure.
- It was found that the claim made by Shepard Tshuma that Constable Radebe took his R300-00 could not be corroborated. Maqhawe Sibanda (A2) also made a claim that the police took his R500-00 but the identity of the officer who took the money is unknown.
- There are contradictions with regard to assault by Captain Maluleke, Captain Nkoal, Warrant Officer Makoe and Constable Radebe.
- It was also found that the senior members of DPCI could not have known that Captain Maluleke did not follow procedures as it is the duty of the officer in question to comply with the legal imperatives of the particular operation. He generated a letter to the Director General of Home Affairs and still put his name as an approving authority thereby confirming that he did not want his seniors to either know or become aware of his activities.
- The success report that claim that Lt General Dramat had a meeting with the Zimbabwean police lacks detail about the meeting itself. There is no indication of what was discussed and who was part of the meeting. It is on that basis that a prima facie case cannot be premised on speculation, but need corroborated facts.
- The evidence that suggest that Major General Sibiya was at the scene during the arrest of Zimbabwean nationals is contradicted by cell phone evidence that suggest he was nowhere near the scene. It is clear that members of Crime Intelligence had been trying hard to pull Major General Sibiya into the operation. This can be deduced from the following quotations in their statements, "I saw a figure in a BMW and Warrant Officer Makoe referred to him as General Sibiya" and "I heard that General Sibiya was in a blue BMW". The cellphone record of Major General Sibiya was acquired and analyzed by an expert, it was discovered that at the time the witnesses claim that he was at Fourways Shopping Centre, he was in Pretoria.
- There is no evidence for the involvement of Former General Mzwandile Petros. However he addressed a letter dated 31/05/2011 to Provincial Head of Crime Intelligence in Gauteng appreciating the good work that members of Crime Intelligence have done when they arrested Zimbabwean nationals involved in the murder of Senior Police Officer in Zimbabwe. The letter was as a result of a request made by Former General Toka of Crime Intelligence requesting General Mzwandile Petros to appreciate members of Crime Intelligence.
- There is also no evidence that suggest that Lt General Dramat, Lt General Toka, Lt General Lebeya and Major General Hatshwayo were involved.

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8. RECOMMENDATION

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

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

Recommended/not recommended

[Signature]
Mr. M SESOKO
ACTING CHIEF DIRECTOR- INVESTIGATIONS AND INFORMATION MANAGEMENT
IPID: NATIONAL OFFICE
DATE: 14/03/2014

Approved/Disapproved

[Signature]
MR. RJ MCBRIDE
EXECUTIVE DIRECTOR: IPID
DATE: 09/04/2014

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Office note

IN RE: SO-CALLED RENDITION MATTER (PROJECT X)-DIEPSLOOT CAS 390/07/2012

DPP JHB REF: 9/2/4/1 (2014/236)

1. BACKGROUND -TIMELINE

- a. Received internal memorandum from the Head Special Projects Division, Office of the NDPP dated 14 February 2014. The exact date of receipt is unclear as no official stamp or date had been affixed to this effect.
- b. According to office note by adv Van Zyl SC this must have been late in February 2014.
- c. Before any decision could be taken by this office messrs Khuba and Angus from IPID collected all the dockets from Van Zyl SC on 7 March 2014 and signed for receipt thereof.
- d. On 18 June 2014 Van Zyl SC phoned mr Khuba who told him that his head mr McBride had instructed him that the dockets must be returned to the NDPP and it was duly done
- e. On 23 June 2014 Van Zyl SC once again spoke to mr Khuba who informed him that it was never his intention to return the dockets to him.
- f. On 27 June 2014 adv Mosing of the Special Projects Division of the Office of the NDPP told Adv Van Zyl SC that the dockets were never returned to him.
- g. These series of events were then brought to the attention of the NDPP by letter dated 3 July 2014.
- h. On 20 August 2014 the NDPP officially responded to the letter by the DPP Adv Chauke, by apologizing for the late response and indicating that he, the NDPP, is in the process of considering the matter and that Adv Chauke may close his file.
- i. On 31 March 2015 the NDPP wrote another letter to the DPP informing him that he had subsequently referred the matter to the DPP North Gauteng who recommended that the accused including Dramat and Sibiyi be prosecuted for *inter alia* kidnapping and defeating the ends of justice. The letter of the DPP Pretoria is dated 6 March 2015.
- j. This letter of the NDPP *inter alia* states that the matter is now returned to Johannesburg because the matter now resorts under the jurisdiction of the DPP Johannesburg since 1 December 2014 as from that date Diepsloot falls under Johannesburg North (Ranburg) in terms of Government Notice No 861 of 31 October 2014. The NDPP also indicated that further investigation should be conducted in the matter.
- k. On 1 April 2015 the Head: National Prosecution Services (NPS) send a letter to the DPP Johannesburg to conduct specific further investigation.
- l. On 10 April 2015 Adv Chauke requested me to advise him on certain aspects after I have looked at the documentation in this matter.

2. It is clear that this matter is being regarded as a "hot potato" and therefore the case is being sent from pillar to post.

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3. There are certain legal issues that need to be address before we even go to the facts of the matter.

4. DISCUSSION OF MATTER

a. JURISDICTION

- i. It is trite law that jurisdiction cannot be conferred retrospectively.
- ii. When these crimes were committed during 2011 all these crimes resorted under the jurisdiction of the DPP North Gauteng. Even the court appearances were done at Attridgeville falling under the DPP Pta's area of jurisdiction.
- iii. The demarcation altered the position as from 1 December 2014. It does not alter the jurisdictional position prior to 1 December 2014, which to my mind remains with the DPP Pretoria. This fact cannot now conferred jurisdiction on the DPP Jhb for all crimes committed prior to 1 December 2014 especially where decisions were previously take by the DPP Pta or prosecutors resorting under him.
- iv. Furthermore the majority of crimes were committed under the jurisdiction of Pretoria and not Johannesburg. It furthermore seems that crucial phone calls implicating Dramat, were also made between Beit Bridge and Pretoria, falling within the jurisdiction of Pretoria.
- v. We must also clearly distinguish between Court jurisdiction and Prosecutor jurisdiction. The best way to explain this is by way of example. The Regional Court jurisdiction is in accordance with the boundaries of the provincial province, Gauteng. This means for instance that it will be within the jurisdiction of the court being the Regional Division of Gauteng (meaning the whole province). On the other hand the prosecutors' jurisdiction has been divided with reference to the seats of the two High Courts in this province of Gauteng. The fact that the DPP of Pta is appointed in the provincial division of the High Court, does not give him more or concurrent jurisdiction over the cases falling within the jurisdiction of the DPP of Jhb being the Local Division. These areas are two distinct areas and the DPP Pta cannot overrule decision taken by the DPP of Jhb merely because he is appointed at the Provincial Division of the High Court in Pta. If that would have been the case, it would never have been necessary for the DPP Pta to request permission to centralize matters from Jhb within his area of jurisdiction. Therefore it means that a specific court might have jurisdiction to do the trial based on the principal of concurrent jurisdiction but that the prosecution's jurisdiction must also be established through with reference to the specific area of jurisdiction. There is no such thing as "concurrent jurisdiction" with reference to the jurisdiction of a DPP. In the old days there were indeed instances where two cities would have concurrent jurisdiction. However at that stage only one DPP or Attorney-General was appointed for the whole area and the smaller area was being controlled by a Deputy who fell under the control and supervision of the AG of DPP. That is a totally different

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scenario than the current one. It is therefore my opinion that the DPP Pta has no concurrent jurisdiction on any matters falling under the DPP Jhb and that the DPP Jhb is totally independent from any interference by his Pretorian colleague.

b. FUNCTUS OFFICIO

- i. I am also of the view that a prosecutor can very seldom resort to a claim of being *functus officio*. Prosecutors are frequently taking decisions and by virtue of this they can alter their decision at any stage, especially in view of new evidence coming to their attention or representations being lodged. This happens on a daily basis at all prosecutor's offices and is nothing strange.
- ii. The fact that a file has being closed therefore does not bar the DPP or prosecutor to revisit the decision initially taken. This can be done and in fact is being done frequently at this office.

c. POWERS OF NDPP

- i. It must be established whether the NDPP has any inherent powers to prosecute or not. Are the powers of the NDPP curtailed to reviewing decision taken by his subordinates, the DPPs or does he possess inherent power to prosecute.
- ii. In order to answer this we must look at the relevant legislation empowering the NDPP.
- iii. The Constitution dictates in sec 179(1)(a) that the NDPP heads the national prosecuting authority. Sec 179(2) states that the national prosecuting authority has the power to institute criminal proceedings on behalf of the state ect.
- iv. Sec 179(5)(c) gives him the power to intervene in a prosecution and subsection (d) the power to review any decision of a DPP after consulting the relevant DPP.
- v. The NPA act, no 32 of 1998 echoes these provisions. Sec 20 states that the power to institute and conduct prosecutions vests in the prosecuting authority and all subordinate officials shall exercise these powers under the control and direction of the NDPP.
- vi. Sec 22 of the NPA Act specifically deals with the powers of the NDPP.
- vii. He heads the national prosecuting authority
- viii. Have authority over ALL the powers conferred or imposed by the Constitution or any other Act.
- ix. It is therefore clear that the NDPP has inherent and original powers to prosecute.
- x. Sec 22(2)(c) of the NPA act gives the NDPP the power to review a decision to prosecute or not after consultation with the relevant DPP and after taking representations of the accused, the complainant and ANY other person or party whom the NDPP considers to be relevant.

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- x. The question now is whether the NDPP may consult other DPPs and not only the relevant DPP, when reviewing the decision? In principle there can be no objection for the NDPP in order to take a decision, to ask other DPPs for a recommendation provided that the relevant DPP is also consulted as required. In terms of the sec 22(3) he may even direct that an offence be decided and prosecuted within the jurisdiction of another DPP.
- xii. Sec 22(4)(a)(i) and (ii) gives the NDPP wide powers to ask for reports and submissions from a DPP.
- xiii. It therefore seems that the NDPP is entitled to request a report from this office in order to assist him in taking a final decision in this matter.
- xiv. In para 3 of his letter to Adv Chauke dated 31/03/2015, he request the DPP to urgently advise him on his decision. Although the phrase is a bit ambiguous it is capable of a construction that the DPP make a recommendation to the NDPP in the same vain as the DPP of North Gauteng has done. This matter is one of those matters where the NDPP has to exercise his inherent and original powers and where he should take the final decision.

5. RECOMMENDATION

- a. I therefore am of the view that this office cannot pass the bug back to the NDPP on the score of jurisdiction or even that the DPP Pta has taken a decision because it is clear that Pretoria only made a recommendation to the NDPP.
- b. However before any decision is taken the required further investigating must be conducted as instructed by the NDPP as well as the subsequent letter from the Head of the NPS.
- c. The way forward is to draft a letter to the new Investigating officer, apparently now someone at the DPCI, to investigate further in line with the queries issued by the NDPP and the NPS. How any subordinate I/O from DPCI can investigate a case against the National and Provincial Heads of the DPCI, is beyond comprehension.

LS
SJ

Fwd: Request to consult with Mr IH Khuba

"SSIO"



Sandile July <SJuly@werksmans.com>
02/03/2015 at 16:50:34

From: Sandile July <SJuly@werksmans.com>
Sent: 02/03/2015 at 16:50:34
To: Sandile Tom <stom@werksmans.com>
Cc:

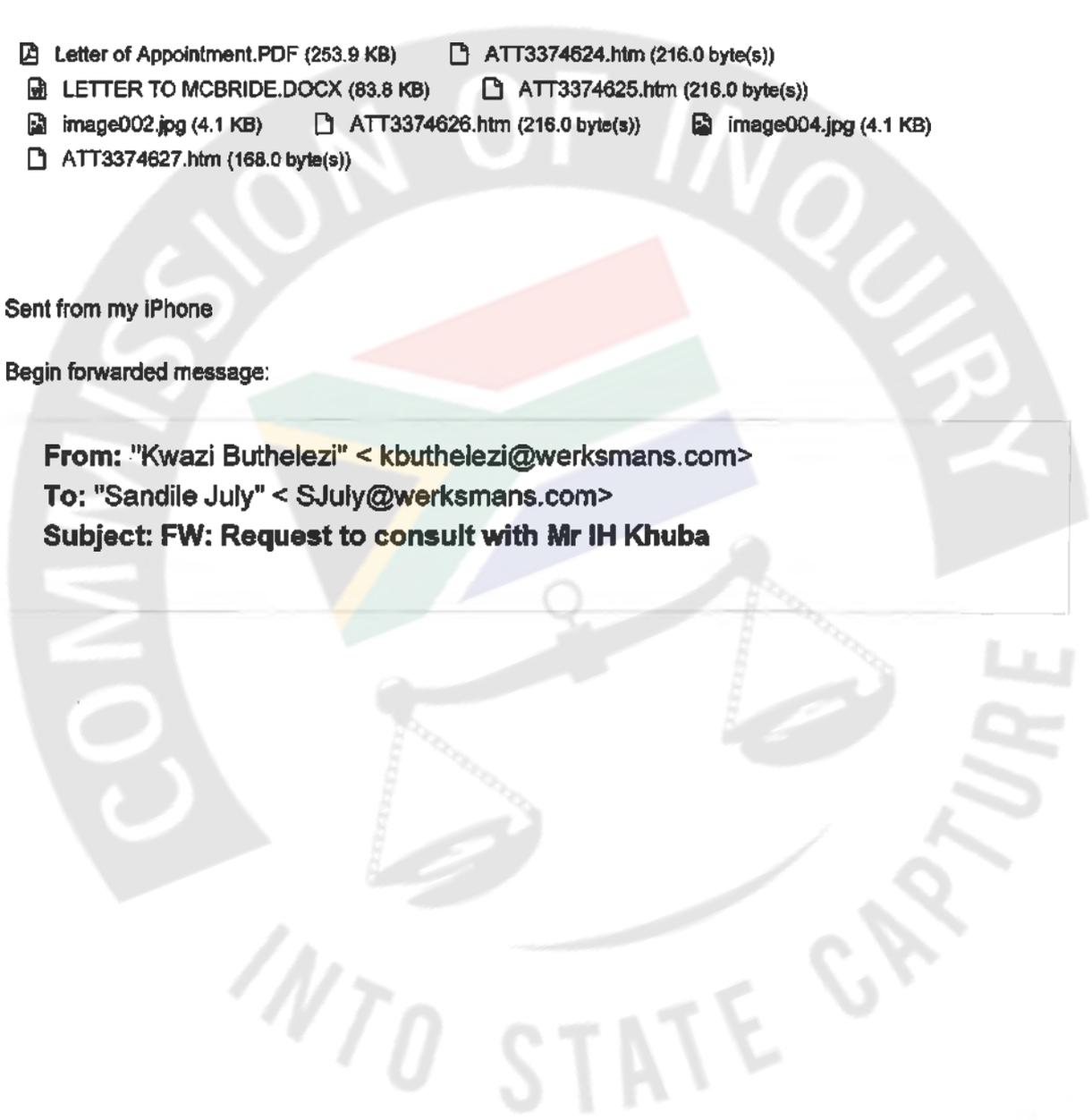
8 Attachment(s) Total 348.8 KB View ^

- Letter of Appointment.PDF (253.9 KB) ATT3374624.htm (216.0 byte(s))
- LETTER TO MCBRIDE.DOCX (83.8 KB) ATT3374625.htm (216.0 byte(s))
- image002.jpg (4.1 KB) ATT3374626.htm (216.0 byte(s)) image004.jpg (4.1 KB)
- ATT3374627.htm (168.0 byte(s))

Sent from my iPhone

Begin forwarded message:

From: "Kwazi Buthelezi" <kbuthelezi@werksmans.com>
To: "Sandile July" <SJuly@werksmans.com>
Subject: FW: Request to consult with Mr IH Khuba



LS
SS

Mr July

Here is the forwarded email sent to McBride.

Kwazi Buthelezi
Candidate Attorney
T: +27 11 535 8177 | F: +27 11 535 8591 | kbuthelezi@werksmans.com

Werksmans Attorneys
155 5th Street, Sandton, Johannesburg, 2196
Private Bag 10015, Sandton, 2146, South Africa
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From: Kwazi Buthelezi On Behalf Of Sandile July
Sent: 27 February 2015 17:27 PM
To: 'RMcBride@ipid.co.za'
Subject: Request to consult with Mr IH Khuba

Dear Mr McBride

Please find the attached documents.

SS^{LS}

We trust you find the above in order.

Should you have any queries, do not hesitate to contact the writer.

Kind Regards

Kwazi Buthelezi
Candidate Attorney
T: +27 11 535 8177 | F: +27 11 535 8591 | kbuthelezi@werksmans.com
<<mailto:kbuthelezi@werksmans.com>>

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<<http://www.werksmans.com>>

LS
SJ

"S J I O C i"

568

**DELIVERED BY EMAIL**

Mr Robert McBride
Independent Police Investigation Directorate
RMcBrde@ipid.co.za

Johannesburg Office
155 5th Street
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
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www.werksmans.com
enquiries@werksmans.com

YOUR REFERENCE: **Error! No document variable supplied.**
OUR REFERENCE: Mr S July/kb/MINI29566.1/#3524136v1
DIRECT PHONE: +27 11 535 8163
DIRECT FAX: +27 11 535 8663
EMAIL ADDRESS: sjuly@werksmans.com

27 February 2015

Dear Sir

APPROVAL FOR CONSULTATION WITH MR IH KHUBA

- 1 The writer is hereby appointed by the Minister of Police to act on his behalf in conducting an investigation to the possible involvement of Lieutenant General Anwa Dramat and Major General Shadrack Sibiya on the allegations of illegal renditions of Zimbabwean. A letter of appointment to this effect has been attached.
- 2 Pursuant to this appointment, we request permission to consult with Mr IH Khuba, the Provincial Head: Independent Police Investigation Directorate of Limpopo.
- 3 We are available on Tuesday 3 March 2015 16h00 should this time and date be convenient.
- 4 We hope you find the above in order, if there are any queries, please do not hesitate to contact the writer thereof.

Yours faithfully

Werksmans Inc

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

Directors DG Williams (Chairman) AL Armstrong BA Aronoff DA Arteiro T Bata AR Berman NMN Bhengu L Bick GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan D Corbett JN de Villiers GW Driver LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewer H Goolam R Gootkin ID Gouws GF Griessel D Hertz J Hollesen MGH Honiball VR Hoslosky BB Hotz HC Jacobs TL Janse van Rensburg N Jansen van Vuuren G Johannes S July J Kallmeyer SLG Kayana A Kenny BM Kew N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner JS Lubbe BS Mabasa PK Mabaso PM Madala MPC Manaka H Masondo C Moraitis KO Motshwane J Nickig JJ Niemand BPF Olivier WE Oosthuizen M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pyzikowski RJ Raath L Rood BR Roothman W Rosenberg NL Scott TA Sibida LK Silberman JA Smit JS Smit CI Stevens PO Steyn J Stockwell W Strachan JG Theron JJ Truter KJ Trudgeon DN van den Berg HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker D Wegierski M Wiehahn DC Willans E Wood BW Workman-Davies **Consultant** JM Bortz

SS LS

Personal Portal

"SJ11" Page 1 of 569

FW: Request to consult with Mr IH Khuba



Sandile July <SJuly@werksmans.com>
02/03/2015 at 16:47:22

From: Sandile July <SJuly@werksmans.com>
Sent: 02/03/2015 at 16:47:22
To: 'MSesoko@ipid.gov.za' <MSesoko@ipid.gov.za>
Cc:

2 Attachment(s) Total 337.7 KB View ^

Letter of Appointment.PDF (253.9 KB) LETTER TO MCBRIDE.DOCX (83.8 KB)

Dear Mr Sesoko

Please find the forwarded email sent to Mr McBride.

Should you have any queries, do not hesitate to contact me.

Kind Regards

Kwazi Buthelezi

Candidate Attorney

[http://ci.werksmans.co.za/email
_signature/werksmans_logo_en
g_with_strap_line.jpg](http://ci.werksmans.co.za/email_signature/werksmans_logo_eng_with_strap_line.jpg)

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Werksmans Attorneys

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Private Bag 10015, Sandton, 2146, South Africa

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From: Kwazi Buthelezi On Behalf Of Sandile July**Sent:** 27 February 2015 17:27 PM**To:** 'RMcBride@ipid.co.za'**Subject:** Request to consult with Mr IH Khuba

Dear Mr McBride

<

LS ✓
SS >

Personal Portal

Page 2 of 570

Please find the attached documents.

We trust you find the above in order.

Should you have any queries, do not hesitate to contact the writer.

Kind Regards

Kwazi Buthelezi

Candidate Attorney

[http://cl.werksmans.co.za/email
_signature/werksmans_logo_en
g_with_strap_line.jpg](http://cl.werksmans.co.za/email_signature/werksmans_logo_eng_with_strap_line.jpg)

T: +27 11 535 8177 | F: +27 11 535 8591 | kbuthelezi@werksmans.com

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SS^{LS}

"SJ12"

571



WERKSMANS
 ATTORNEYS
DELIVERED BY EMAIL

Mr Robert McBride
 Independent Police Investigation Directorate
 RMcBrde@ipid.co.za

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 www.werksmans.com
 enquiries@werksmans.com

YOUR REFERENCE: **Error! No document variable supplied.**
 OUR REFERENCE: Mr S July/kb/MINI29566.1/#3524136v1
 DIRECT PHONE: +27 11 535 8163
 DIRECT FAX: +27 11 535 8663
 EMAIL ADDRESS: sjuly@werksmans.com

27 February 2015

Dear Sir

APPROVAL FOR CONSULTATION WITH MR IH KHUBA

- 1 The writer is hereby appointed by the Minister of Police to act on his behalf in conducting an investigation to the possible involvement of Lieutenant General Anwa Dramat and Major General Shadrack Sibiyi on the allegations of illegal renditions of Zimbabwean. A letter of appointment to this effect has been attached.
- 2 Pursuant to this appointment, we request permission to consult with Mr IH Khuba, the Provincial Head: Independent Police Investigation Directorate of Limpopo.
- 3 We are available on Tuesday 3 March 2015 16h00 should this time and date be convenient.
- 4 We hope you find the above in order, if there are any queries, please do not hesitate to contact the writer thereof.

Yours faithfully

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SJLS

"5313" 572

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PROPERTY & LITIGATION ATTORNEYS

Adams & Adams

EMAIL MESSAGE

To: sjuly@werksmans.com
From: jac.marais@adamsadams.com

Tel No. (Nat) (012) 432 6000
(Int) +27 12 432 6000

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Lynnwood Manor Pretoria
CORRESPONDENCE
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DOCEX 61 Pretoria

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EMAIL mail@adamsadams.com
WEB www.adamsadams.com

Our Reference: JSM/vc/LT2141

Your Reference: Mr S July/kb/MINI29566.1
##3524136v1

Date: 6 March 2015

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WERKSMANS ATTORNEYS Johannesburg

Dear Sirs

IN RE: MINISTER OF POLICE / INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

1. We refer to your letter dated 27 February 2015 which has been referred to us for reply to on behalf of the Independent Police Investigative Directorate ("IPID").
2. We shall procure instructions from IPID as soon as possible and furnish you with a substantive response to your letter shortly.
3. We confirm that, in the interim, Mr. Khuba has not been granted permission to consult with you. We furthermore request that you direct any further correspondence in relation to your investigation to the writer hereof.

Yours faithfully
ADAMS & ADAMS

J S MARAIS

Checked and signed by author and sent electronically

Pretoria, Johannesburg, Cape Town, Durban, Mozambique (ARPO), Angola, Tanzania, Burundi, Cameroon (OAPI), Botswana, Lesotho, Namibia, Swaziland, Kenya, Ghana & Nigeria Partners: Gavin Kolze, Howard Rogers, Darío Tanziani, Johan du Preez, Colin MacKenzie, Nella Hickman, Mariette du Plessis, Samantha Copeling, Gérard du Plessis, Phil Pta, Louis van der Walt, Chamé le Roux, Russell Bagnall, Simon Brown, Suzaan Laing, Grigor Wolter, Joseph Goedhals, Blain de Villiers, André Visser, Nolwazi Gcaba, Eugene Honey, Darren Oliver, David Scheepers, Megan Moerdijk, Marius Gerber, Kelly Thompson, Nolo Khachane, Janice Galvad, Nishi Chetty, Lucy Signorelli, Steven Yeates, Johnny Flandelo, Leander Opperman, Jenny Pinaar, Danie Dohmen, Alexis Apostolakis, Biklis Rassool, Manisha Maganbhai-Mooloo, Debbie Marriot, Michael Gwela, Lauren Ross, Dale Healy, Mandy Gordon, Roelof Grové, Nicolette Koch, James Davies, Nicky Gamott, Vishen Pillay, Godfrey Budeli, Jac Marais, Nthabisheng Phaswana, Dieter Wolhagen, Ferdi Myburg, Somayya Khan, Danie Strachan, Nishan Singh, Verina Griffiths, Sajida Garneldien, Pieter Visagie, Jessica Axelson, Jani Cronjé, Wilhelm Prozesky, Nicolette Bigger, Jean-Paul Rudd, Andrew Molver, Venashrie Mannar, Lindie Semurle, Charl Poigleler.

Senior Consultants: Esmé du Plessis, Marth Rottveel, Stephan Ferreira, Chris Job, Craig Forbes, Ize Dijkstra.

Associates: Deborah Marsicano, Delene Bertasso, Therése Davis, Claire Bothma, Stephen Hollis, Alicia Kabini, Kagisho Manyashi, Natasha Wright, Alicia Castleman, Udi Pillsy, Amina Sullinan, Andrew Phillips, Nicole Smalberger, Renée Nienaber, Tiffany Conley, Charl Marais, Nondumiso Msimang, Paul Muscat, Laurika van Deventer, Jean-Louis La Grange, Wynand Fourie, Vuyokazi Ndamee, Jan-Ham Swanepoel, Suraya Veerasamy, Dakalo Luvhimbini, Dionne Mubika, Wensel Britz, Kim Rumpersach, Lizeal Mostert, Thamaray Govender, Zunsaid Olivier, Lisa-Mari Damata, Kerry Wiers, Nicole Haworth, Catherine Wojtowicz, Richard Wiers, Ashlin Pecumall, Kareema Shaik, Shal Govender, Aissa Nayanah, Ian Learmonth.

Assisted by: Jevonne Le Roux, Farzana Rassool, Melissa Dreyer, Keren Lam, Zomokuhle Sokhela, Tayyiba Nalla, Lisa Nunes, Farzana Manjoo, Thando Mambisa, Gabi Makuta, Nazli Parker, Navashni Pillay, John Ndlovu, Jeanette Visagie, Deirdre Daniel-Naudé, Francois Landman, Megan Dinno, Gillian Griffiths, Misha Post, Khanyisile Khanyisile, Dineo Modibedi, Helgard Jansse Van Rensburg, David Gauna, Luzaan Dudley, Shani Van Der Bergh, Chandre Du Toit, Reinhardt Biermann.

Chief Operating Officer: Dave Forbes

Level 3 BBBEE Contributor rating

LS
SJ

Personal Portal

"5314"

Page 1 of 2

573

**IN RE: MINISTER OF POLICE / INDEPENDENT POLICE INVESTIGATIVE
DIRECTORATE**



Jac Marais <jac.marais@adamsadams.com>
06/03/2015 at 15:09:48

From: Jac Marais <jac.marais@adamsadams.com>
Sent: 06/03/2015 at 15:09:48
To: 'sjuly@werksmans.com' <sjuly@werksmans.com>
Cc: Jac Marais <jac.marais@adamsadams.com>, Michael Gwala <michael.gwala@adamsadams.com>, Varana Chutterpaul <Varana.Chutterpaul@adamsadams.com>, Ansuya Buccas <Ansuya.Buccas@adamsadams.com>

1 Attachment(s) Total 180.2 KB View ^

Email to Werksmans Final 6 03 2015.PDF (180.2 KB)

Our ref: LT2141

Your ref: Mr S July/kb/MINI29566.1/#3524136v1

Dear Sirs,

**IN RE: MINISTER OF POLICE / INDEPENDENT POLICE INVESTIGATIVE
DIRECTORATE**

Please find attached correspondence for your attention.

Yours faithfully,

Jac Marais

Partner

PHONE +27 12 432 6356

FAX +27 12 432 6550

EMAIL jac.marais@adamsadams.com

Ls

Sj

WEBSITE www.adamsadams.co.za

PHYSICAL ADDRESS Lynnwood Bridge, 4 Daventry Street, Lynnwood Manor, Pretoria, South Africa

POSTAL ADDRESS PO Box 1014, Pretoria, 0001, South Africa

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Adams & Adams

EMAIL MESSAGE

To: sjuly@werksmans.com
From: jac.marais@adamsadams.com

Tel No. (Nat) (012) 432 6000
(Int) +27 12 432 6000

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Lynnwood Manor Pretoria
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www.adamsadams.com

Our Reference: JSM/vc/LT2141

Your Reference: Mr S July/kb/MINI29566.1
/#3524136v1

Date: 6 March 2015

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WERKSMANS ATTORNEYS
Johannesburg

Dear Sirs

IN RE: MINISTER OF POLICE / INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

1. We refer to your letter dated 27 February 2015 which has been referred to us for reply to on behalf of the Independent Police Investigative Directorate ("IPID").
2. We shall procure instructions from IPID as soon as possible and furnish you with a substantive response to your letter shortly.
3. We confirm that, in the interim, Mr. Khuba has not been granted permission to consult with you. We furthermore request that you direct any further correspondence in relation to your investigation to the writer hereof.

Yours faithfully
ADAMS & ADAMS

J S MARAIS

Checked and signed by author and sent electronically

Pretoria, Johannesburg, Cape Town, Durban, Mozambique (ARPO), Angola, Tanzania, Burundi, Cameroon (CARP), Botswana, Lesotho, Namibia, Swaziland, Kenya, Ghana & Nigeria
Parvona Gavin Kotze Howard Rogers Darb Tarziani Johan du Preez Colin MacKenzie Nella Hickman Mariëtte du Plessis Samantha Copeling Gérard du Plessis Phil Pt
Louis van der Walt Chamé la Roux Russell Bagnall Simon Brown Suzann Laing Grigor Wolter Joseph Goodhais Blain de Villiers André Vaser Nolwazi Gaba Eugene Haney
Darren Oliver David Schepers Megan Moorjik Markus Garber Kelly Thompson Noko Khechete Janke Galved Nishi Chetty Lucy Signorelli Steven Yeates Johnny Flandro
Leonard Opperman Jenny Pienaar Denis Detman Alexia Apostolides Bikas Rassool Hamina Mageshina-Mooloo Debbie Mambit Michael Gwala Lauren Ross Dale Healy
Mandy Gordon Roald Grové Nicolette Koch James Davies Nicky Gerratt Vishen Pillay Godfrey Budell Jac Marais Nikabshang Phaswana Dieter Wehagen Ferdi Myburg
Somayya Khan Danie Strachan Nishan Singh Werina Griffiths Septha Gantsoelen Peter Veagle Jessica Amelton Jan Cronjé Wilhelm Prozesky Nicolette Bigger Jean-Paul Rudi
Andrew Mohr Vanessa Manner LINDIE SOUTHERN CHARL POTGIETER
Senior Consultants Emé de Plessis North Robevaal Stephan Fanelais Chris Job Craig Forbes Iza Dijkstra
Associates Deborah Marciano Delene Berlesso Therése Davis Claire Botma Stephen Hollis Alicia Kabini Kagiso Manyishi Natasha Wright Alicia Castlemen Udi Pillay
Amina Sultan Andrew Phillips Nicole Smalberger Renée Niensber Tiffany Conley Charl Marais Nondumiso Msimang Paul Aluscat Laurika van Deventer Jean-Louis La Grange
Wynand Fourie Vuyokazi Ndasee Jan-Harm Swaneperle Suraya Verwoerd Dinko Luvimbini Dionne Mubiko Weneel Britz Kim Ranspersach Lizal Mostert Tamaray Govender
Zunaid Oliver Uta-Mitzi Qamata Kerry Wiens Nicole Harvath Catherine Witkowitz Richard Wiers Aelien Perumal Kareema Shaik Sinal Govender Alesia Nyanzali Ian Learmonth
Assisted by Jevonne Le Roux Farzana Rassool Melissa Dreyer Karen Lam Zanoluhte Sokhela Yanyiba Nella Lisa Hures Farzana Manjoo Thando Manentia Gabi Moku
Nazli Parker Nevasini Pillay John Nkomo Jeanette Veagle Debra Daniel-Naudé Françoise Landman Megan Dinnle Gillian Griffiths Misha Post Khenyisite Khenyite Dineo Modibedi
Helgard Janse Van Rensburg David Gauru Luzaan Dudley Shani Van Der Bergh Chandre Du Toit Reinhardt Biermann
Chief Operating Officer Dave Forbes

Level 3 BBBEE Contributor rating

LS
SJ

DELIVERED BY EMAIL

Mr Matthew Sesoko
 Independent Police Investigative Directorate
 Chief Director: Investigation & Information Management

Email: MSesoko@ipid.gov.za

Johannesburg Office
 155 5th Street
 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: **Error! No document variable supplied.**
 OUR REFERENCE: Mr S July/kb/MINI29566.1/#3535005v1
 DIRECT PHONE: +27 11 535 8163
 DIRECT FAX: +27 11 535 8663
 EMAIL ADDRESS: sjuly@werksmans.com

5 March 2015

Dear Sir

RE: REQUEST TO CONSULT WITH MR IH KHUBA

- 1 We refer to the above matter. We acknowledge receipt of your email dated 4 March 2015.
- 2 We find it difficult to comprehend why it is taking a long time to give permission to Mr Khuba to consult with us in this regard. This is a matter of extreme urgency as per the Minister's directive. The Minister gave us two weeks to give a report on the investigation. Mr Khuba remains a key player in this investigation, hence the urgent consultation with him is highly significant.
- 3 Should we not get confirmation from you by close of business tomorrow 5 march 2015, we will have no alternative but to seek for the urgent intervention of the Minister in this regard.
- 4 We look forward to your urgent response.
- 5 We hope you find the above in order.

LS
 SS

MINI29566.1/#3535005v1
05032015



Yours faithfully

Werksmans Inc



LS
SS 2

DELIVERED BY EMAIL

Mr Innocent Khuba
 Mr HI Khuba
 Acting Provincial Head of IPID : Limpopo
 Independent Police Investigative Directorate

Email: IKhuba@ipid.gov.za

Johannesburg Office
 155 5th Street
 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: IPID REPORTS
 OUR REFERENCE: Mr S Tom/st/MINI29566.1/#3564304v1
 DIRECT PHONE: +27 11 535 8146
 DIRECT FAX: +27 11 535 8646
 EMAIL ADDRESS: stom@werksmans.com

19 March 2015

Dear Sir

REQUEST FOR CONSULTATION: IPID REPORTS ON THE ILLEGAL RENDITION OF ZIMBABWEAN NATIONALS

- 1 We refer to the above matter.
- 2 As you may recall that we have been appointed to conduct an investigation into the illegal rendition of Zimbabwean nationals. For the purposes of our investigation, we urgently request to consult with you at our offices on Monday 23 March 2015.
- 3 We are available to consult with you from 15h00 pm.
- 4 Please revert to us at your earliest convenience.
- 5 We look forward to hearing from you.

Yours faithfully

Werksmans Inc

LS
 SJ

DELIVERED BY EMAIL

Mr Matthews Sesoko
 Independent Police Investigative Directorate

Email: MSesoko@ipid.gov.za

Johannesburg Office
 155 5th Street
 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/st /MINI29566.1/#3564332v1
DIRECT PHONE: +27 11 535 8146
DIRECT FAX: +27 11 535 8646
EMAIL ADDRESS: sjuly@werksmans.com

19 March 2015

Dear Sir

REQUEST FOR CONSULTATION: IPID REPORTS ON THE ILLEGAL RENDITION OF ZIMBABWEAN NATIONALS

- 1 We refer to our letter dated 6 March 2015, the contents of which are self-explanatory.
- 2 We urgently request to consult with you on Tuesday 24 March 2015 at 15h00 pm.
- 3 Please revert to us at your earliest convenience.
- 4 We look forward to hearing from you regarding the aforesaid.

Yours faithfully

Werksmans Inc

LS
 SJ

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 AR Berman NMN Bhengu L Bick HGB Boshoff GT Bossr TJ Boswell MC Brønn W Brown PF Burger PG Cleland JG Cloete PPJ Coetsar C Cole-Morgan D Corbett JN de Villiers GW Driver LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewer JA Gobetz H Goolam R Gootkin ID Gouws GF Griessel J Hollisen MGH Honiball VR Hosiosky BB Hotz HC Jacobs TL Janse van Rensburg N Jansen van Vuuren G Johannes S July J Kallmeyer SLG Kayana A Kenny BM Kew R Killoran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner JS Lubbe BS Mabasa PK Mabaso PM Madala MPC Manaka H Masondo C Moraitis KO Motshwane L Naidoo J Nickig JJ Niemand BPF Olivier WE Oosthuizen M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pyzkowski RJ Raath A Ramdthin L Rood BR Roothman W Rosenberg NL Scott TA Sibidla LK Silberman JA Smit JS Smit CI Stevens PO Steyn J Stockwell W Strachan JG Theron JJ Truter KJ Trudgeon DN van den Berg HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker D Wegierski M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies

IN RE: INVESTIGATION BY THE MINISTER OF POLICE ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT: MAJOR GENERAL SHADRACK SIBIYA; AND OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES INVESTIGATION ("DPCI") IN THE ILLEGAL RENDITION OF ZIMBABWEAN



Jac Marais <jac.marais@adamsadams.com>
23/03/2015 at 16:47:13

From: Jac Marais <jac.marais@adamsadams.com>
Sent: 23/03/2015 at 16:47:13
To: 'sjuly@werksmans.com' <sjuly@werksmans.com>
Cc: Jac Marais <jac.marais@adamsadams.com>, Michael Gwala <michael.gwala@adamsadams.com>, Jameel Hamid <Jameel.Hamid@adamsadams.com>, Varana Chutterpaul <Varana.Chutterpaul@adamsadams.com>, Ansuya Buccas <Ansuya.Buccas@adamsadams.com>

1 Attachment(s) Total 198.9 KB View ^

Email to Werksmans Attorneys 23 03 2015.PDF (198.9 KB)

WERKSMANS ATTORNEYS
Johannesburg

ATTENTION: Mr S July

Dear Mr July

IN RE: INVESTIGATION BY THE MINISTER OF POLICE ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT: MAJOR GENERAL SHADRACK SIBIYA; AND OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES INVESTIGATION ("DPCI") IN THE ILLEGAL RENDITION OF ZIMBABWEAN NATIONALS IN 2010

Please see **attached** correspondence for your kind attention.

LS
SS

Personal Portal

Page 2 of 2
581

Yours faithfully,

Jac Marais

Partner

PHONE +27 12 432 6356

FAX +27 12 432 6550

EMAIL jac.marais@adamsadams.com

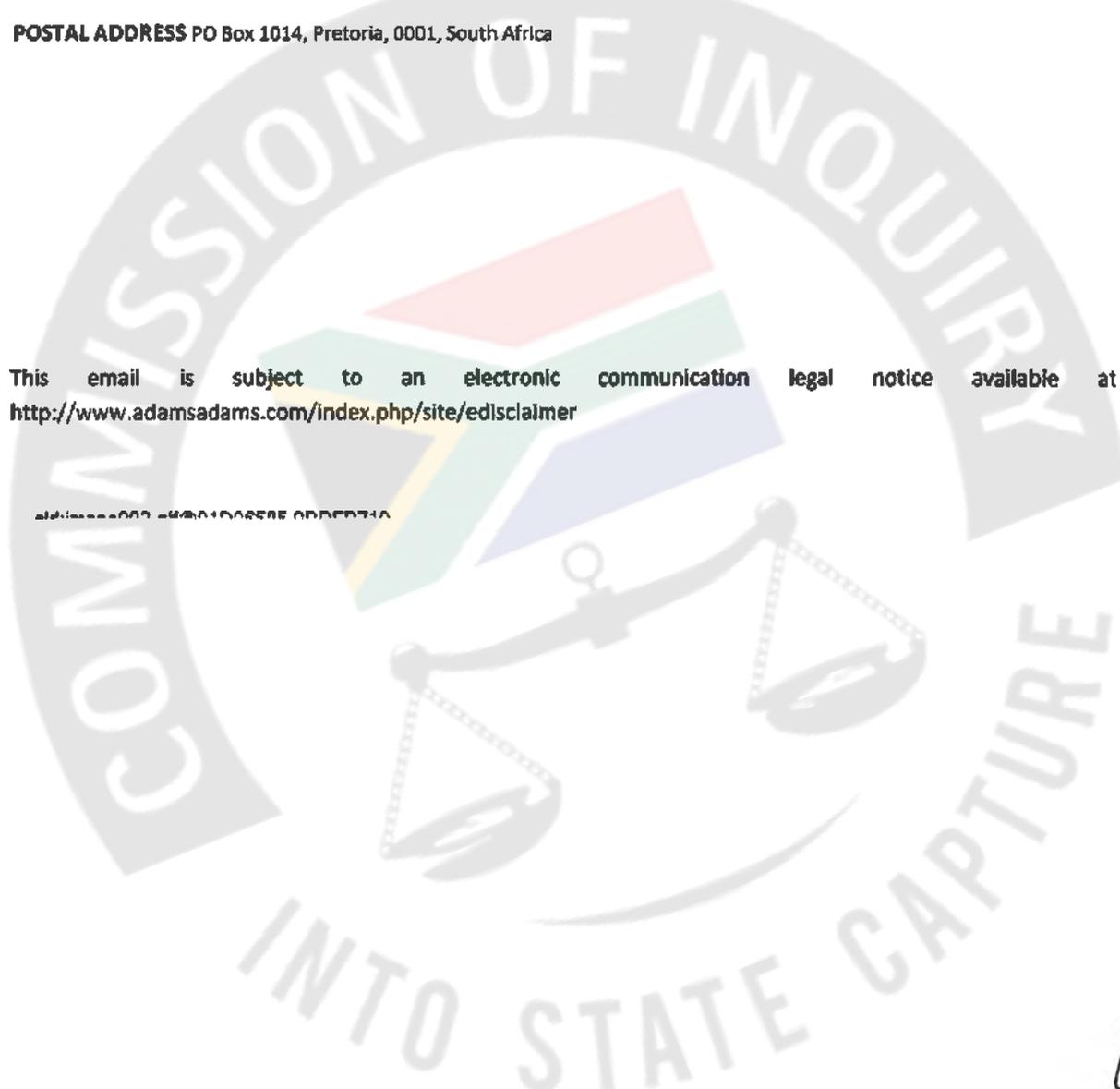
WEBSITE www.adamsadams.co.za

PHYSICAL ADDRESS Lynnwood Bridge, 4 Daventry Street, Lynnwood Manor, Pretoria, South Africa

POSTAL ADDRESS PO Box 1014, Pretoria, 0001, South Africa

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ad/11111111-1111-1111-1111-111111111111



LS
SS

PATENT, TRADEMARK, COPYRIGHT, COMMERCIAL,
PROPERTY & LITIGATION ATTORNEYS

Adams & Adams

EMAIL MESSAGE

To: sjulv@werksmans.com
From: jac.marais@adamsadams.com
Tel No. (Nat) (012) 432 6000
(Int) +27 12 432 6000

PRETORIA OFFICE
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Lynnwood Manor Pretoria
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DOCEX 81 Pretoria

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WEB www.adamsadams.com

Our Reference: JSM/vc/LT2141
Your Reference: Mr July/MINI29566.1
Date: 23 March 2015

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WERKSMANS ATTORNEYS
Johannesburg

URGENT

ATTENTION: Mr S July

Dear Mr July

IN RE: INVESTIGATION BY THE MINISTER OF POLICE ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT: MAJOR GENERAL SHADRACK SIBIYA; AND OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES INVESTIGATION ("DPCI") IN THE ILLEGAL RENDITION OF ZIMBABWEAN NATIONALS IN 2010

- As previously indicated, we represent the Independent Police Investigative Directorate ("IPID"). Your correspondence below addressed to Mr. M. Sesoko has been referred to us for consideration and reply.
- Our instructions are to facilitate IPID's cooperation with your inquiry, as referred to in your letter under reply, including in respect of interviews with Mr. McBride, Mr. Sesoko and others. We request that you address all further correspondence to us.
- With regard to the aforesaid we draw your attention to the judgement per Fabricius J in the matter of *Independent Police Investigative Directorate and Robert McBride v Minister of Police and Minister of Public Service and Administration* under case number 6588/2015

Pretoria, Johannesburg, Cape Town, Durban, Mozambique (ARPO), Angola, Tanzania, Burundi, Cameroon (OAPI), Botswana, Lesotho, Namibia, Swaziland, Kenya, Ghana & Nigeria
Partners Gavin Kotze Howard Rogers Darío Tanziani Johan du Preez Colin MacKenzie Nelia Hickman Mariëtte du Plessis Samantha Copeling Gérard du Plessis Phil Pla
Louis van der Walt Chamé le Roux Russell Bagnall Simon Brown Suzaan Laing Grégor Wolter Joseph Goedhals Blain de Villiers André Visser Nolwezi Gcabe Eugene Honey
Carren Olivier David Scheepers Megan Moerdijk Marius Gerber Kelly Thompson Nde Khedwane Janice Galvao Nishi Chetty Lucy Signorilli Steven Yeates Johnny Pfandero
Leander Opperman Jerry Pfaneer Danie Duijven Alexis Apostolakis Biko Rasoof Manisha Maganbhai-Mooloo Debbie Marriot Michael Gwala Lauren Ross Delo Heely
Mandy Gordon Roodol Grové Nicolette Koch James Cayles Nicky Gamell Vishen Pillay Godfrey Budell Jac Marais Ntshaheng Phisoana Dieter Wellhagen Ferdi Myburg
Somayya Khan Danie Strachan Nishan Singh Werine Griffiths Sajida Gamelkhan Pieter Visagie Jessica Axelson Jani Granjé Wilhelm Prozesky Nootette Bigger Jean-Paul Rood
Andrew Molver Vanshika Mannar Lindie Semurder Charl Potgieter
Senior Consultants Esmé du Plessis Martin Rottveel Stephan Ferreira Chris Job Craig Forbes Iize Dijkstra
Associates Deborah Maricano Delene Barlasco Thérèse Davis Claire Bothma Stephen Haffis Alicia Kabini Kagiso Manyashi Nethasha Wright Alicia Casseken Udi Pillay
Arlina Suliman Andrew Phillips Nicole Smaibarger Kande Nienaber Tiffany Conlay Charl Marais Nondumiso Msimang Paul Muscat Laurika van Deventer Jean-Louis La Grange
Wynand Fourie Vuyokazi Ndawese Jan-Harm Swanepoel Suraya Veerasamy Dzakala Luvimbini Dionne Mubika Wenzel Britz Kim Ramphoso Lelani Mostert Thabazayo Gwendol
Zunaid Olivier Lita-Mili Gamata Kerry Wiers Nicole Howarth Catherine Wojcik Richard Viers Ashia Perunani Kareema Sheik Saal Gwendol Alisa Mayanah Ian Leamonah
Jevonne Le Roux Farzana Rasoof Melissa Dreyer Karen Lam Zanokuhle Solihle Tayyiba Nalla Lisa Nunes Farzana Marloé Thardo Manentes Gabi Ndaba Nezil Parker
Hemashini Pillay John Mofu Jeanette Visagie Delinda Daniels-Naudé Francois Landman Megan Dimite Gillen Griffiths Mphah Post Khanyisa Khanyisa Dineo Modibedi
Holgard Janse Van Rensburg David Gauru Lizaan Dudley Shani Van Der Borch Chandre Du Toit Reinhold Blomann Lize-Mari Van Dyk Neale Christy
Chief Operating Officer Dave Forbes

Level 3 BBBEE Contributor rating

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SS

Page 2

where it was held by the Honourable Judge that *"I do believe that part B is arguable, and it does have reasonable prospects of success"* (paragraph 15). Our client's view in respect of the Minister's powers as presently formulated in the IPID Act is fortified by the views expressed by the Honourable Fabricius J. Our client has accordingly requested the Minister to agree to expedited time periods for the hearing of Part B of the aforesaid application. We await to hear from the Minister in this regard.

4. Our client is confident that your inquiry will not lead to any adverse findings against our client, in relation to the allegations contained in your Terms of Reference (or at all). We confirm that our client's cooperation with your investigation is without prejudice to its rights in relation to the unlawfulness of the Minister's powers referred to above and the pending litigation.
5. We will consult with our client's Mr. Sesoko as soon as possible whereafter we will revert regarding suitable dates and times for an interview. To assist you with planning we confirm that our client's Mr. M. Sesoko has indicated he will probably be out of town tomorrow. We are, however, appreciative of the time pressures that you are under and will therefore endeavour to revert as soon as possible.

Yours faithfully
ADAMS & ADAMS

JS MARAIS
Checked and signed by author and sent electronically



LS
SJ

Read: IN RE: INVESTIGATION BY THE MINISTER OF POLICE ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT: MAJOR GENERAL SHADRACK SIBIYA; AND OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES INVESTIGATION ("DPCI") IN THE ILLEGAL RENDITION OF ZIMBABWEAN



Sandile July <SJuly@werksmans.com>
23/03/2015 at 16:48:16

From: Sandile July <SJuly@werksmans.com>
Sent: 23/03/2015 at 16:48:16
To: Jac Marais <jac.marais@adamsadams.com>
Cc:

1 Attachment(s) Total 255.0 byte(s) View ^

receipt.txt (255.0 byte(s))

Your message

To: Sandile July
Cc: Jac Marais; Michael Gwala; Jameel Hamid; Varana Chutterpaul; Ansuya Buccas

Subject: IN RE: INVESTIGATION BY THE MINISTER OF POLICE ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT: MAJOR GENERAL SHADRACK SIBIYA; AND OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES INVESTIGATION ("DPCI") IN THE ILLEGAL RENDITION OF ZIMBABWEAN

Sent: Mon, 23 Mar 2015 16:47:11 +0200

was read on Mon, 23 Mar 2015 16:47:34 +0200

LS
SS

DELIVERED BY EMAIL

JS MARAIS
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 www.werksmans.com
 enquiries@werksmans.com

YOUR REFERENCE: JSM/vc/LT2141
 OUR REFERENCE: Mr S July/st/MINI29566.1/#3574121v1
 DIRECT PHONE: +27 11 535 8146
 DIRECT FAX: +27 11 535 8646
 EMAIL ADDRESS: sjuly@werksmans.com

URGENT

25 March 2015

Dear Sir

IN RE: INVESTIGATION BY THE MINISTER OF POLICE ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT; MAJOR GENERAL SHADRACK SIBIYA; AND THE OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES, IN THE ILLEGAL RENDITION OF ZIMBABWEAN NATIONALS IN 2010

- 1 We refer to your letter dated 23 March 2015.
- 2 Kindly advise on when are you and your client, Mr Sesoko, available to consult with us in relation to the above matter. We are available to consult on Thursday 26 March and/or Wednesday 1 April 2015.
- 3 We look forward to hearing from you as a matter of extreme urgency.

Yours faithfully

Werksmans Inc

LS
 SJ

RE: INVESTIGATION BY THE MINISTER OF POLICE ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT; MAJOR GENERAL SHADRACK SIBIYA; AND THE OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES, IN THE ILLEGAL RENDITION OF ZIMBABWEAN NATIONALS IN 2010



Jac Marais <jac.marais@adamsadams.com>
26/03/2015 at 08:30:10

From: Jac Marais <jac.marais@adamsadams.com>
Sent: 26/03/2015 at 08:30:10
To: 'Sandile Tom' <stom@werksmans.com>
Cc: Sandile July <SJuly@werksmans.com>, Jac Marais <jac.marais@adamsadams.com>, Michael Gwala <michael.gwala@adamsadams.com>, Jameel Hamid <Jameel.Hamid@adamsadams.com>, Varana Chutterpaul <Varana.Chutterpaul@adamsadams.com>

Our ref: JSM/MG/LT2141

WERKSMANS ATTORNEYS

Johannesburg

Dear Sirs

IN RE: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE & MR R McBRIDE / THE MINISTER OF POLICE AND THE MINISTER OF PUBLIC SERVICE AND ADMINISTRATION - CASE NO. 6588/15

We acknowledge receipt of your letter dated 25 March 2015. We will procure instructions from IPID as soon as possible and hope to be in a position to provide you with a substantive response, including in respect of dates and times for the proposed interview with Mr Sesoko.

Kind regards,

Jac

Jac Marais

Partner

PHONE +27 12 432 6356

LS
SJ

FAX +27 12 432 6550

EMAIL jac.marais@adamsadams.com

WEBSITE www.adamsadams.co.za

PHYSICAL ADDRESS Lynnwood Bridge, 4 Daventry Street, Lynnwood Manor, Pretoria, South Africa

POSTAL ADDRESS PO Box 1014, Pretoria, 0001, South Africa

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From: Sandile Tom [mailto:stom@werksmans.com]

Sent: 25 March 2015 01:15 PM

To: Jac Marais

Cc: Sandile July

Subject: INVESTIGATION BY THE MINISTER OF POLICE ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT; MAJOR GENERAL SHADRACK SIBIYA; AND THE OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES, IN THE ILLEGAL RENDITION OF ZIMBABWEAN NATIONALS IN 2010

This email and its attachments are private, confidential, may be subject to legal professional privilege and are only for the use of the intended recipient.

Dear Sir

Please see the attached letter for your urgent attention.

<

✓ LS
'SS

Kind regards

Sandile Tom
Associate
T +27 11 535 8146
F +27 11 535 8646
stom@werksmans.com

Werksmans Attorneys
155 - 5th Street, Sandton, 2196
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F +27 11 535 8600

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SS

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**DELIVERED BY EMAIL**

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YOUR REFERENCE: JSM/vc/LT2141
OUR REFERENCE: Mr S July/nm/MINI29566.1/#3574121v1
DIRECT PHONE: +27 11 535 8146
DIRECT FAX: +27 11 535 8646
EMAIL ADDRESS: sjuly@werksmans.com

URGENT

25 March 2015

Dear Sir

IN RE: INVESTIGATION BY THE MINISTER OF POLICE ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT; MAJOR GENERAL SHADRACK SIBIYA; AND THE OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES, IN THE ILLEGAL RENDITION OF ZIMBABWEAN NATIONALS IN 2010

- 1 We refer to your letter dated 23 March 2015.
- 2 Kindly advise on when are you and your client, Mr Sesoko, available to consult with us in relation to the above matter. We are available to consult on Thursday 26 March and/or Wednesday 1 April 2015.
- 3 We look forward to hearing from you as a matter of extreme urgency.

Yours faithfully

Werksmans Inc

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 Arteiro T Bata AR Berman NMN Bhengu L Bick HGB Boshoff GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan D Corbett JN de Villiers GW Driver LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewer JA Gobetz H Goolam R Gootkin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hoslosky BB Hotz HC Jacobs TL Janse van Rensburg N Jansen van Vuuren G Johannes S July J Kallmeyer SLG Kayana A Kenny BM Kew R Killoran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner JS Lubbe BS Mabasa PK Mabaso PM Madala MPC Manaka H Masondo C Moraitis KO Motsiwanne L Nakoo J Nickig JJ Niemand BPF Olivier WE Oosthuizen M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin L Rood BR Roothman W Rosenberg NL Scott TA Sibidla LK Silberman JA Smit JS Smit CI Stevens PO Steyn J Stockwell W Strachan JG Theron JJ Truter KJ Trudgeon DN van den Berg HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker D Wegierski M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies

SJLS

DELIVERED BY EMAIL

Mr Innocent Khuba
 Acting Provincial Head of IPID : Limpopo
 Independent Police Investigative Directorate

Email : IKhuba@ipid.gov.za

Johannesburg Office
 155 5th Street
 Sandton 2196 South Africa
 Private Bag 10015
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 Tel +27 11 535 8000
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www.werksmans.com
enquiries@werksmans.com

YOUR REFERENCE: Mr Khuba
 OUR REFERENCE: Mr S July/cm/MINI29566.1/#3580173v1
 DIRECT PHONE: +27 11 535 8163
 DIRECT FAX: +27 11 535 8663
 EMAIL ADDRESS: sjuly@werksmans.com

27 March 2015

Dear Sir

REQUEST FOR DOCUMENTS

- 1 We refer to the consultation we had with yourself on Thursday, 26 March 2015.
- 2 We request that you furnish us with the info note that you mentioned in our consultation. In addition, could you please furnish us with the report that you sent to Messrs Seseko and McBride for their signature.
- 3 We await to hear from you.

Yours faithfully

Werksmans Inc
 THIS FAX/EMAIL HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

SJ LS

"SSIS"

IN RE: INVESTIGATION BY THE MINISTER OF POLICE ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT; MAJOR GENERAL SHADRACK SIBIYA; AND OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES INVESTIGATION ("DPCI") IN THE ILLEGAL RENDITION OF ZIMBABWEAN



Jac Marais <jac.marais@adamsadams.com>
31/03/2015 at 11:15:03

From: Jac Marais <jac.marais@adamsadams.com>
Sent: 31/03/2015 at 11:15:03
To: sjuly@werksmans.com
Cc: Jac Marais <jac.marais@adamsadams.com>, Michael Gwala <michael.gwala@adamsadams.com>, Jameel Hamid <Jameel.Hamid@adamsadams.com>, Ansuya Buccas <Ansuya.Buccas@adamsadams.com>, Varana Chutterpaul <Varana.Chutterpaul@adamsadams.com>

1 Attachment(s) Total 12.4 KB View ^

image004.jpg (12.4 KB)

WERKSMANS ATTORNEYS
Johannesburg

ATTENTION: Mr S July

Dear Mr July

IN RE: INVESTIGATION BY THE MINISTER OF POLICE ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT; MAJOR GENERAL SHADRACK SIBIYA; AND OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES INVESTIGATION ("DPCI") IN THE ILLEGAL RENDITION OF ZIMBABWEAN NATIONALS IN 2010

1. We refer to the above matter ("the Application") as well as your correspondence of 25 March 2015.
2. Please be advised that the First Applicant, per Mr. Kgamanyane the Acting Head of IPID, has instructed us that it will not proceed with the aforesaid Application, and, we will, accordingly, shortly deliver:

2.1. a Notice of Withdrawal of Application by the First Applicant. Please note that the Second Applicant is proceeding with the Application; and

LS
SS

2.2. a Notice of Withdrawal of Attorneys of Record.

3. Any further correspondence to the First Applicant in relation to the Application should, accordingly, be directed to Mr. Viceroy Maoka, Acting Head of Legal Services, at vmaoka@ipid.gov.za .
4. Any correspondence in relation to the Application addressed to the Second Applicant should be directed to the writer hereof.

With kind regards,

Jac

Jac Marais

Partner

PHONE +27 12 432 6356

FAX +27 12 432 6550

EMAIL jac.marais@adamsadams.com

WEBSITE www.adamsadams.co.za

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POSTAL ADDRESS PO Box 1014, Pretoria, 0001, South Africa

New CPL signature (Jac Marais)-Image01

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SJ

"5316"

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WERKSMANS
ATTORNEYS

DELIVERED BY EMAIL

Mr Robert McBride
Independent Police Investigative Directorate

Email: RMcBride@ipid.gov.za

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YOUR REFERENCE: ILLEGAL RENDITIONS INVESTIGATION
OUR REFERENCE: Mr S July/cm/MINI29566.1/#3597163v1
DIRECT PHONE: +27 11 535 8163
DIRECT FAX: +27 11 535 8663
EMAIL ADDRESS: sjuly@werksmans.com

2 April 2015

Dear Sir

REQUEST TO CONSULT: RE IPID REPORTS

- 1 The above matter bears reference.
- 2 As you are aware that Werksmans Attorneys has been appointed to conduct an investigation into the two reports that were submitted to the National Prosecuting Authority. For ease of reference, we attach hereto a copy of the appointment letter from the Minister of Police.
- 3 We have interviewed Mr Khuba, and Mr Sesoko who are members of the Independent Police Investigative Directorate ("IPID"). During the said interviews, you have been mentioned as one of the people who were involved in one of the reports in question.
- 4 In the circumstances, we would like to consult with you at our offices on 7 April 2015 at 15h00. We would appreciate it if you could accede to our request and attend such consultation.
- 5 We look forward to your most urgent response.
- 6 Should you have any queries, do not hesitate to contact us.

LS
SJ

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa
Directors: D Heriz (Chairman) AL Armstrong BA Aronoff DA Artelro T Bata AR Berman MNM Bhengu L Bick HGB Boshoff GT Bossr TJ Boswell MC Brinn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers GW Driver LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewer JA Gobetz H Goolam R Gootkin ID Gouws GF Griesel J Hoffeser MGH Honball VR Hosiosky BB Hotz HC Jacobs TL Janse van Rensburg N Jansen van Vuuren G Johannes S July J Kallmeyer SLG Kayana A Kenny BM Kew R Killoran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner JS Lubbe BS Mabasa PK Mabasa MPC Manaka H Masondo C Moraitis KO Motshwane L Naloo J Nickig JJ Niemand BPF Olivier WE Oosthuizen S Padayachy M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pyzikowski RJ Raeth A Ramdhan L Rood BR Roothman W Rosenberg NL Scott TA Sibida LK Silberman JA Smit JS Smit CI Stevens PO Steyn J Stockwell W Strachan JG Theron JJ Truter KJ Trudgeon DN van den Berg HA van Niekerk FJ van Tonder JP van Wyk A Valaidis RN Wakefield DC Walker D Wegierski M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies



MINI29566.1/#3597163v1
02042015

Yours faithfully


Werksmans Inc



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Personal Portal

"5317"

Page 1 of 1 595

Investigations to the Illegal Renditions of Zimbabweans



Sandile July <SJuly@werksmans.com>
13/04/2015 at 11:13:30

From: Sandile July <SJuly@werksmans.com>
Sent: 13/04/2015 at 11:13:30
To: 'lkgamanyane@ipid.gov.za' <lkgamanyane@ipid.gov.za>
Cc: 'Tmahibila@ipid.gov.za' <Tmahibila@ipid.gov.za>

📎 1 Attachment(s) Total 224.7 KB View ^

📄 20150413122112999.pdf (224.7 KB)

Dear Mr I Kgamanyane.

Please find the attachment for your urgent Consideration .

Kind Regards

Kwazi Buthelezi
Candidate Attorney
T: +27 11 535 8177 | F: +27 11 535 8591 | kbuthlezi@werksmans.com

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-----Original Message-----

From: scans@werksmans.co.za [mailto:scans@werksmans.co.za]
Sent: 13 April 2015 12:21 PM
To: Kwazi Buthelezi
Subject: Message from "RNPF3C6AA"

This E-mail was sent from "RNPF3C6AA" (Aficio MP 6001).

Scan Date: 13.04.2015 12:21:12 (+0200)
Queries to: scans@werksmans.co.za

LS

ST

596

**DELIVERED BY EMAIL**

Mr Israel Kgamanyane
Acting Executive Director: IPID

Email: Ikgamanyane@ipid.gov.za
Cc : Tmahiblla@ipid.gov.za

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enquiries@werksmans.com

YOUR REFERENCE: Zimbabwean Renditions Investigation
OUR REFERENCE: Mr S July/kb/MINI29566.1/#3610923v2
DIRECT PHONE: +27 11 535 8163
DIRECT FAX: +27 11 535 8663
EMAIL ADDRESS: sjuly@werksmans.com

13 April 2015

Dear Sir

IN RE: INVESTIGATION BY MINISTER OF POLICE IN THE ILLEGAL RENDITION OF ZIMBABWEAN NATIONALS IN 2010

- 1 We refer to the above matter.
- 2 On 2 April 2015, we addressed a letter to Mr Robert McBride requesting to consult with him regarding the investigations into the renditions. We hereby attach the said letter for ease of reference. To this day, we have not received any response from Mr McBride.
- 3 We hereby request that you instruct Mr McBride to avail himself urgently for such consultation.
- 4 Furthermore, we would like to urgently consult with Mr Innocent Khuba once more today in our offices if possible.
- 5 We hope you accede to our urgent request.
- 6 Should you have any queries, do not hesitate to contact us.

Yours faithfully,

Werksmans Inc

Werksmans Inc., Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa
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W Brown PP Burger PG Cleland JG Cloete PP Coetzee C Cole-Morgan JN de Villiers GW Driver LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewer
JA Gobetz H Goolam R Gooldin ID Gouws GF Griessel J Hoffmann MGH Honiball VR Hostosky BB Hotz HC Jacobs TL Janse van Rensburg N Jansen van Vuuren
G Johannes S July J Kallmeyer SLG Kayana A Kenny BM Kew R Kiloran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner
JS Lubbe BS Mabasa PK Mabaso MPC Manaka H Masondo C Moraitis KO Motswane L Naidoo J Nicklg JJ Nlemand BPF Olivier WE Oosthuizen S Padayachy
M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pyzikowski RJ Raath A Ramdhan L Rood BR Roothman W Rosenberg NL Scott TA Sibidla LK Silberman
JA Smit JS Smit CI Steyn J Stockwell W Strachan JG Theron JJ Truter KJ Trudgeon DN van den Berg HA van Niekerk FJ van Tonder JP van Wyk
A Vatalidis RN Wakefield DC Walker D Weglinski M Wiehahn DC Williams DG Williams E Wood BW Workman-Davies

SS
LS

"5318"

IN RE: INVESTIGATION BY THE MINISTER OF POLICE ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT: MAJOR GENERAL SHADRACK SIBIYA; AND OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES INVESTIGATION ("DPCI") IN THE ILLEGAL RENDITION OF ZIMBABWEAN



Jac Marais <jac.marais@adamsadams.com>
15/04/2015 at 17:31:40

From: Jac Marais <jac.marais@adamsadams.com>
Sent: 15/04/2015 at 17:31:40
To: 'sjuly@werksmans.com' <sjuly@werksmans.com>
Cc: Jac Marais <jac.marais@adamsadams.com>, Michael Gwala <michael.gwala@adamsadams.com>, Jameel Hamid <Jameel.Hamid@adamsadams.com>, Ansuya Buccas <Ansuya.Buccas@adamsadams.com>, Varana Chutterpaul <Varana.Chutterpaul@adamsadams.com>, kbthelezi@werksmans.com

WERKSMANS ATTORNEYS
Johannesburg

ATTENTION: Mr S July

Dear Mr July

IN RE: INVESTIGATION BY THE MINISTER OF POLICE ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT: MAJOR GENERAL SHADRACK SIBIYA; AND OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES INVESTIGATION ("DPCI") IN THE ILLEGAL RENDITION OF ZIMBABWEAN NATIONALS IN 2010

1. We refer to the above matter and your correspondence addressed to Mr. Kganyane, dated 13 April 2015, as well as the email addressed to Mr. McBride, dated 2 April 2015, which has been forwarded for our consideration and reply on behalf of Mr. McBride ("our client").
2. We place on record that our client did not receive your email of 2 April 2015 as it was apparently sent to RMcBride@ipid.gov.za, an email address that he does not have access to. The email came to his attention via Mr. Kganyane yesterday, to whom our client consented to his contact details being provided to you.
3. Despite our repeated requests for all correspondence relating to Mr. McBride to be directed via our offices, we have not heard from you in this regard. To the contrary, you seem to still be directing your correspondence in relation to Mr. McBride elsewhere.

SS

4. Our client has on numerous occasions confirmed his commitment to assist with the Werksmans Investigation, and we have requested you to address correspondence to us in this regard.
5. It has also come to our attention that our client has received two telephone calls from your office during the course of this afternoon wherein a tentative consultation has been arranged for Friday, 17 April 2015 at 12h00. We will procure instructions from our client in this regard.
6. Notwithstanding the aforementioned our client remains committed to assisting you with the Investigation and in this regard we look forward to hearing from you.
7. We thank you in anticipation.

With kind regards,

Jac

Jac Marais

Partner

PHONE +27 12 432 6356

FAX +27 12 432 6550

EMAIL jac.marais@adamsadams.com

WEBSITE www.adamsadams.co.za

PHYSICAL ADDRESS Lynnwood Bridge, 4 Daventry Street, Lynnwood Manor, Pretoria, South Africa

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This email is subject to an electronic communication legal notice available at <http://www.adamsadams.com/index>

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"5319"



WERKSMANS
ATTORNEYS

DELIVERED BY EMAIL

Mr JS Marais
Adams & Adams Attorneys

Email : jac.marais@adamsadams.com

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Fax +27 11 535 8600
www.werksmans.com
enquiries@werksmans.com

YOUR REFERENCE: JSM/VC/LT2141
OUR REFERENCE: Mr S July/st/MINI29566.1/#3619087v1
DIRECT PHONE: +27 11 535 8146
DIRECT FAX: +27 11 535 8646
EMAIL ADDRESS: stom@werksmans.com

16 April 2015

Dear Sir

IN RE: INVESTIGATION BY MINISTER OF POLICE IN THE ILLEGAL RENDITION OF ZIMBABWEAN NATIONALS IN 2010

- 1 We acknowledge receipt of your letter dated 15 April 2015.
- 2 We place on record that we have never, at any stage, before 2 April 2015 requested to interview your client.
- 3 Although you have advised in your letters addressed to us that you were representing Khuba, Sesoko and McBride and indicated your willingness to arrange dates for the interviews with your clients. On 26 March 2015, you made two telephone calls to the writer hereof. During the first telephone call, you indicated that you were representing IPID and not individuals. You later called on the same day, during this telephone conversation you indicated that your mandate has been terminated by IPID.
- 4 Pursuant to the telephonic conversation, interviews were held with Sesoko and Khuba. On 2 April 2015 we addressed a letter to your client, which your client apparently did not receive. We never received a response from your client. We forwarded the letter to his employer, the IPID. We were advised by Mr Gamanyane of IPID that Mr McBride did not receive the letter. The letter was then provided to your client by Mr Gamanyane.
- 5 Instead of advising us that he is represented by you, he sent an SMS to Mr Gamanyane which was in turn forwarded to us, which reads as follows:

"Hi there. You can pass on my cell phone number to Werkismans. Thanks."

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 AR Berman NMN Bhengu L Bick HGB Boshoff GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloets PJJ Coetser C Cole-Morgan JN de Villiers GW Driver LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewer JA Gobetz H Goolam R Gootkin ID Gouws GF Griesel J Hollesen MGH Honiball VR Hosiosky BB Hotz HC Jacobs TL Janse van Rensburg N Jansen van Vuuren G Johannes S July J Kallmeyer SLG Kayana A Kenny BM Kew R Kiloran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner JS Lubbe BS Mabasa PK Mabaso MPC Manaka H Masondo C Moraitis KO Motshwane L Naidoo J Nickig JJ Niemand BPF Olivier WE Oosthuizen S Padayachy M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pzykowski RJ Raath A Ramdhin L Rood BR Roothman W Rosenberg NL Scott TA Sibida LK Silberman JA Smit JS Smit CI Stevens PD Steyn J Stockwell W Strachan JG Theron JJ Truter KJ Trudgeon DN van den Berg HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker D Wegierski M Wihahn DC Willans DG Williams E Wood BW Workman-Davies

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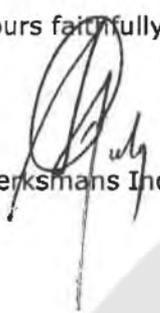
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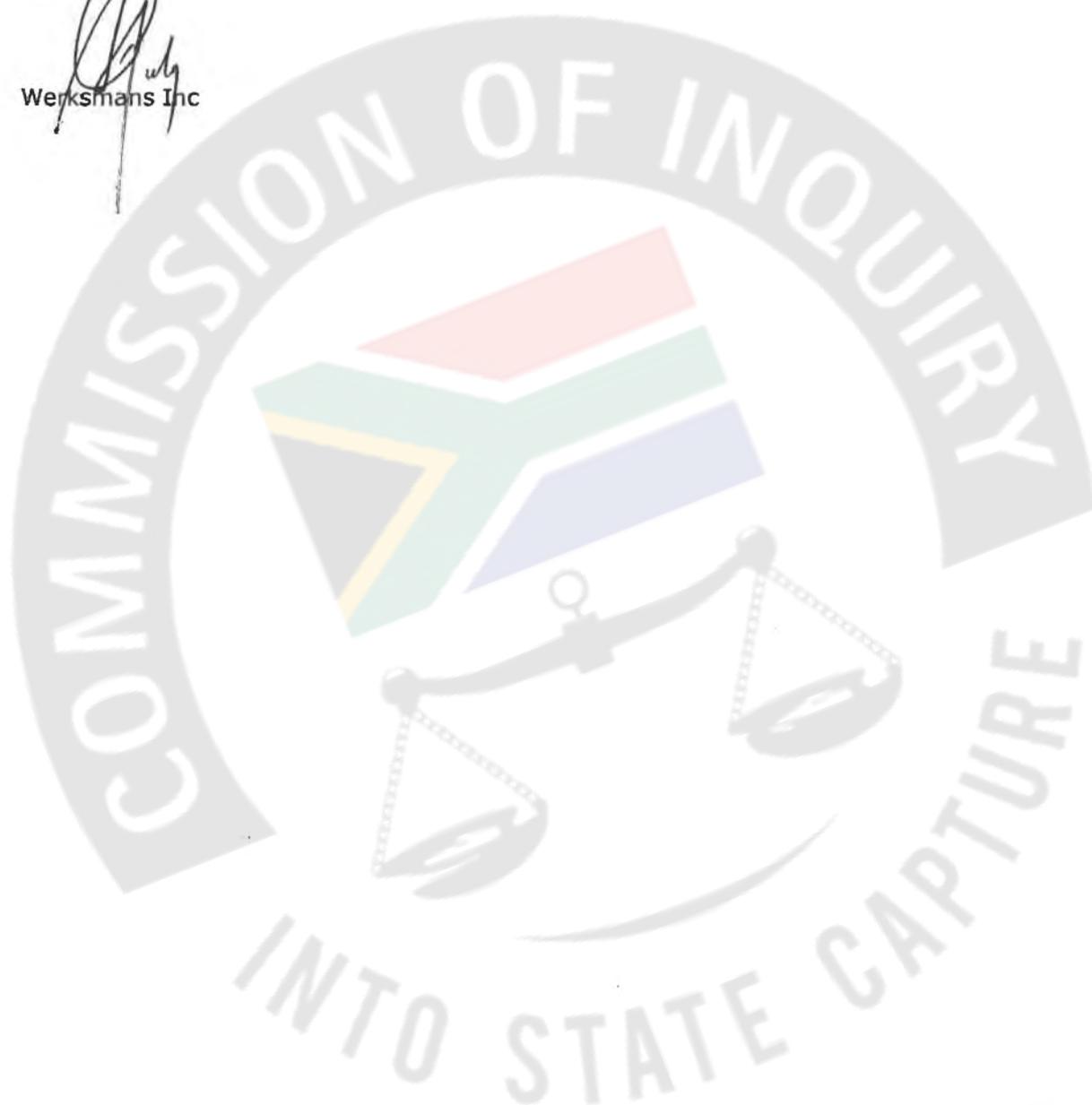
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- 6 It was on the basis of the SMS and the telephone call from Mr Gamanyane that Mr Mr McBride was pestering him that we contacted your client and arranged a meeting with him for Friday 17 April 2015 at 12h00. Had he told us that he was represented by you in this matter we would not have contacted him.
- 7 With regard to the meeting scheduled on 17 April 2015, please advise whether or not it is proceeding.
- 8 We look forward to hearing from you as a matter of extreme urgency.

Yours faithfully


Werksmans Inc



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SS

"S320"

INVESTIGATION BY THE MINISTER OF POLICE IN THE ILLEGAL RENDITION OF ZIMBABWEAN NATIONALS IN 2010 [IWOV-Litigation.FID297488]



Sandile July <SJuly@werksmans.com>
16/04/2015 at 09:16:36

From: Sandile July <SJuly@werksmans.com>
Sent: 16/04/2015 at 09:16:36
To: <jac.marais@adamsadams.com>
Cc:

1 Attachment(s) Total 156.1 KB View ^

20160416102304460.pdf (156.1 KB)

Dear Sir

Please find herewith the attached letter for your attention.

Kindly acknowledge receipt.

Sandile July
Director
T: +27 11 535 8163 | F: +27 11 535 8663 | sjuly@werksmans.com

Werksmans Attorneys
155 5th Street, Sandton, Johannesburg, 2196
Private Bag 10015, Sandton, 2146, South Africa
T: +27 11 535 8000 | F: +27 11 535 8600 | www.werksmans.com



LS
SS

"S321"

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Nyiko Mathebula

From: Jac Marais <jac.marais@adamsadams.com>
Sent: 16 April 2015 15:53
To: Sandile July
Cc: Jac Marais; Michael Gwala; Jameel Hamid; Ansuya Buccas; Varana Chutterpaul
Subject: RE: INVESTIGATION BY THE MINISTER OF POLICE IN THE ILLEGAL RENDITION OF ZIMBABWEAN NATIONALS IN 2010 [IWOV-Litigation.FID297488]

WERKSMANS ATTORNEYS
Johannesburg

ATTENTION: Mr S July

Dear Mr July

IN RE: INVESTIGATION BY THE MINISTER OF POLICE ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT; MAJOR GENERAL SHADRACK SIBIYA; AND OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES INVESTIGATION ("DPCI") IN THE ILLEGAL RENDITION OF ZIMBABWEAN NATIONALS IN 2010

1. We refer to the above matter and your email below.
2. We confirm that the consultation with our client on Friday, 17 April 2015 at 12:00 pm at your offices.
3. We request that any documentation in respect of which you will rely on for the interview with our client be made available to him in advance for consideration in order to make the interview more constructive.
4. We look forward to receiving your response.

With kind regards,
 Jac

Jac Marais
 Partner

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 FAX +27 12 432 6550
 EMAIL jac.marais@adamsadams.com
 WEBSITE www.adamsadams.co.za

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 POSTAL ADDRESS PO Box 1014, Pretoria, 0001, South Africa

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"S322"

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S July/IPID
17.04.15

ROBERT McBRIDE

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

5

ROBERT McBRIDE

PRESENT: MR ROBERT McBRIDE IPID
MR SANDILE JULY Director, Werksmans 10
MS KERRY BADAL Associate, Werksmans
MR SANDILE TOM Associate, Werksmans
MR KWAZI BUTHELEZI Candidate Attorney

17 April 2015 15

MR JULY: Mr McBride, my name is SANDILE JULY, I'm an attorney conducting this interview. This is SANDILE TOM, who is an Associate here, then we have KWAZI BUTHELEZI, who is a Candidate Attorney, and that is KERRY BADAL, who is an Associate here. 20

MR McBRIDE: Okay.

MR JULY: We were supposed to start this meeting at 12h00, but we are late. The reason for us being late is that we were stuck in traffic. 25
We do apologise. Today is 17 April 2015, and we are talking to MR McBRIDE.

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S July/IPID
17.04.15

ROBERT McBRIDE

Mr McBride, I don't know how we start, but we will tell you what we know. We have interviewed a number of people.

MR McBRIDE: I just want to mention something. In your first communication with IPID, the email didn't reach me. By the time I was suspended you sent the next email to my work email address, and I don't have access to it. I was also expecting an SMS from you confirming today, so that I could have details, because I think both of you phoned me from ...

MR JULY: ... a landline?

MR McBRIDE: Yes, without a number on it.

MR JULY: I will tell you what happened, Mr McBride. After I spoke to you, we then received a letter which made reference to you. They then wrote us a letter to say: We know that we are not supposed to speak to you. That's how it works. When you have a lawyer, we don't then talk to you. But what has happened is this, and maybe we need to explain this, we sent you an email which you did not receive. We then forwarded that email to your employer to say: Listen, we wrote a letter to Mr McBride - we didn't know that you did not receive it - but

SJ LS

S July/IPID
17.04.15

ROBERT McBRIDE

we have not received any response from him,
can you liaise with him? Apparently MR
KGAMANYANE directed him to send the letter to
ADAMS & ADAMS. Remember, we don't know for
the purposes of this interview, that you are 5
represented by ADAMS & ADAMS. Initially ADAMS
& ADAMS indicated to us that they were
representing IPID, they were not representing
individuals at IPID. Therefore, if we wanted
to speak to any person from IPID, we must come 10
through (?). Then on 26 March I got a call
from MR JACQUES MARAIS, who said: When is
KHUBA coming here? I said: No, the meeting
with KHUBA is supposed to be at 11h00 and the
time was 10h55. Then I said I wasn't sure 15
where he was, but we were supposed to meet
with him at 11h00. He then said he was going
to confirm his instructions with IPID. He
came back to me to say he was no longer
representing IPID. So when he said to me he 20
was no longer representing IPID, therefore the
individuals at IPID were no longer represented
by him, hence the letter to you and not to
ADAMS & ADAMS. Hence when we couldn't find
you and you couldn't respond to us, we didn't 25

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S July/IPID
17.04.15

ROBERT McBRIDE

know the reason and we sent the letter to the employer, who then wrote to ADAMS & ADAMS. Then we received a letter from ADAMS & ADAMS telling us that we should not have contacted you, they have been on record several times - I think MR MARAIS forgot about our telephone conversation on 26 March, which I explained to him.

MR McBRIDE:

Okay.

MR JULY:

He came back to say today's meeting is proceeding. We also thought that you would be coming with him.

MR McBRIDE:

No, I think initially, from the beginning, we had indicated that we do not require lawyers to be present. But since I am suspended, and they are acting on my behalf, I obtained advice and guidance from them. The most important issue was you were not in contact with me, either via the lawyer or anybody, because I was not receiving this stuff. For me I was happy that at least you could make contact and sort out the legal issues between the lawyers. That was the most important thing.

MR JULY:

At least that has been sorted out now, Mr

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S July/IPID
17.04.15

ROBERT McBRIDE

McBride. The issue is this, you started at IPID in March.

MR McBRIDE:

Yes.

MR JULY:

If I'm not mistaken it was 3 March?

MR McBRIDE:

That's correct, 3 March I started, yes.

5

MR JULY:

Yes, 3 March. MR KHUBA tells us a few days later, which could have been 6 March, you contacted him and asked him about the report, and the report we are talking about is the report in question, which is the ZIMBABWEAN report. He came to you and he talked about the report, and the following day you again called him to talk about the report. In that meeting it was you, SESOKO, him and MR GLEN ANGUS, and there was talk about the report.

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KHUBA says he was told by SESOKO that you wanted to speak to him, because he was attending a conference, and you didn't have his numbers, so you only contacted him through SESOKO. We want to know what happened when you received the report on either the 5th or the 6th, and what happened in the meeting with the four of you. Subsequent to that, according to MR KHUBA, there were other meetings. Firstly, there was an email

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S July/IPID
17.04.15

ROBERT McBRIDE

exchange about the report, and later on there was a meeting where there was a signing of the report.

MR McBRIDE: I will answer your question. On the first issue I was initially concerned about the way I was not contacted when you started communicating with IPID, so I mention that. Then also the fact that a private law company is investigating a government investigative agency, albeit an independent one, before the NPA had made a decision. Just to say that I would have expected that there would have been a wait, for the NPA to make a decision. It's neither here nor there, but with the communication problem, and then this, it was a little bit of a concern to me. (External interruption.) Is it okay if I continue speaking?

MR JULY: If you can just hold on.

MR McBRIDE: On my appointment I had asked for a briefing on all high-profile cases, and I think it was CATO MANOR, it was RIAH PHIYEGA's matter, it was this one of SIBIYA and DRAMAT - I can't remember - but I can't recall ANGUS and KHUBA in the same meeting on this issue of DRAMAT's

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S July/IPID
17.04.15

ROBERT McBRIDE

case. Maybe in the CATO MANOR cases, but I don't see why he would have been in that meeting, because I don't think he was an investigator in this case. He could have been in a meeting with me, but I don't seem to recall ... 5

MR JULY:

Let me tell you what he says. He says he was called into that meeting because he had raised a number of issues. You wanted to know - you must have thought there was something that went wrong with the investigation, and then you wanted him to also be involved in the investigation. He was hesitant to do that, but it did not happen in any event that he became part of the investigation, because one of the things he raised about the investigation was the involvement of MOUKANGWE from Crime Intelligence. 10 15

MR McBRIDE:

My issue in the briefing - and I can't remember the exact sequence of events - was firstly Crime Intelligence was involved in the case from the beginning. That's the one issue. The second issue was that my predecessor, Acting, MS MBEKI, had told KHUBA: Mr Khuba, just report directly to me, don't 20 25

SS LS

S July/IPID
17.04.15

ROBERT McBRIDE

report to . This is what I was told. Then
also that he must work with the Crime
Intelligence guy, and the Crime Intelligence
guy also linked him up with ADVOCATE MOSING.
So for me already independence in the 5
investigation was compromised, the way it had
been said. In other words, bypass the Head of
Investigations. Those were my issues.
Immediately that was my concern.

I was also concerned because it became 10
apparent that Crime Intelligence operatives
were involved in the rest of the ZIMBABWEANS
themselves. They were also involved in the
illegal repatriation. Those were my concerns.
Then I questioned, because there were many 15
people involved: Who was involved at what
stage in this crime that you mention to me,
and to what extent? I also asked: What crime
has been committed, by whom, and who was
involved in it? What are the elements of that 20
crime? That's what it was. Basically that is
how it was.

At a later stage they gave me a work session
on MARIKANA. In fact KGAMANYANE was the
investigator there. Then they briefed me 25

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S July/IPID
17.04.15

ROBERT McBRIDE

about CATO MANOR and its status, and so on. PHIEGA with LAMOER was completed. They were waiting for a warning statement from PHIEGA. On this matter of HAWKS, Rendition and Crime Intelligence, if my memory serves me correctly 5 there were some outstanding statements or warning statements at the stage when they spoke to me. If I'm not mistaken it could be SIBIYA's warning statement.

MR JULY: Did they tell you at that time that they had 10 asked SIBIYA about his warning statement?

MR McBRIDE: It's possible, yes. I can't remember the specifics. They could have said that they needed a warning statement from SIBIYA.

MR JULY: Can I also clarify this. In that meeting did 15 KHUBA indicate to you that: On 22 January I submitted the report to the NPA?

MR McBRIDE: No, no, no, no, what he did tell me was that he was in discussions with ADVOCATE MOSING. No, he didn't tell me, and I don't think he 20 would have - and I don't want to think on his behalf - because the investigation was not complete, as there were outstanding statements. In fact, I think there was a statement from JENNI IRISH-QUOBOSHEANE in that 25

SS LS

S July/IPID
17.04.15

ROBERT McBRIDE

thing. I can't remember the context of it. I remember after I had started, I bumped her, and she said my guys were there - meaning IPID people were there to take a statement from her. I don't know if she meant then or on a previous occasion before I had started with IPID.

MR JULY: So he didn't express it in so many words, that: My investigation is not complete, and the report that you are asking for is not complete?

MR McBRIDE: Look, the specifics of what was discussed in a meeting more than a year ago, where no minutes were taken - I think it would not be safe to rely on who said what and in which context. The key issue for me, is normally such a report, the way I understand the law, would not come to me. It would go from the provinces. But because it concerned two provinces this one had to come to me, and it was driven by National. So that's the issue. Normally I wouldn't even have the report, because reports and dockets move in every day to the NPA, they don't come past me.

MR JULY: You were still explaining.

SS LS

S July/IPID
17.04.15

ROBERT McBRIDE

MR McBRIDE: On the issue of details of the discussion and sequence of events, they were not really important to me. We did not take minutes of the meeting, so I can't confirm what was said. What I know is there is one report I have seen, which I have signed. The only issue on that report was that it was badly written: there were spelling errors, grammar and stuff like that. There were no other issues. I didn't even go through any of the evidence that was there. I looked at the recommendations that were made, and the analysis, and I signed it. 5

MR JULY: Let's make this supposition. If you knew about the existence of the report which had been given to the NPA, would you have asked for that report which had gone to the NPA? 10

MR McBRIDE: Well, the investigation was not completed. That was my impression. If you recall from the papers, we had briefed Minister Mthethwa on the status of various of these high-profile cases. It was just a status report, and it was soon afterwards. I think I indicated in that report that these cases were in the process of being finalised. It's in that 15 20 25

SJ LS

S July/IPID
17.04.15

ROBERT McBRIDE

information note that you will see. Just as my memory serves me now, as you ask me questions, I'm being reminded. Therefore, the investigation was not complete, because in the info note I mentioned that the investigations were in the process of being completed. 5

MR JULY:

If KHUBA says the investigation was completed but there was new evidence that came up, would he be right in that? He said: I had completed the investigation, but there was this new evidence about the cellphones in relation to SIBIYA, which needed to be tightened up. 10

MR McBRIDE:

From memory my understanding is that it was new analysis of cellphone records, and additional statements and warning statements. I don't know whether I knew it at that stage or subsequently, now that we have had a chance to go through the report in detail because of this unhappiness in this matter. What I must also add is this, just as you get my mind going - and I have mentioned it in the papers at court also - that I had briefed the Minister on this matter on 4 August. That's our present Minister Nhleko. On 4 August, 15 20 25

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S July/IPID
17.04.15

ROBERT McBRIDE

when we had our first one-on-one, I briefed him about this case. I briefed him that I was concerned about this case, and that it appears that Crime Intelligence people tried to implicate a number of Generals from the HAWKS 5
falsely. I raised that with him then. I raised it with ADVOCATE MATHENJWA from the Reference Group. Then I raised these issues with the Minister in an info note, I think on the 26th, when he had asked for the docket I 10
think on the 24th. I think on 26 November - he gave me two days to give the docket and all exhibits, and so on. I felt uncomfortable about that, because I know MATHENJWA was looking for them, because he had phoned KHUBA, 15
but I was advised: Let's give everything to the Minister, because you don't want to appear to be obstreperous or anything, so give the Minister the docket.

MR JULY: So the docket you were going to give to the 20
Minister.

MR McBRIDE: He asked for the docket. In fact, the Minister asked for the docket, he asked for all exhibits, colour photos - that's what he asked - which made me kind of uncomfortable, 25

SJLS

S July/IPID
17.04.15

ROBERT McBRIDE

because I wasn't sure who it was going to and
why he wanted it. But I gave him everything.
I gave him the whole copy and I sealed it for
him and signed every page so that he had it.
Remember, we were plagued also by leaks. Now 5
that I have been able to check, there were
lots of leaks. That's why, when we took the
docket and the report which I wrote - which I
signed and we gave to the NPA, we got it
directly to the National Director of Public 10
Prosecutions, because of the leaks that were
coming out of the NORTH GAUTENG DPP.

MR JULY: I want to clarify this point. At one stage
you gave the docket to the Minister.

MR McBRIDE: Yes. 15

MR JULY: At what point did you give it to the NPA?

MR McBRIDE: 14 April 2014. Yes, that's the date signed.
The 14th or 13th, so it was like eight months
before the Minister asked for it. I think the
Minister was not even appointed as Minister 20
yet, when we submitted the full docket to the
National Director of Public Prosecutions.

MR JULY: So the Minister asked for this somewhere in
November?

MR McBRIDE: In November. On 22 or 23 December, when 25

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S July/IPID
17.04.15

ROBERT McBRIDE

DRAMAT was suspended, and the Minister's
spokesperson made a statement that as a result
of the IPID report the Minister had suspended
DRAMAT, I got a fright, because there is no
way that it could be like that based on our 5
report that I gave to the Minister - the one
and only report, and which is the same one I
gave to the NPA - that the Minister could have
come to that conclusion.
Of course, later on it became clear that the 10
Minister said he disagrees with our report.
Now, I'm not sure whether his disagreement
with the report is merely an opinion at a
stage when the NPA hadn't made a decision. I
heard our Minister speaking in Parliament, but 15
I just kept quiet, because I had briefed him.
Then on 8 January 2015, in CAPE TOWN, I met
the Minister, and I said to the Minister:
Minister, this decision has caused confusion.
I said: Minister, I have met with Dramat and 20
his lawyers, I met in the presence of my
provincial head in the Western Cape, and we
told him we can't discuss the case. But I
confirmed, as I did on a previous occasion,
that they are not suspects from our point of 25

SJLS

S July/IPID
17.04.15

ROBERT McBRIDE

view. But I told the Minister: Minister, I have spoken to Dramat, and he is willing to assist you to de-escalate this issue. That's what I told him. The Minister said: That's a good idea, I'll think about it. I wasn't 5
sure how he had come to the decision to suspend, based on our report, because it couldn't have been from our report. There is no link between that.

At that meeting I also briefed the Minister on 10
other investigations concerning KwaZULU NATAL, the Provincial Commissioner and the National Commissioner's negligence of duty. Then the Minister said by the 13th or 14th, which was a few days after, he wanted a full report, 15
making recommendations on the Provisional Commissioner, KZN and the National Commissioner. So I prepared those reports and then met him later on in January - I can't remember when - and I gave him the 20
recommendations.

MR JULY:

Maybe before you proceed, Mr McBride, did you know that KHUBA and somebody else went to fetch the docket from the NPA or DPP SOUTH GAUTENG? Before it came to you, it was 25

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already with the DPP SOUTH GAUTENG for a decision.

MR McBRIDE: Well, it couldn't have been because there were no warning statements in it. It couldn't have been sent for a decision, because no docket goes to the NPA for decision without warning statements or such things. 5

MR JULY: Let me tell you what we have been told, because we are not in a court of law here, and I don't intend to trick you, but KHUBA says he went to fetch the docket. CHAUKE says the docket was with a certain MR VAN ZYL, SC because he got it from the NPA. 10

MR McBRIDE: I don't know any of that. I wouldn't have known who was sitting with it, and stuff like that. The only issue I knew was MOSING had the docket. That's all I knew. At some stage in between - and at some stage there was a leak, long before I was appointed in IPID, in November 2013 in MAIL & GUARDIAN or whichever newspaper, but there was a leak talking about this issue. Obviously I didn't have an acute interest in it then, but it was in the newspapers. On this issue of KHUBA fetching a docket, I wouldn't know. If he fetched a 15 20 25

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docket on this day, I'm not in a position to
negate anything he says he did, nor would I do
it for the sake of it. All I know is there is
one report, with one set of dockets, which I
signed. There is only one report I know. I 5
think just in fairness, when our Minister
asked for the docket, he said: All progress
reports and final recommendations - or final
report. So he asked for all of that, the
progress reports and the final document. For 10
me the investigation had been finished then,
and the docket was with the NPA. I think
where the confusion came in is that the
Minister may have forgotten that I told him on
4 August that it had already been submitted to 15
the NPA for decision. I think that might have
caused some confusion.

MR JULY: What you are saying you had with you at the
time was an inconclusive report?

MR McBRIDE: No, no, I'm not saying that. Mr July, please 20
let's be honest with each other. I didn't say
that. I said I got one final report which I
signed. I didn't say it was an inconclusive
report.

MR JULY: No, no, no, no. 25

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MR McBRIDE: So there was no inconclusive report, there was a final report, which was prepared by KHUBA and signed by SESOKO.

MR JULY: Maybe I should have said at the discussions, when you were discussing it and were looking at this report which had bad language. That's the one I'm talking about.

MR McBRIDE: No, it was a final report with bad language. There was no interim or progress report, or anything like that. If you look at the time lines, you will see the report was given to me, signed by these guys, I think on the 9th, and I signed it on 13 or 14 April, something like that. I can't remember the exact sequence. I think I received the report in April, but there were a few days between receiving it and when I signed it.

MR JULY: If KHUBA is lying, that you called him two days after you signed it - you called him and asked for the report ...

MR McBRIDE: No, no, I could not have called KHUBA, and I'll tell you why, because I didn't have his number. I could not have called him. I only got his number recently, when this started, so I could not have called KHUBA directly.

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MR JULY: Okay, let me put it this way, that you met with him to discuss a report.

MR McBRIDE: No, no. There were many high-profile matters. KHUBA was also involved in the CATO MANOR investigation. So there is CATO MANOR, there are a lot of other cases. One case I asked for a briefing on was PHIYEGA's report - and I think KHUBA might have been involved in that one also at the investigation stage. So I asked for a briefing on all the issues, which anyone who is heading an organisation should do.

MR JULY: I think you have said this, but you have never had sight of any other report?

MR McBRIDE: Look, a report comes to me, it's signed by the Head of Investigations and by the investigator. I signed it.

MR JULY: It came to you already signed?

MR McBRIDE: Yes, it was signed by the two people. That's the report I signed, the one with the corrected language and spelling.

MR JULY: KHUBA then says the three of you were working on a report, which is different from what you are saying. You were working on a report, there was to-ing and fro-ing before the actual

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signing, and you were involved in that.

MR McBRIDE:

No, no, this is not true. I looked at the spelling, and, as I indicated to you, the questions indicated to me are what the crimes are, what the elements are of that crime, who was involved and at what stage. Because it is over a period. If you want my opinion on issues, I can give you my opinion. My opinion was, and still is, quite firmly - and I stand by that report I signed; I stand by it - there was no crime committed by anybody until the time the ZIMBABWEANS were arrested. There was no crime committed.

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MR JULY:

No crime committed by anybody ...

MR McBRIDE:

By anybody that I was aware of, or that the evidence shows on that issue.

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MR JULY:

I don't think we will then have to take you through the report of 22 January, because you have never seen this report.

MR McBRIDE:

Which one?

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MR JULY:

The one which was submitted by KHUBA on 22 January.

MR McBRIDE:

The one that has KHUBA's signature on it?

MR JULY:

Yes.

MR McBRIDE:

I had never seen that report until this

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hullabaloo started here.

MR JULY: In the same breath then ...

MR McBRIDE: No, I had never seen that report.

MR JULY: In the same breath then, we can't ask you
about the inconsistencies that exist between 5
the two because you don't know anything about
that?

MR McBRIDE: Well, KHUBA can tell you about that. KHUBA
can tell you about inconsistencies in the
report. I don't even think there are 10
inconsistencies, there is additional evidence.
One report is longer than the other. One
report has additional information to the other
one. One report has an analysis of cellphone
records and it has warning statements, which 15
is a normal thing. So I wouldn't say
inconsistencies, I would maybe say a change of
analysis. I know in one case they had to send
a statement to be analysed, to say whether the 20
guy was truthful or not, because of evidence
which came out from a cellphone, where people
placed SIBIYA at the scene, and then from
SIBIYA's cellphone records he could not have
been on the scene. Then they had to look at
other people's statements again and analyse 25

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them. Out of that was a protest which showed that if these guys lied about SIBIYA being on the scene, where else have they lied.

MR JULY: Then, to be fair to you about the inconsistencies, although we know you know 5 nothing about this report, I think we can't conclude this conversation without showing you the inconsistencies.

MR McBRIDE: No, I don't want to look at them because then I would be interfering in the investigation. 10 So I don't want to look at them, because if there are inconsistencies in a document which I did not have at the time of signing the final report, you can't question me on that.

MR JULY: No, no, I thought you said there are no 15 inconsistencies.

MR McBRIDE: No, your definition of inconsistency - you must talk to the investigator about that. Talk to KHUBA about it. My view was they were not inconsistencies, it is additional analysis 20 and additional evidence. That's what I'm saying. So I'm not conceding to you that - look, Mr July, you're a lawyer, you have your brief, and when you put something to me about inconsistencies, I'm saying from what I have 25

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been told and have been informed, and what the analysis says, there is additional information and additional analysis. That's all I'm saying, and a review of initial assumptions. If I can go through it, there are some statements made which point to people being involved in a crime. Then later on, with additional information, new information, new analysis, a different assumption needs to be made, so there is a review of that. I understand - and after the suspension of DRAMAT I then asked KHUBA: Did you make a mistake anywhere in your statement? I asked him: Is there anything where there is a problem? I even asked about this other report and when it was signed. Because at some stage our spokesperson said the media were asking about a report, and when is this decision going to be made. Our view was: Let the NPA decide. Then he had a report. So I asked: Where did you get this report from, and is it signed? It has "signed" written, but it's not signed. Then I said: Well, it's got no status if it is not signed. I signed only one report. I only signed one report. There is

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only one report with my signature on.

MR JULY: Anything else, Mr McBride, that you would want to share with us?

MR McBRIDE: No, no, no, I think I have said everything. You can ask me additional questions and you 5
can call me back. What I would like to add, is there is a notion somehow that there has been some impropriety on this issue. As far as I'm aware there is none. If I look at DRAMAT and SIBIYA, before I came to IPID I 10
knew about them, but I had never sat like this - like I'm sitting with MR TOM - and looked at DRAMAT or SIBIYA. I know DRAMAT's background, it's similar to mine. My father was on ROBBEN ISLAND with him. So I know him, and that he 15
was involved in the taking down of PAGAD, but I didn't know the guy until I came to IPID. There is no reason for me, in a democratic SOUTH AFRICA, to want to do any favours for anyone in an independent investigative body. 20
There is no reason to want to help anybody on this issue. We work on the evidence that is there.
But I will even go so far as to say there is no court in this country that will be able to 25

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convict DRAMAT and SIBIYA. There is no
evidence against them. This evidence of
people receiving - a simple question was this:
Three Crime Intelligence people arrested the
ZIMBABWEANS. Those three went with MALULEKE 5
to take them across. I don't hear anyone
saying: The Crime Intelligence Heads must be
suspended. No-one is saying that.
There is another issue I want to add on this.
There were assaults made on the ZIMBABWEANS. 10
I had asked MR KHUBA and MR SESOKO: Why
aren't you recommending charges when there is
evidence from statements saying there were
assaults on these guys and police were
present? They said: Let's wait for the NPA 15
decision on this, and then we can add the
charges after. Even afterwards, when the
report was with the NPA, I asked MR KHUBA a
number of times: Please can you start
preparing the charges on the assaults, and get 20
warning statements on that. That's what I
did. I'm just sending a message because I'm
late for my other meeting.

MR JULY:

I think we are finished. Thank you.

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INNOCENT KHUBA

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

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INNOCENT KHUBA

PRESENT: MR INNOCENT KHUBA - IPID 10
MR SANDILE JULY - Director, Werksmans
MS KERRY BADAL - Associate, Werksmans
MR SANDILE TOM - Associate, Werksmans

26 March 2015 15

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. 20

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 25

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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. 5 10

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. 15 20

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 25

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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: What was KOEKIE's position at that time?

MR KHUBA: 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 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 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, 15 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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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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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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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 5
some disciplinary. I'm going to cut and go to
the core.

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 15
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 20
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.

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

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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 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 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 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. 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

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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 5
happy about when I cast my ...

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 10
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 15
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.

The following day I drove there straight away 20
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 25

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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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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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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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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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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, I had to go outside. 5

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 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. 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 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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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

SJ LS

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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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INNOCENT KHUBA

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.

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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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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

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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 5
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 10
wearing a red tie. I wanted to get the point
that he knows GENERAL DRAMAT.
After that, when I had taken all the
statements, I even went to the houses of the
TRT members. Because even though I extracted 15
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 20
these two things, and I found they were the
same by finding it inside the docket.
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

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

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INNOCENT KHUBA

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 5
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 10
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 15
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 20
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 25

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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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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. 5

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. 10 15

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 20 25

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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, 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 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 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

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INNOCENT KHUBA

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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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 5
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 10
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 15
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 20
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. 25

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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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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 5
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 10
can't remember. Now it will be up to the
prosecutor to decide, but we could not really
get much on that.
Again, on the issue of DUBE, DUBE was facing
five charges. When he was arrested by these 15
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 20
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 25

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- 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 KHUBA

and on the 28th the register of NOORD 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 5
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 10
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 15
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 20
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 25

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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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INNOCENT KHUBA

even now I have not yet got her statement. I
sent out questions which relate to not only
MALULEKE, because by that time I had these
success reports, so I had to add GENERAL
DRAMAT, to say: You signed these success 5
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 10
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 15
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 20
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 25

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this person had been discharged from hospital
- the same resistance. Lately, when I was
requested by ADVOCATE BALOYI 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

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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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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 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 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 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 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

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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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INNOCENT KHUBA

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

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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 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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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 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. 5

I think on 3 March McBRIDE started, if I'm not 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. 10 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 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 20 25

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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? 5

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 10 between updating new evidence in terms of saying what its impact is, and also the issue of ...

MR JULY: ... of saying how does it get you to a conclusion. 15

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 20 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 25

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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 ...

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

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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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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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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. 10 15 20
- After leaving the hotel I went straight to PRETORIA to meet with McBRIDE, as well as the...
- 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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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 5
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 10
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 15
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 20
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 25

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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 5
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 10
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 15
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 20
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 25

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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 5
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. 10
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 15
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 20
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 25

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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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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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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 5
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 10
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 15
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 ... 20

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 25

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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 5
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 10
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 15
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 20
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 25

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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. 5

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. 10

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. 15

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: 20
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 25

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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 ... 5

MR JULY: Yes, I heard that part.

MR KHUBA: He had an automated email/SMS dispatch. 10

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 15 20 25

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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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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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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 5
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 10
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: 15
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 20
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 25

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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 5
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 ... 10

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 15
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 20
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 25

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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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- 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 5
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 10
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 15
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.

MR JULY: And they were committing an unlawful act. 20

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 25

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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 15

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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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 ...

MR JULY: The second report? 20

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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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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SESOKO signed on the 18th.

MR KHUBA:

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?

MR JULY:

No. 15

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 Sibiya." 25

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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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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 25

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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 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 operation. 5 10

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 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 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 15 20 25

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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.

MR JULY: You see, his physical presence would have been relevant on assault and theft.

MR KHUBA: Mmm.

MR JULY: 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. 5

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. 10 15

THE INTERVIEW ADJOURNS 20

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: 25

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"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 15
National Commissioner DPCI. The person
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 DRAMAT.

MR KHUBA:

Yes. It says:

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

Yes.

MR JULY: You see, that part has nothing to do with this
either. 5

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, 10
paragraph 53, which is the second page of the
second report.

MR KHUBA: Paragraph 53 or 5.3?

MR JULY: It's paragraph 5.3, sorry.

MR KHUBA: I see that. 15

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: 20

"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 25

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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." 5

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

MR KHUBA: Let me check.

"He sent emails circulating more than 10
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 15
tracing the main suspects."

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 ... 20

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 5
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). 10
These SMSs were sent at various milestones of the operations."

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

MR KHUBA: This one is not in terms of the analysis?

MR JULY: This one. 15

MR KHUBA: No, no, that's fine.

MR JULY: 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?

MR KHUBA: There it is in the blocks. 20

MR JULY: 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.

MR KHUBA: Whereas here it is there.

MR JULY: Yes, it's left out, even (indistinct) is 25

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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 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: 5 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 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 20 25

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INNOCENT KHUBA

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? 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 ...” 10 15

That thing is not here under MALULEKE. 20

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. 25

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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 15 assisted Captain Maluleke to cross the border with the suspects. He contacted Lieutenant General Dramat when he welcomed the Zimbabwean police the first time." 20

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." 25

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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. 10 15

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 20 25

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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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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:

5

"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 ..."

10

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.

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MR JULY: It does.

MR KHUBA: Where?

MR JULY: It does. If you look at the second ...

MR KHUBA: It doesn't.

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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

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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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INNOCENT KHUBA

MR KHUBA: Okay.

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

Okay.

5

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:
Zimbabwean police ..."

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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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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: 5

"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 ..." 20

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 25

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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. 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. 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? 25

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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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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. 5

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. 10 15

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 20 25

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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. 5

MR KHUBA: Probably the way it is presented seems to be taking responsibility away from DRAMAT. 10

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? 15

MR KHUBA: I agree with you, yes. 20

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. 25

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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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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 ...

MR KHUBA: ... some things that are not there ... 15

MR JULY: ... things that have been removed.

MR KHUBA: 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 25

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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 when 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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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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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
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
something in the report but leave it in the
docket? Do you see now?

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MR JULY:

Yes.

MR KHUBA:

Because it's not the report that informs the
investigation, it's the investigation that
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

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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. 5 10

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 15 20 25

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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.

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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 ...

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MR KHUBA: Of the original report?

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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.

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

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meeting in August 2010 held between
Zimbabwe ..."

To that one you may deliberately not make
reference.

MR KHUBA: So it doesn't appear in the analysis? 5

MR JULY: Yes.

MR KHUBA: Okay. It's not in the findings?

MR JULY: It says in the findings - there is only one
meeting that is being referred to. It talks
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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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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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? 5

MR KHUBA: Okay, did you check DRAMAT's statement, the warning statement?

MR JULY: No, you see, the warning statement - that's a bad memory. It's not ... 10

MR KHUBA: It's not factual?

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

MR KHUBA: 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." 15 20

MR JULY: On which page is that? 25

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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."

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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.

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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.

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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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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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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 15

MR KHUBA: Yes.

MR JULY: In this case, when DRAMAT becomes aware of this, it is beyond question whether ...

MR KHUBA: ... whether the other one followed procedure or not? 20

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 25

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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, 25

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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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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. 25

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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 5
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 10
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 15
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 20
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). 25

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MR JULY: Criminally?

MR KHUBA: Yes. But these other ones like NKOSI, 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 5
the rationale behind the issue of saying why the decision was that way.

Also, can I raise another point here?

MR JULY: Yes.

MR KHUBA: There was a memo - an info note, sorry, which 10
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 15
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. 20
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.

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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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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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? 5
- 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 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 number 1, and the review of the existing evidence. Those are the two major things. 15 20
- 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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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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INNOCENT KHUBA

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

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INNOCENT KHUBA

PRESENT: MR INNOCENT KHUBA - IPID
MR SANDILE JULY - Director, Werksmans 10
MS KERRY BADAL - Associate, Werksmans
MR SANDILE TOM - Associate, Werksmans
MR KWAZI BUTHELEZI - Candidate Attorney

13 April 2015 15

MR JULY: We are going to record this. I was saying to you that when we interviewed MR MOUKANGWE, he said you, him and SESOKO went to the NPA.

MR KHUBA: Yes.

MR JULY: And the reason you went to the NPA is you 20
wanted a warrant of arrest.

MR KHUBA: Yes.

MR JULY: He said it was taking time and you guys wanted
to find out why.

MR KHUBA: Yes. 25

MR JULY: Then was MR SESOKO aware of the report that
was given to the NPA?

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MR KHUBA: Okay.

MR JULY: No, I'm asking you.

MR KHUBA: According to me I don't think he was aware, because I never gave him a copy.

MR JULY: Let's say you never gave him a copy, but he was aware - because he said somewhere in December you sought his advice as to how to submit the report to the NPA. 5

MR KHUBA: Yes.

MR JULY: So he was aware of the report. 10

MR KHUBA: Yes.

MR JULY: But he may not have seen the report. You also testified that because he was your senior, sort of, although the Acting Executive Director gave you specific instructions not to involve him, you did inform him about the report. 15

MR KHUBA: Yes, yes.

MR JULY: So he knew about the existence of the report.

MR KHUBA: Yes. 20

MR JULY: So when McBRIDE asked you - maybe before I go to McBRIDE, do you remember the date when you went to see the NPA?

MR KHUBA: When I went to see ...

MR JULY: When you went with MR MOUKANGWE and MR SESOKO? 25

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MR KHUBA: No, I can't remember the date, but it was before McBRIDE joined us.

MR JULY: Yes, definitely. You know why it was before McBRIDE, because it was shortly after you submitted the January report. 5

MR KHUBA: Yes, yes.

MR JULY: McBRIDE joined on 3 March.

MR KHUBA: This year, yes.

MR JULY: And you submitted your report on 22 January.

MR KHUBA: Yes. 10

MR JULY: So if you visited the NPA it would have been around February then?

MR KHUBA: Yes, it would have been around there.

MR JULY: And at that time you all went there with one intention, to get the warrant of arrest. 15

MR KHUBA: Yes.

MR JULY: We're not going to talk about the new information. We have talked about the new information and we have our views about this new information, but at one stage you guys 20 applied for the same information, before McBRIDE came into the picture.

MR KHUBA: Okay.

MR JULY: Section 205 - the cellphone information and dates. 25

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- MR KHUBA: Mmm.
- MR JULY: According to MOUKANGWE there was nothing that was required - even what you say is new. You knew about that information, firstly, that SIBIYA - at the time you had information that the cellphones that you tracked were not at the scene of the crime. 5
- MR KHUBA: Yes.
- MR JULY: That information you always knew about, even when the report was finalised and was given. That information you knew about? 10
- MR KHUBA: Yes.
- MR JULY: Even the advocates at the NPA raised that issue: Listen, this information you may have a problem with, and that you could go and do one or two things regarding that information. 15
- MR KHUBA: Alright.
- MR JULY: So according to him there was nothing new that came out. 20
- MR KHUBA: Let me expand. There was a telephone record we got in terms of Section 205. That telephone record was like raw data. It had not yet been integrated to an extent where it could guide us to say where (?). I need to be 25

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very clear, because I was one of the people who was very insistent on saying: This person must be put as a suspect - what is his name?

MR JULY: SIBIYA. 5

MR KHUBA: SIBIYA. And also DRAMAT must be put as a suspect. There was a time when the advocate dealing with the case was quite hesitant about the issue, to say: Why is SIBIYA being put in the report? But he insisted by saying that we 10 needed to get an expert to assist us. I indicated to him that I had already engaged the expert, but that was not coming forth. I indicated to him that I would suggest to my boss, MBEKI, to say: Can we issue a new order 15 to a new person to deal with the information? The point that makes a difference is that when I discussed it with SESOKO - when we discussed these things - he was also of the view that we can't put this person (?). The issue that you 20 raised last time, that was my point of view to say SIBIYA was heading a unit. The unit came out of that, and in that operation he communicated with his seniors about this operation, because I wanted to go to him with 25

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a warning statement, to say: Sibiya, if you were not communicating about the mission, what were you talking about? And he never came clear. I have his response. When we went and discussed it - that is when we discussed it 5
with MR SESOKO, after the deliberation with McBRIDE. I want to put this very clearly, to say, if MR McBRIDE then had an agenda for the changing of the report, he might have used SESOKO, because SESOKO had evaluated. We 10
argued. MR SESOKO said: No, no, you can't put words like that. We deliberated about it. We deliberated because that was my position. One question - and I don't know whether you asked it previously - if McBRIDE did not join 15
with the (?), would it have been changed. My view, without even being convinced by SESOKO, I wouldn't have changed it. Because my understanding is that when we deal with such people they are very senior, and to get a 20
little thing where you can point fingers at them is not - because it means you won't get anything.

MR JULY:

So at the time when you met with SESOKO, who was going through the report - he says, and 25

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let me be upfront with you: Khuba never told me that he even sat with the report. We know that is not true. We said to him that that can't be right, and that will go to the honesty - that KHUBA was not honest with you, 5 because KHUBA came to you and asked for your advice on how to submit the report. He submits the report, and you guys go there and want a warrant off the report that you never signed. The question that I want to ask is 10 this. When McBRIDE asked you for a report, you gave him the report that you had already submitted to the NPA?

MR KHUBA: Let me tell you that the report which I had given to him, which I emailed - I don't know 15 whether he read it or did not read it - is the report that I sent the NPA. I had already updated it, but I don't think I updated the recommendation, it was just to add those statements that had just arrived. Because 20 there were things that I received after the report had already been sent.

MR JULY: But those things did not influence your recommendation - they did not influence the changing of the recommendation?

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MR KHUBA: Let me be honest with you, when I dealt with the report, when I got these new statements, I never went back and looked at the recommendations, I just updated the statements. Because if you check my report, 5
it's categorised. I would do statements of this or of this, but the actual interpretation and the changing of everything happened when McBRIDE had already arrived.

MR JULY: Here's the thing. You remember we showed you 10
a number of pages where the information was deleted?

MR KHUBA: Yes.

MR JULY: And when we showed SESOKO he said he 15
doesn't know anything, you were the one who was working with that information, and he doesn't know anything about the changes. You said on record you did not delete that information.

MR KHUBA: Yes. 20

MR JULY: And you know there is a reason why you would not have deleted the information. For instance, what was said by the people - for you to change it, you would have a reason, and you would put that reason in your report. So 25

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that information was removed. But if it was not you and it was not SESOKO, we have not yet been able to talk to MR McBRIDE, although we wrote him an email to come and talk to us, who then would have deleted that information? 5

MR KHUBA:

That is a very difficult question. But I need to say as the investigating officer I was over-trusting with the report. Because when SESOKO asked for the report, I never withheld the report, I emailed it to him. When we were working on the report I used his computer. Whether he showed McBRIDE - but I remember McBRIDE, if there is one person who read that report extensively it was McBRIDE. He read it extensively. Then the progress which I was doing on the report itself, I was only adding stuff. He was sitting next to me. I was adding things, I was doing things, but whether that part was cut out by him or by me, I will not say, but I don't remember removing it. 10 15 20

MR JULY:

Deleting?

MR KHUBA:

No, no, no, I do not remember thinking to say: I'm deleting this part. Because I had nothing 25

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to benefit by it. In fact it's something that would have made me feel bad, to have the investigation and make me have sleepless nights, and yet not all things are going into that. But the way we worked on that report, I emailed it to MR SESOKO. I do not know how MR SESOKO dispatched it to him.

MR JULY:

Tell me then, the day of the signing, when you signed, were you in the same room when you signed the report? Did you sign the report when you were somewhere else, or were you in the same office?

MR KHUBA:

I need to be honest, and I just want to lay a background for you, so that you can understand. When we were dealing with this report, it went back and forth. There were a number of issues we queried, and I was tired. I was tired. Finally there was this report, and it was still on MR SESOKO's computer, because I was not linked to the printer. I was not linked. He was the only one who was linked. So it might have taken not even - it never took three days in succession, it might be around a week or two. Sometimes I would drive, come there, deal with this report and

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go back. At the time when we signed, I signed something that was printed off MR SESOKO's computer. Whether it was not the right one, I don't know, because I never went back into this, reading and analysing, but I just 5 believed that it was the same report.

MR JULY:

I think from my side I don't have any further questions. I think those were the questions that we wanted to find out, to confirm that indeed you asked SESOKO about the process of 10 submitting the report to the NPA, and the two of you visiting the NPA before McBRIDE, and it was based on the report that you submitted.

Another thing that we just need to confirm, 15 and maybe I will ask the question from my side. We spoke to MR ANGUS, who said with a report, when you submit a number of updates, it is not called a report. You are adding to the existing report. But once you make the 20 recommendations, any report which has recommendations is a final report. And if later on you may find one or two bits of additional information, you will add that there, but that report remains the final 25

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MR KHUBA:

report once it has the recommendations.

I want to tell you that a report that has a recommendation can be regarded as a final report on the basis that there is nothing else you need to do. You need to understand the procedure which I outlined previously, to say when you compile a report with recommendations it has to be assessed by the senior person, who signs it. I was in the predicament where firstly the Acting Head - SESOKO was a senior, but he was still at the same rank as I was. He was acting in that position, but I was also acting, so there was not much difference. We were all Acting Chief Directors anyway. The challenge was that when I completed that report I contacted head office, to say: This report needs to be signed, and there is no-one to sign. SESOKO was already told that he must not really cooperate well with me in that investigation. MBEKI was still an Acting Head, but waiting for SASSA(?). So you have a person who has taken employment with a department. When I spoke with the PAs in her office, they told me: This lady is on study leave(?) and she's only dealing with important

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matters. MOSING was pressuring me, to say: This matter has been going on for a long time, you need to sign. I said: I will definitely sign, I'm going to sign. So I signed it.

MR JULY: You were signing the report ... 5

MR KHUBA: ... even though there were things that were outstanding. But I signed a report with recommendations.

MR JULY: In other words, what ANGUS says, is that what you believed to be the factual situation at the time when you signed the report, even if it changes later on, that report remains the final report. If things have to change you will then have to deal with it, and how do you deal with those issues that have cropped up? 10 15

MR KHUBA: What you are talking about I don't think is an issue of only departmental procedure. It's an issue of commonsense, that once you have made a recommendation you have done your investigation. If new evidence surfaces to rebut that, then you are able to advance: Now I have this and that and that. But you need to understand that when I was requested to submit the report, which I had already updated 20 25

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- because I was very ...

MR JULY: When you were submitting, you were adding?

MR KHUBA: I was adding stuff. But I even sent some of
the stuff to MOSING. I said: I have the
response of (?), and I sent it to him. That's 5

when he said to me: No, no, Khuba, I am not
dealing with this, I have already sent it to
GAUTENG. All along I was thinking he was the
one who was dealing with this investigation,
and he would probably prosecute it. 10

Then the issue of us doing the other report,
even if I had updated that report, I could
have probably (indistinct), but whether the
recommendation would have changed I do not
know. My understanding, from my view, when I 15

sat with SESOKO I started to see it in another
light, and I was very firm with my view. But
SESOKO with his prosecutorial background said:
Mr Khuba, you can't take it this way. You
need to know that when McBRIDE arrived and 20

read the report, we did a new report, he had
an option to say: Guys, let's leave the
prosecutors (indistinct). He had an option.

And he also exercised the other option to say:

You will go and work on this report to reflect 25

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the content. That's why when this document was sent I was never part of it.

MR JULY:

You see, the problem is it is one thing to change the recommendation, but it's another thing to delete information to justify the changing of the recommendation. And if there is no basis or justification for the deletion of information then the conclusion and the report itself raises questions. Do you get what I'm saying?

MR KHUBA:

I understand that. The other thing that you also need to understand is that I think the manner in which we handled the report was quite problematic. When you showed me the part that was deleted, I was worried that they deleted the part that deals with DRAMAT - I think the two. The other one does not deal with DRAMAT. I saw the other one, and it does not deal with him. I was worried. The other reason is that when I came here last time I never prepared. Even now I haven't prepared. I know this investigation, because I did it. I told you that clearly these reports are still there, because that is my understanding. You know what I did, after I dealt with the

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report - in fact I emailed the report to
SESOKO and we worked on it. I went home.
Another day I came again. That's why it took
very long. If you check from the 3rd, when
McBRIDE started, to the date when it was 5
submitted, it took very long. I had this
challenge, and I think this is where I need to
be honest with you, because when we had our
discussions in the room, he also raised the
issue of Crime Intelligence. There was an 10
issue where he was not happy with Crime
Intelligence. I never had the number of my
boss - I think I told you last time that it
might have taken three months or seven months.
I was always figuring that probably he was mad 15
about me cooperating with Crime Intelligence,
and that is why he raised the issue of
independence and all these types of things.
It was an issue I was really concerned about.
Whatever happened through the process, I might 20
have been busy, but I was not even supposed to
be cautious because I was dealing with people
where we are working with things objectively.
But when you started to show me that some of
the things were missing, for me that was ... 25

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MR JULY: And you never suspected anything, he never told you about the information that was deleted?

MR KHUBA: No.

MR JULY: You signed the report on the basis that 5
it is the same report and you were adding to that?

MR KHUBA: Yes. I signed knowing that it was the same report, because I had dealt with that report for the past eighteen months to the date I 10
signed the report. Because of that, I was so used to it. You know you are dealing with a new person. I had dealt with so many other Executive Directors, and here I was dealing with Executive Directors with a traceable 15
political background. That was my biggest challenge. It's not to say that it really influenced it, it did not, but the point of the matter is I was less (?) in the way I dealt with the issue. MR SESOKO and I read 20
through the report, we did that, and he said sign. There was a date when I went there - if it was not the date that we signed only, it might be a date when we did little things and then the report was signed. But my conscience 25

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is clear, I never ...

MR JULY: ... deleted?

MR KHUBA: No, I never. That's why even when you called me today, I said I will tell you what I know.

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MR JULY: Okay, that's fine.

MR TOM: There is just one thing, Mr July. Mr Khuba, this question relates to - remember the statements that you obtained from various witnesses in relation to the incidents of 5 10 November 2010 and 22 and 23 November 2010 in relation to GENERAL SIBIYA's involvement in the arrests of MR PRITCHARD CHUMA? There is a statement there from PETROS CHAUKE in which PETROS says he saw GENERAL SIBIYA. I just 15 didn't bring the big file which has his statement under oath, where he says he saw GENERAL SIBIYA, who, according to him, is the head of the TOMS, and he saw GENERAL SIBIYA in the second operation. Now, this cellphone 20 evidence that places GENERAL SIBIYA in SUNNYSIDE in PRETORIA, for instance, I want to understand the weight that was attached to this statement from PETROS CHAUKE. I'm aware you have statements or affidavits, rather, 25

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from one DESMOND CAMPBELL, who says: I didn't see, but I heard they were saying he was in the car. And I think there is another person who says the same thing: I didn't see him, but I heard Warrant Officer Makoe calling his name. I understand that information to say perhaps you need to go a bit further to establish whether or not you can rely on that information, to say: I didn't see him, I heard his name being called. I want to understand how you guys treated this statement from PETROS CHAUKE, who says that he saw him. 5 10

MR KHUBA: For me, that statement was quite a solid statement, and I think it was the basis for me to say at the initial stage I would want GENERAL SIBIYA to be charged criminally. The other challenge was that the issue of the cellphone records - and that is what I started to discuss with some of the police officers - I started to realise that when these guys know that they are involved in illegal activities, they will come and give you a phone, and say: You are my brother, I'm going out at this time, this time and this time, make a call. 15 20 25

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When calls come, answer them. For example, if you receive a call of your brother, maybe it's (indistinct), you try to create a discussion that will last maybe a minute with that person, to say: No, this person is not here, do you have a message, what is your name, may I take your details? You prolong that, whereas the person will be busy with illegal activities somewhere, but the phone will show the activities within the radius of that particular tower, which is not near the scene of the crime. So that always happens. When I was discussing it with MR SESOKO, the argument was: But do you have proof? Do you get what I'm saying?

MR TOM: I get exactly what you are saying.

MR KHUBA: For me, as an investigator, I was pursuing it, and thinking these guys are supposed to have known these things. But the argument was: You do not have proof.

MR TOM: You do not have proof, apart from this statement from PETROS CHAUKE.

MR KHUBA: Yes. Also, when you are arguing with a person who has a prosecutorial background it makes things very difficult.

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MR TOM: Absolutely. I would also have that difficulty if I were to debate a subject with a person who has prosecutorial experience who poses these questions, on the understanding that I myself am not a criminal lawyer. So he asked for something in addition to this mere statement? 5

MR KHUBA: Yes.

MR TOM: Because I have seen, Mr Khuba, in the analysis of the Section 205 process in what I will term the second report, for instance when it comes to the analysis of the cellphone evidence it just says: 10

"The reason for this was to test the version of witnesses who are alleged to have seen General Sibiya at the crime scene." 15

Now it doesn't specify which crime scene, because from my understanding - and correct me if I'm wrong - there are two instances, the one of 5 November 2010, and the one of the 22nd and 23rd. It's just a question that has been hovering in my mind, to say: Does this cellphone evidence which happened to place GENERAL SIBIYA in SUNNYSIDE relate to all 20 25

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activities, for instance being the 5th and the 23rd?

MR KHUBA:

I think there you have a point, because in fact SIBIYA has been dealing with a lot of criminal activities in terms of investigation, so he knows this. They were very aware - even the police who were involved knew what they were doing was wrong, so they might have pre-planned in terms of how they approached this thing.

MR JULY:

The last thing from my side, because it is not for us to determine the merits or demerits of your findings, it's to find out about the existence of the two reports, as to which is the report, I can tell you now that our preliminary view is that there is only one report, which is the first report.

MR KHUBA:

Yes.

MR JULY:

The other report is just something we don't know why - because you see, you can't have a second report which is so identical to the first report, and the only thing that is different is that certain information has been left out. Because SESOKO wanted to give the impression that this report was something that

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now needed to be started afresh, the wording had to be new. He went through the pages, and if you look at how the first page starts the wording is the same. In the second page the wording is the same - everything. So for him 5
to say he had no knowledge about the report is really - I don't know, MR SESOKO must decide if he intends to mislead this investigation. If that is his intension then he has a problem, because in our recommendation we will 10
indeed indicate his attempt to mislead us. The issue about how he goes to a meeting with the NPA on the basis of the report that was submitted, and then he claims that he didn't know anything about the report ... 15

MR KHUBA: On that, I still remember the meeting. MR MOUKANGWE was also there. Also, what I'm really worried about insofar as this matter is concerned, is I'm really - okay, there are things that I'm going to mention off record. 20

MR JULY: Okay. We can switch off now.

THE INTERVIEW ADJOURNS

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



INTERNAL MEMORANDUM

TO: MR M.S.O. NXABANA
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

OFFICE OF THE NATIONAL DIRECTOR
2013-11-12
NATIONAL PROSECUTOR GENERAL

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 Government's 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 28 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 members 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 (Matuleke), 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 TR7 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 2011 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. Maluleke 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.

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- 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, Moinosh Polele, 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 call 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.

Makuleke 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 unworn 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 Makuleks 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

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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 fro 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 assesment 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

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ANTHONY MOSING

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

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ANTHONY MOSING

PRESENT: MR ANTHONY MOSING - NPA
MR SANDILE JULY - Director, Werksmans 10
MS KERRY BADAL - Associate, Werksmans
MR SANDILE TOM - Associate, Werksmans
MR KWAZI BUTHELEZI - Candidate Attorney

14 April 2015 15

MR MOSING: ... has to be refreshed if, for instance, they refer to them coming to see us at a certain stage.

MR JULY: Somewhere in February?

MR MOSING: Yes, yes. But I can tell you what I recall 20 clearly offhand about the matter and then we can fill in gaps from memory.

MR JULY: I can let you know that we are on record now. Today is 14 March 2015.

MR MOSING: Okay, thanks, Mr July. I think maybe from my 25 side, before we really get into the details, of course I have been told that I am now

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ANTHONY MOSING

cleared to speak with you.

MR JULY: Oh, yes, yes, I got an email.

MR MOSING: Of course coming here now and thinking in terms of what is going to be required, I just needed to understand what exactly I am 5 authorised to be able to speak about. But really, I haven't seen the request - the email that went to the NPA. All I got was: Yes, you can; you're allowed to go and talk. DR MAITE just said yesterday that I'm allowed to 10 consult with WERKSMANS about the letter, but I'm not too sure exactly what you will require from me eventually. I thought that if I could see the request that you drafted to the NPA, which led to them agreeing for 15 me to come here, just in case there is anything that might - I don't want to be in trouble, or anything like that, because of course I'm discussing matters which are *sub judice* now within the NPA. In other words, 20 this matter is *sub judice* within the NPA still. And whatever I'm saying, you must understand ...

MR JULY: Our role is very limited, but I appreciate your concerns. We don't know what is really 25

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ANTHONY MOSING

sub judice at the NPA. Our mandate is to discover and unravel a number of things, but the main issue is that there is a report that was submitted. Then there is a second report. We need to establish the status of the two reports, that's all - only that. It's about the report, but I think it's better that you see the letter from the Minister which was written to us, and also the letter from the Minister of Police to the Minister of Justice, asking the NDPP to release anybody who may be of assistance in our investigation.

MR MOSING: The release part, I am available, because I will participate, it's understood. But I'm not too sure what further issue ...

MR JULY: I'm not sure what is happening at the NPA regarding this report or these reports, but our issue is about the two reports - one given on 22 January and one which is dated 18 March.

MR MOSING: Okay. I think that I will be able to explain, but I think probably I will start from the beginning, in order to get to the report. That must be in context in terms of our

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ANTHONY MOSING

understanding of the reports, the old report,
if that is the case. Is that ...

MR JULY: That's fine, I'm with you.

MR MOSING: I just want to see, because I have a report
which I need to find in my files. I actually 5
thought I didn't have it, but it's actually
two copies. I drafted them in pencil at the
time, because they were not, let's say, the
official version.

MR JULY: I think maybe also for your benefit it is 10
important that you read this mandate, so that
you understand.

MR MOSING: I don't know whether you are aware, but from
my involvement in the matter I think - and I
must also make sure of the dates - but I would 15
say we got involved in the matter at a
relatively early stage when the investigations
basically started. I must mention that my
position at the NPA at the time was that I was
heading a unit which is called the Special 20
Projects Division, which is basically an
office of the NDPP. As such I reported to
ADVOCATE JIVA, who was the Acting NDPP at the
time. So I attended a meeting where we were
then instructed to assist with this 25

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investigation. I think MR MOUKANGWE was involved at that stage. I'm not sure what his rank is in the SOUTH AFRICAN POLICE SERVICE. There had already been some statements obtained from - I'm not sure whether it's 5
three or four - ZIMBABWEAN Nationals, who, let's say, had survived this ordeal, and who at the time were in witness protection. There were also statements I think from four Crime Intelligence members, who, it appears, were 10
part of the so-called TOMS unit of GAUTENG. They were seconded to be part of that unit, and they also made statements pertaining to the first alleged kidnapping of four 15
ZIMBABWEAN Nationals.

I'm trying to think what other evidence there was, but I think at that stage that was basically the evidence at the time. Although the evidence indicated or mentioned certain names of senior police officials from Ops in 20
particular, the evidence wasn't really very conclusive. We obviously advised the investigation that there would have to be a lot more investigation done to get to a stage where one could make concrete decisions from 25

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a prosecution point of view. At some stage, also, I think IPID got involved early on as well, because to our minds they were the relevant body as well. They informed us that they were also tasked at the time by the Minister to investigate the matter. I think we were also shown an investigation that was done by the Civilian Secretariat for Police regarding these allegations and the report that they gave after having received the reports. I think there were about three or four reports from the HAWKS and the Police which dealt with the allegations. Part of the reports were actually answers to Parliamentary questions. From that report of the Civilian Secretariat I think one could see that they pointed out a number of inconsistencies and unsatisfactory aspects which they advised the Minister to have investigated.

I must say, it was difficult to make a general observation. I think, given the nature of the case, and the suspects involved, it was generally difficult to get people to cooperate. There were a lot of police members involved in TOMS, and it was only these Crime

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Intelligence guys who had made statements. But I think in the light of the allegation then that there was a fight between Crime Intelligence units and the HAWKS, and maybe there was some sort of personal vendetta or
5 some sort of thing, we had to view the evidence with caution. That's why we insisted that the police must investigate the matter and try to get other people who were involved in these things. I think it was generally
10 difficult. I must say MR KHUBA from IPID was involved in investigating right from the start, with MOUKANGWE, but then he would report or discuss developments in the investigation with myself and BILLY MOELETSI.
15 I think we met on several occasions, but I cannot say exactly how many times. I think we also saw the report that the HAWKS' Integrity Unit had conducted into the allegations of the involvement of their members, which basically
20 exonerated them. I think the breakthrough in the investigation really started when MR KHUBA obtained a statement from a certain MADILONGA. I'm not sure what his rank is now, but he was the head of the Border ...
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MR JULY: He's dead.

MR MOSING: Yes, apparently he's dead. I was shocked. I actually advised him: You know what, this is a key witness, you must put him in witness protection. But I thought with him deceased it weakened the case. That was generally my view at the time. I think I'll get to it when I come to the point when we stopped with this investigation. He excitedly even phoned me in the night or over the weekend to say he's got this statement. I think he even emailed the statement to me. When I read it, it was really like a light that was switched on in the investigation. It was detailed - a very good statement, and one which one could view credibly, although I think it contradicted an earlier statement he had made to the HAWKS' investigations. But at least he explained why he had made that earlier statement.

From that statement I think the investigation really came to a point where everything was reasonably clear, as to what really transpired. I don't know - I don't want to deal with every step of the investigations, up

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to the point where it became - although one
can, but I wouldn't want to leave out gaps.
I don't have the docket, and of course I don't
remember every statement, but I think we ended
up understanding - because initially the 5
allegations were that there were four
ZIMBABWEAN Nationals. I think that's how the
police reported it. There were four
ZIMBABWEAN Nationals who were deported under
a HOME AFFAIRS process. I think at the start 10
he got statements from HOME AFFAIRS people
which actually showed that these documents
were not authentic. They were even submitted
to a document dispute expert, who gave a
report as well that ... 15

MR JULY: The documents that were used to deport
them?

MR MOSING: To deport them, yes. There were, shall I say,
a lot of gaps with regard to that deportation.
Firstly, there was a moratorium against 20
deportation. He even got from HOME AFFAIRS a
complete list of all the people who had been
deported during that period of the moratorium,
and none of these people were on that list.
According to HOME AFFAIRS' evidence, the 25

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persons were only deported during that period
if they had committed a crime or were involved
in criminal activities. Other than that there
was a complete moratorium. Also, copies of
those deportation documents were not available 5
at HOME AFFAIRS, so the only copies were the
ones that the HAWKS had. I think the issue
also with the apparent falsification of those
documents was that the same stamp appeared to
have been used. The documents were really 10
identical, to the extent that they didn't
appear to be very authentic. Also, the fact
why the HAWKS had to deport these people
instead of them being taken to LINDELA, and so
on. Because on that same night they were 15
detained in SOWETO, there were other illegal
immigrants, and those were taken to LINDELA.
These four were taken a separate route. What
transpired from the earlier statements of the
ZIMBABWEAN Nationals was that two of these 20
guys actually never crossed the border, they
were dumped somewhere next to the freeway -
that's according to their statements. It
transpires that only two were actually taken
over the border. That was also contrary to 25

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the reports and contrary to what was contained
in the reports from the HAWKS in answer to the
Parliamentary questions. So there already it
was clear that things were not as they
appeared to have been. 5

When MADILONGA gave his statement, as I
said, things started falling into place. The
investigating officer then managed to uncover,
let us say, the other kidnappings and
deportations. Let me just have a look, 10
because I actually wrote a memo to my bosses,
explaining the matter in detail. I said:

“Significant progress was made by the
investigating team since July 2013. In
summary the following evidence was then 15
obtained.”

That's when I think additional statements - of
course we had the SAP13's, the police stations
where these people were kept. There was a
SELEKE or SELEPE IO, who did not give us a 20
statement, but we insisted that they must try
and get a statement from him. Then one
captain from TOMS gave a statement. He was
the first one to confirm that there were
policemen from ZIMBABWE present during that 25

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first operation. Because initially, as I said, the allegation was only made by the CIG guys. For some reason I treated that with caution. I wasn't too sure whether it was a made-up story. But then NIEUWOUDT, I think is 5
his surname, confirmed that yes, that was with the first operation. I think it was 5
November. On 23 November is when they realised that SHEPARD TSHUMA in a follow-up operation was kept at ALEXANDRA Police 10
Station. From the records there he was taken out by a certain SELEPE or SELEKE - SELEPE, I think it was. Eventually SELEPE also made a statement to say he was requested to transport this guy. I think he is also from TOMS. He 15
confirmed that he transported TSHUMA - it's not SHEPARD TSHUMA, I think it's another TSHUMA. PRITCHARD CHUMA, because there are two CHUMAS. It's PRITCHARD CHUMA, and he transported him to the border with MALULEKE, 20
so MALULEKE was following in another vehicle. At the border he handed him over to MALULEKE, and MALULEKE took him into the office there, and then he turned back. So at least we could account for PRITCHARD as well. Then the other 25

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two incidents happened, and in the investigation I'm really satisfied that we had all the statements, to show that: Here are the other two - which was GORDON DUBE as well as JOHNSON NYONI. Because I think DUBE and JOHN NYONI were arrested later, around January, after that incident. The people who were involved in those arrests - it shows that Crime Intelligence gathering investigators from PRETORIA were involved in those arrests. With DUBE I have actually set it out in this memo, and I can give you a copy of this, because that really explains what my understanding was at the time of the investigation - how it unfolded. DUBE was supposed to appear in court at ATTRIDGEVILLE on serious offences of robbery and house breaking, because he was a wanted criminal. The Crime Intelligence guys came from PRETORIA - that's what they normally do, they go to the police station in the area and look for the suspects, to help trace them through their sources. So MALULEKE understood that they were looking for DUBE, and he actually asked them, to say: Trace this person for us, which

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they did in DIEPSLOOT, and they arrested him. We got a statement from the investigating officer who was MEYER, of those documents, who said MALULEKE demanded that he hand over DUBE, the accused, to MALULEKE, to be taken to ZIMBABWE, where he was to face charges of armed robbery and murder. The investigating officer did that, contrary to the fact that this case was on the roll in ATTRIDGEVILLE. I don't think we could trace the charge sheet, or if we did trace it - no, we did have the charge sheet, but we didn't have the explanation from the prosecutor. Apparently the prosecutor had resigned as well - in the ATTRIDGEVILLE case - because we wanted to get an understanding of why he allowed an accused who was facing court not to be brought to court, and whether there was a warrant issued, and all that. But it seems from the computer of MALULEKE there was a statement MALULEKE made, which I think MEYER also confirmed, which may have been handed to court to show that DUBE was taken to ZIMBABWE for deportation purposes and he had been sentenced to life imprisonment and was never coming back

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to SOUTH AFRICA. That seems to have been the explanation to close our diary.

The firearm as well - when DUBE was arrested they found a firearm which allegedly was a firearm robbed from this Colonel in ZIMBABWE, 5
and although it was handed in to Ballistics, the two police guys were instructed by MALULEKE to go and fetch that firearm and bring it to PRETORIA to MALULEKE, which they did. That firearm - and there are photographs 10
you can see, which were taken on the premises of PROMED Building, where GENERAL DRAMAT is based, you can see is still in the forensic bag. They deliberately took a photo of it as being the firearm, as if it was being handed 15
to the ZIMBABWEAN Police to return with it. So we managed to trace that DUBE was arrested, and he, together with JOHNSON NYONI - I just want to see the dates here, because on the 12th - there were documents, sort of progress 20
reports of MALULEKE that we saw, but he didn't explain, and it didn't make sense from the initial story. However, when we got this information and he had explained the various incidents, you can say, on 5 November they 25

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arrested four people and deported two. On 23
November they arrested PETER CHUMA and
deported him as well, presumably, because he
was taken to the border. The two further
incidents were then these guys DUBE and 5
JOHNSON NYONI. NYONI was arrested as well,
using these Crime Intelligence gathering
officers from PRETORIA, because they had a
source in DIEPSLOOT. I think he is the one
who alerted them to DUBE as well as NYONI. 10
They then arrested him as well. But he was
arrested and apparently taken directly to
PROMED BUILDING, and that's when allegedly, as
some of the witnesses stated, GENERAL DRAMAT
came and congratulated them whilst he was in 15
the vehicle in custody. There were
photographs of him being there. After that
the members say a braai was made to thank them
for their participation. This was a TRT unit,
sorry, not the TOMS - in other words the 20
support unit that helped arrest them, the
TACTICAL RESPONSE TEAM.
After that, NYONI was kept at the MOOT Police
Station. We managed to get the records there
that showed SAB14, or whatever, and showed 25

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that he was detained, and was allegedly
detained for fraud. Then the next day he was
taken out by MALULEKE himself. The record
says he was taken to BEIT BRIDGE to be
deported. 28 January I think corresponds with 5
MADILONGA's testimony that people were taken
to the border. That really accounted for all
five, because seemingly there were five people
sought by the ZIMBABWEAN Police. It looks as
if they did an excellent job in arresting all 10
five of them, and all five of them you can say
were taken out (indistinct). The only thing
still remaining were the corroborating
documents in the computer of MALULEKE, which
showed that there was a letter from the 15
ZIMBABWEAN High Police Office, written to our
SOUTH AFRICAN counterpart, where they thanked
them for these arrests of DUBE and NYONI, and
also some other operations. I'm not sure
which ones, but they happened at the same 20
time.

There was just one more thing, there was a
suspect, MOYO, who was facing charges in
PRETORIA for bank robbery. He is a ZIMBABWEAN
National as well. He had escaped several 25

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times, and the one time he had escaped -
because from that computer of MALULEKE I think
there was some evidence which showed they may
have been involved in getting MOYO, almost
like the reciprocal action on the part of the 5
ZIMBABWEAN Police to reciprocate for what
happened with these five. That happened
around May of 2011. We pursued that
investigation and statements and KHUBA even
went to see MOYO in prison. MOYO's story is 10
yes, he was shot by the ZIMBABWEAN Police
after he had escaped from SOUTH AFRICA, he was
brought back to SOUTH AFRICA, and at the
border he was seemingly handed over to the
SOUTH AFRICAN POLICE - the HAWKS - and taken 15
to a hospital in MUSINA, where he was again
brought to court in SOUTH AFRICA. I thought
that also corroborated the basic allegations
that the SOUTH AFRICAN POLICE helped. On the
evidence regarding who of the police was 20
involved, I think that it was where KHUBA
spoke with DRAMAT several times, trying to get
their statements - their warning statements.
He had taken a warning statement from
MALULEKE, but he was trying not to be 25

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cooperative, really. From MADILONGA's statement he mentioned that when this contingent of ZIMBABWEAN Police came there, they had a cellphone number, which they said was DRAMAT's and they should phone DRAMAT to confirm. It seems it turned out that that number was his official cellphone, and he was called. We also have a record of his cellphone to show the call was received from that number. So there was just a slight thing about the dates. I think he misjudged the dates in terms of when the ZIMBABWEAN Police came, but it was a minor thing. In fact what he said really corroborated it.

What we did, because the only thing that was really doubtful was the involvement of SIBIYA. The four initial Crime Intelligence officers did allude to the fact that he was present - not all four of them, but they had actually made two or three statements each.

MR JULY: Now, when you're talking about "present", do you mean present at the crime scene, where they were assaulting, and all those kinds of things?

MR MOSING: Yes, at the very first - on 5 November. To me

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the evidence wasn't really conclusive, but one
guy said MALULEKE did all the talking during
the briefing. Because they first briefed all
the members at the place where they met. I
think it was some supermarket just outside of 5
DIEPSLOOT where they all gathered, and
seemingly MALULEKE was doing the briefing, and
then the two ZIMBABWEAN Police guys were
present. The story was that they were from
PRETORIA, and they were actually ZIMBABWEAN 10
Police guys. They were now going to look for
suspects. They said GENERAL SIBIYA was
present, but he was sitting in the car, and he
let MALULEKE do all the talking. Then when
they moved into DIEPSLOOT the other members 15
managed to arrest these four guys. Then there
were discussions as to what must happen to
them, and where must they be taken. Some of
the ZIMBABWEAN witnesses said the General in
the car said they must go to SOWETO Police 20
Station. You see, all that evidence of course
was not conclusive, to say who the General
was, and for me, what was really not
satisfactory was that these Crime Intelligence
members ought to know SIBIYA. They knew him 25

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because they worked with him as part of the TOMS. That evidence wasn't conclusive at that stage.

With the cellphone location we tried to see, because that would have proved conclusively 5 whether he was present or not at the scenes, especially at the first scene. Unfortunately I think the one cellphone that was alleged to be his, if I understood it correctly, showed that he may not have been there, he was 10 somewhere else in PRETORIA, or whatever. I think it was the cellphones as well as the vehicle tracking, because there was tracking on those vehicles. That is why you have that evidence from some expert company that mapped 15 the movements of the vehicles. Those other vehicles definitely show that they were around that vicinity, and from there they moved to SOWETO. But again, that evidence wasn't conclusive to say that SIBIYA was there beyond 20 a reasonable doubt.

That's basically the investigation. Then KHUBA prepared his report, because we agreed we had uncovered what may have been the true version of what happened with 25

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all these events. That version was clearly very different from the official version that had been given by the HAWKS in the beginning. We were satisfied that definitely there were offences committed, and again we could define who the members were who were involved. 5

It is true that when KHUBA was requested to draft a report, because it was our understanding that the ICD previously - and now IPID - when they do an investigation they would compile a report, with a clear recommendation as to who must be charged or not, and they then submit it with the docket. He did compile the first report, which is dated 22 October 2013. I have a copy of it here. He submitted it to us and then ... 10 15

MR JULY: Can we have copies of that report?

MR MOSING: I think you can have a copy of that. Yes, I will make a copy of it. When he submitted this report to us, we basically sent it back to him to say it was not sufficient, because for the persons who must make a decision - the evidence in the report must be summarised 20 25

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properly. In fact, summarise all this evidence and mark it accordingly, to say: A1 says this, A2 that, A3 that. There were some inaccuracies in terms of that. But you will see I made pencil notes. So he went back and of course he did that. Then I think around 22 January 2014 was when the report was brought in this fashion, of which I have copies. There was one last thing that KHUBA needed to get before we could say we were closing the investigation from our perspective. Remember now, we were merely asked to assist the investigation. It was made clear to the investigators that the decision to prosecute is not ours, it's not myself and BILLY, it is going to be the DPP.

MR JULY: All they do even then, is they recommend.

MR MOSING: Yes, they recommend. But I'm saying our role in the matter we made clear to them, that this report is not given to me so that I can make a decision, we would submit it to the relevant DPP office, who would take it, and we were merely guiding that investigation and assisting them. As I said, we had continuous

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discussions with the investigating team, so at
no stage did he disagree really as to what was
happening. I think there was a lot of
pressure as well to terminate the
investigation, to move over to arrest. We 5
basically had to say: Make your investigation
complete first, make sure you've got all the
evidence, which at least indicates a *prima*
facie case so that a prosecutor can take it
forward and at least is assured of getting a 10
conviction. But really there wasn't any
pressure from anybody to say: Arrest this
person and arrest that person, in a sense.
But I'm saying of course this matter happened
some time ago already, and there was some 15
delay in really getting to the nitty-gritty,
to the truth of the whole event, until we
started making progress. It was just to make
sure: Finish your investigation so that there
is nothing extra to go and get. So by the 20
time he then wrote the final report, which we
then had agreed in terms of who would be
charged, and so on - as I said, where we had
agreed, and we mentioned names as well, as was
mentioned in this report dated 22 January 25

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2014. Based on this report, which we understood to be the final report, with the investigation being final as far as we were concerned, the matter was now ready to be submitted to a prosecutor to make a decision on whether to prosecute anyone or not. BILLY MOELETSI and myself drafted a memorandum to the Deputy National Director of Public Prosecutions, ADVOCATE JIVA, attaching - let me just get that report, first of all.

MR JULY: Let's take a break while you are looking.

THE INTERVIEW ADJOURNS

THE INTERVIEW RESUMES

MR JULY: You prepared a memorandum to the Deputy National Director of Public Prosecutions, and I think you were looking for it.

MR MOSING: Thank you, Mr July. The memo I was looking for is actually from myself as Head, Special Projects to ADVOCATE JIVA, the Deputy National Director of Public Prosecutions. I think at that stage MR NXASANA of the NDPP was already appointed in October 2013, because the report is dated 13 February 2014. It's also addressed to CHAUKE, the DPP of SOUTH GAUTENG, because it was my understanding that the

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matter should be referred to the DPP, who would then decide on the prosecution. As I indicated, I was not to decide the prosecution, but merely to assist and guide the investigations. 5

If I can just read a few introductory things in this report, it says:

"The purpose of the report was 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." 10

Then paragraph 2 is "BACKGROUND", and it says:

"The investigation 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 two lever-arch files, together with other files containing the cellular phone data and evidence obtained from a computer belonging to the DPCI, is also enclosed." 15 20

Then the third paragraph is a summary of the 25

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facts of the investigation. So I don't know whether I can call it standard practice to provide this to the NDPP or my supervisor, really, with our report on the assistance we gave regarding the matter. As you can see, as far as we were concerned the investigation was complete, to the extent that the matter could now be referred to the DPP for a decision. It's just a pity that I did not refer to the date of the report of IPID which accompanied the docket. 5 10

MR JULY: But the date of your memo is ...?

MR MOSING: My date is 13 February 2014. It then precedes...

MR JULY: ... March? 15

MR MOSING: Yes. Not to go through the whole summary of the evidence ...

MR JULY: You will also make a copy of that?

MR MOSING: I will make a copy of this, yes. We did an analysis of the evidence, as far as we were concerned, and then the challenges that we anticipated. The last paragraph really deals with the recommendations which we, as the team guiding the investigations, were making to the DPP. It reads: 20 25

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"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 contained in the docket. Those directly implicated in the actions are the Head of the DPCI, Lieutenant-General Dramat, Lieutenant-Colonel Maluleke, Warrant Office Makoe, Constable Radebe and Captain Nkosi. The recommendation in respect of Major-General Sibiya is not supported for the reasons mentioned above. 5 10

In addition to the charges mentioned in the IPID report, we would also recommend a charge of fraud, alternatively forgery and uttering in respect of the Home Affairs document that was submitted to the Civilian Secretariat and others." 15

In summary our recommendations tallied with the recommendations that were contained in the report from IPID which was dated 22 January 2014. To refer to those recommendations, that reads: 20

"Based on the available evidence, the 25

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Independent Police Investigative
Directorate recommends that Lieutenant-
General Dramat, Major-General Sibiya,
Lieutenant-Colonel Maluleke, Constable
Radebe, Captain S E Nkosi and Warrant
Officer Makoe be charged criminally for
kidnapping, defeating the ends of
justice, assault and theft (only
applicable to Captain Maluleke, Warrant
Officer Makoe, Radebe and Nkosi)."

That is the assault and theft charges. So in
essence we were in agreement with this
recommendation. It is in line with what we
had seen from the investigation up to that
stage. I then handed this memorandum,
together with the dockets - and I think I even
handed it personally to ADVOCATE CHAUKE, who
at that stage was at the head office, in the
presence of ADVOCATE JIVA, who was the head of
Prosecution Services at the time. This
included the report from IPID, dated 22
January 2014.

That was as far as our involvement went in the
matter. To our mind the matter was with the
NDPP SOUTH GAUTENG, who was going to make a

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decision whether to prosecute or not to
prosecute. Some time during 2014 - and I
don't have the exact dates - I was called by
ADVOCATE ZEISS VAN ZYL from the DPP SOUTH
GAUTENG office, who was enquiring about this 5
particular docket. He mentioned that some
police people came and fetched the dockets
from him under circumstances which for him
were very suspicious. He felt they were going
to bring the dockets back, they hadn't 10
returned the dockets, and he was getting
worried and suspicious about it. He thought
the dockets were back with us, being at head
office. I said to him: No, that can't be the
case because the dockets are now with the DPP, 15
for the DPP to decide the matter. He also
phoned ADVOCATE MOELETSI to the same effect -
I think he phoned MOELETSI before he phoned
me. When he heard we hadn't received the
dockets, he was worried. As I said, he became 20
very concerned. We then suggested as well
that perhaps the dockets were returned to the
NDPP, MR NXASANA, who was now the new head of
the NPA, without our knowledge, and they could
enquire about it from him. So I think they 25

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wrote a memo enquiring about it, setting out
the circumstances of the matter, and enquiring
about the dockets. I have seen that memo in
the file, in an email. It was in the custody
of the NDPP, MR NXASANA. This was in the last 5
few days of December 2014 - last year - and
this was after the media reporting that
GENERAL DRAMAT had been suspended, and so on,
with regard to this matter. MR NXASANA of the
NDPP called me in and asked me about the 10
matter, and then mentioned that the docket was
with him. He showed me a box with certain
lever-arch files which appeared to be the
docket in the matter, and he showed me the
IPID report. I saw it was dated some time in 15
March - I think it was 18 March 2014. He
showed me the recommendation, and I was
shocked to see that the recommendation was
completely different to the recommendation
that we had seen when the matter was referred 20
to the DPP SOUTH GAUTENG for prosecution or
for decision. I think the latter report
basically said that GENERAL DRAMAT and GENERAL
SIBIYA were exonerated - that's the word that
was used. I then briefly paged through the 25

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body of the report to see whether certain evidence was still there, still discussed in that report, particularly the statement of MADILONGA, because that was the one that I think pertinently implicated GENERAL DRAMAT as such. I did see that a summary of his evidence was still in that report. I then mentioned to the NDPP that to my mind this recommendation was not the recommendation we... 5 10

MR JULY: It was not consistent with the statement?

MR MOSING: ... it was not consistent with the evidence that was in the report - that was still part of the report.

MR JULY: Tell me, Mr Mosing, because you were in your capacity as the NPA, you were just assisting. 15

MR MOSING: Yes.

MR JULY: The decision to prosecute was not yours, but you were assisting. Were you consulted when the second report or the so-called second report was produced? 20

MR MOSING: No, not at all. That's why I said I was so surprised in December 2014 to see that the recommendation in the report now said these two were exonerated. As you can see from my 25

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memo, initially I felt that the evidence was not conclusive with regard to SIBIYA, but with GENERAL DRAMAT we ourselves had recommended as well that there was evidence that implicated him.

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MR JULY: And the part which was not conclusive was his location?

MR MOSING: Yes. It was a question that look, that could have been supplemented by further evidence from members who were there, who had not yet made statements at the time, as well as ID parades perhaps, because it was mentioned by the ZIMBABWE Police, but it was also dark and maybe they couldn't identify him properly. But I felt that the other police members, who were part of that operation, or even other evidence could come out that showed that. Because with cellphone things - with cellphones people know how to bypass things. If you are a policeman of that calibre, you will know what evidence - I think the investigators had mentioned that he may have used other cellphones, which they didn't have, and which would perhaps have placed him in that location. It's also unlikely, it's

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improbable that he wouldn't have been there, because he was actually the person designated to work in cooperation with the ZIMBABWEAN Police with regard to this cross-border cooperation.

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MR JULY: His own statement says that. He says he was asked for personnel, and he had to provide that personnel.

MR MOSING: Yes.

MR JULY: The question then is how does that personnel carry out its duties without instructions from him?

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MR MOSING: Yes, and TOMS in GAUTENG were reporting to him basically, I think. That's also the statement of the members from Crime Intelligence. Because their evidence, which they gave right at the beginning, and which is now corroborated by the rest of the investigation, suddenly gains a little bit more credibility.

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Because now you can actually see, if they say he was present, then he would have been present. You start now giving a bit more belief to what they were saying, because they are not just uncorroborated statements from people that are said to be in cahoots, or

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maybe have some motive. But now that the whole case was done, I think if you look at the evidence, I was not excluding the fact that the DPP could decide that SIBIYA was properly implicated, or that other evidence could do that. It's just that at that stage when we did our memo, or our report basically, the evidence was not conclusive as far as he was concerned. But we definitely felt there was a strong case to be made out regarding the rest. 5 10

Can I just maybe say that that report of March also did not even mention the other members like MALULEKE, MAKOE - I think it maybe mentioned MALULEKE, but MAKOE ... 15

MR JULY: It doesn't mention what should happen to others.

MR MOSING: And for me throughout that case it had always been clear - in fact we had gone so far as to give the IO draft charge sheets as far as the kidnapping and assault. We had pinpointed exactly the theft of the cellphones and the monies. We had prepared those charge sheets for the investigating officer. It was always that these people should be charged for those 20 25

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smaller offences as well. For them to be excluded completely in the report just showed me that the report is not very consistent with the evidence.

MR JULY: I was going to say the meeting - and we don't know when the meeting took place between KHUBA, MAKOE and SESOKO, a meeting with you. MAKOE confirms the meeting, KHUBA confirms the meeting and the only person who is not sure about the meeting is SESOKO. 5 10

MR MOSING: I think the only time that I met MR SESOKO was once, when he was part of this thing. That could be the meeting that is being referred to. I remember it was also at a venue which was not the usual venue where they used to meet. Due to the nature of the case, we were also not meeting in the office places because of the need to keep the matter confidential. That was the only time SESOKO came, and it was here at the PETROPORT. What exactly was discussed was really nothing out of the ordinary from what had already been discussed, and I think that was not after the reports were done, it was still well within the matter being investigated. Unfortunately I did not - 15 20 25

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I can try and find out when, more or less, from my records, to be exact. Perhaps I will be able to pinpoint the exact date. But it wasn't as if it was a matter where it was being referred to the NDPP already or that the investigations were done at that stage. 5

I think the purpose of MR KHUBA bringing MR SESOKO as well, was because SESOKO was a senior person within IPID. I think he's the Chief Director, or something like that. Obviously at that stage we were getting a little bit worried as the team, because these allegations were serious, they involved high-profile people, and the question was whether IPID reported these things as well to the principals, or whatever, so that at least there was proper reporting about that. I think that's what MR SESOKO's role would have been, because KHUBA was merely the investigator, and we were just assisting him. 10 15 20

MR JULY:

In your experience does the investigating officer, who is appointed by IPID and who signs the report, have to sign the report with other people, or does he sign the report alone? 25

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MR MOSING:

For us, when we received this report of 22
January, it was signed by MR KHUBA. It was an
official report and it was a final report.
There was no doubt that it was still subject
to somebody in higher office - because it was 5
done on a proper letterhead. As I indicated,
there were previous drafts which we helped him
to correct, so that he could give us a
complete product. There was no indication
that this report was still subject to being 10
corrected, or signed, or authorised, or
approved by somebody else. I think it was
basically the report from IPID about the
matter. That is why I did not expect - and if
it was going to be changed, I would have 15
thought that they would at least have
discussed it with us to say: This evidence
has changed, we've got new evidence which
shows something else. But nothing was
discussed. To my mind, given what ADVOCATE 20
VAN ZYL wrote in his memo, he said basically
that he received the dockets, as we had handed
them over, they were with him for a couple of
weeks, or something like that, he never looked
at them at the time, and they were then 25

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retrieved by IPID. So nothing new was added to that investigation. Even up to today I'm not sure what was added which then led to the report being changed, which then exonerated these people. If there is that evidence one can at least say yes, maybe they got some other evidence that ...

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MR JULY: But again, does it change the report, or do you add to the report and that will influence the decision?

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MR MOSING: You would normally make a supplementary report to say: This was the decision at that stage, now we've conducted a further investigation, and this further investigation then changes the initial recommendation. But to me it doesn't look like there was. I didn't see that.

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I must also just mention that during November GENERAL DRAMAT actually wrote through his attorneys' representation to the NDPP, which then happened to come to me as well. As a consequence of that I had to draft a memo to the NDPP, basically explaining the case and what was going on with the matter. From that as well, the involvement, in particular of

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GENERAL DRAMAT, because he was the one who was
now making this representation which we had to
address as to whether or not he was implicated
in the matter - we said that they were
responsible. As I said, when I saw it that 5
day, they say now that he is exonerated, and
I was really surprised because the evidence we
had managed to obtain, despite the
difficulties, was reasonably strong, to the
extent that a person taking a prosecuting 10
decision would have managed to say:
Definitely. To my mind now, I know the matter
since January this year was referred to the
DPP in PRETORIA by the NDPP. I understand
there was a recommendation to charge GENERAL 15
DRAMAT. Again, there doesn't seem to have
been - it was still on the same evidence that
we had. I think the only thing that was
different was also a recommendation of a
charge of murder. Between MOELETSI and myself 20
we had disagreed, and I also felt that there
was a case to be made out for murder, but he
felt otherwise. The murder being especially
of the first guy who was killed in ZIMBABWE,
and even others who would have been killed as 25

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a result of this kidnapping and handing over. Because there was evidence to the effect that MALULEKE actually bragged to the other members that the first one who was taken up was killed by the police, and that's how they dispense justice there, therefore if you continue on that argument, it means that he knew exactly what was going to happen. And if that thing happens then you are actually guilty of murder. It seems like it was borne out by our colleagues. 5 10

MR JULY: While we have this, can we ask to make copies of those documents?

MR MOSING: From the lady of the Secretariat pertaining to the report of their investigation - that statement was actually obtained. 15

MR JULY: What is her name?

MR MOSING: I'll tell you now.

MR JULY: I think it's QHOBOSHEANE.

MR MOSING: QHOBOSHEANE, yes. You'll see the date of her statement. It was very late. It was roundabout this time - here it is, JENNIFER IRISH-QUOBOSHEANE. It was the only thing KHUBA had to get before he basically finalised this thing. It's dated 17 February. The 20 25

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report I said was dated 13 February. So that was the only thing he wanted to add to the docket before he could finally submit the docket for a decision. I think that's why I perhaps wrote "draft" on this report. I want 5
to see if he added ...

MR JULY: What was the conclusion of QUOBOSHEANE, the recommendation?

MR MOSING: It's the same. In fact she didn't make any recommendation - I think. 10

MR JULY: It then makes sense that the October one was still a draft, hence there was no recommendation.

MR MOSING: Yes. That one was a draft, and because we didn't want this decision to be only ours. 15
They're the investigators, they are bound to indicate what the conclusion is of their investigation. I think that was one of the reasons why I said you must go and write your report in the usual format, and then he's the 20
guy who makes a recommendation on prosecution. If they say there is no case, then at least there is a recommendation. The prosecutor will be guided also by what the attitude is of the investigator. It's probably contained 25

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there, it's not just put under headings ...

MR JULY: Like the one which was ...

MR MOSING: Yes.

MR JULY: Also it was a final in October, but the only
reason why it had to (?), is the manner in 5
which it was drafted?

MR MOSING: Yes, it was the cosmetics. You see, if you
look at this one - the final one in January -
after he had changed it, it read better. I
think what he didn't do, it wasn't really 10
structured. We said: Discuss your evidence
that you rely on.

MR JULY: And then he changed that one to blocks when it
came to - he made blocks in order to get rid
of certain information. 15

MR MOSING: You see, that part I haven't seen. Where is
the new report? I didn't even get a copy of
that report.

MR JULY: If you look at this ...

MR MOSING: Oh, is this now the report? You see what is 20
also interesting, I looked at the dates, and
I thought, no, no, those dates can't be.

MR JULY: Let's start at page 9. If you look at page 9,
that is where the problem starts.

MR MOSING: And the rest is all the same? 25

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MR JULY: Yes. Then on page 9, on the report of 22 January, if you look at page 9 as well - look at the paragraph that starts in the middle with:

"He will state that ..."

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It's the fourth paragraph. It's in the middle.

MR MOSING: You know why? Remember I said this one is a draft.

MS BADAL: Oh, is this yours?

MR MOSING: Yes.

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MR JULY: Oh, let me show you this one.

MR MOSING: There would have been some changes. Can I just look to see what it says at the front? That's why I wrote "draft", because he needed to do something else before we could say yes. It will be identical, but there was something...

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MR JULY: It will be the pages that will be different. But the problem with this here is page 9.

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

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MS BADAL: This is 18 March.

MR JULY: On 18 March, where it is supposed to start with "He will state", after the paragraph ends

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with "suspects". After that it's supposed to read:

"He will state that ..."

MR MOSING: Yes, yes.

MR JULY: It's not there. 5

MR MOSING: It's not there.

MR JULY: He starts here.

MR MOSING: He left out that entire part?

MR JULY: Yes.

MR MOSING: What does it state. (Reading to himself.) No 10
but this is ridiculous, because this is
exactly the basis of MADILONGA's evidence,
where he said they had a cellphone, he phoned,
he had called RADZILANI. RADZILANI made a
statement - I think he made a statement as 15
well, which corroborated that guy, because he
didn't want to phone DRAMAT himself. He was
a junior officer, so he phoned his immediate
boss, and I think he said his immediate boss
told him: You can phone Dramat, and he then 20
phoned.

"... but she requested that he should
call Brigadier Makushu, who was a
Provincial Head Protection and Security
Services. He then called him on his 25

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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 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 cellphone and he responded
by saying that he is aware of the
Zimbabwean Police and he must let them
come." 5 10

MR JULY: That doesn't say this.

MR MOSING: No, that is clear tampering. What does KHUBA
say, because KHUBA ... 15

MR JULY: It was taken out.

MR MOSING: But he knows that it was supposed to be in?

MR JULY: He knows that it was supposed to be there.

MR MOSING: Clearly that is what we also understood.

MR JULY: Then if you go to page 21, this paragraph: 20
"DOCUMENTARY EVIDENCE ACQUIRED FROM DPCI
OFFICES ..."
This is what it says.

MR MOSING: That is 5.2.

MR JULY: It starts with "Success report". What then 25

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happens, you see this looks like it reads the same, but here it changes when it comes to another success report.

"The report bears reference number 26/02/1 and again to the Deputy National Commissioner DPCI. The person to whom enquiries must be directed is Captain Maluleke ... 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."

But here, on that one, there is not that paragraph. So this is the part that is not there.

MR MOSING: Both of them?

MR JULY: Both of them.

MR MOSING: But they removed this one?

MR JULY: Yes. In 5.2. You see if you start here:

"The report bears reference number 14/02/01 ... General Dramat held a meeting with Zimbabwean police ..."

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That is not there. You won't see it there.
It's this part of the report. This is where
it starts.

MR MOSING: It just says:

"The report also covers ..."

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MR JULY: Yes. It says:

"The report also covers the arrest of
Gordon Dube ..."

Instead of having ...

MR MOSING: I think it's this part here:

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"The report also covers the arrest of
Gordon Dube ..."

But it doesn't talk about this other part.

MR JULY: Yes, they delete all of this part.

MR MOSING: If you look at that success report, and you
look at how they are reporting here and how
they are reporting there, you will see which
one is more credible and which one is more
complete. That will be a simple exercise, to
show this one is (talking together).

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MR JULY: You will see what has been deleted there is,
it says:

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

You won't find it there.

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MR MOSING: It's not there, it just says:
 "He sent email to Zimbabwean Police
 trying to find out how they travelled
 back home and that he is still
 tracing..." 5
 This one says also sent email to the
 ZIMBABWEAN Police, so in the first one he is
 saying - I mean, really, it's no wonder they
 said he is chopping and changing on this
 thing. 10
 MR JULY: Yes, and there is no GENERAL DRAMAT mentioned
 there. I think 5.5 on the next page, just
 before "CELL PHONE RECORD OF LIEUTENANT
 NEETHLING", it says:
 "Captain Maluleke also communicated with 15
 General Dramat in terms of outgoing
 SMSs..."
 MR MOSING: "... at a very important milestone of the
 operation."
 MR JULY: "He also called a Zimbabwean number ..." 20
 And if you go and check on ...
 MR MOSING: Did they change this now?
 MR JULY: They changed it.
 MR MOSING: "EVIDENCE IN TERMS OF SECTION 205."
 MR JULY: Yes, do you see? Then they changed it and 25

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they put it in blocks.

MR MOSING:

They put it in blocks and changed the whole thing. But you see what they are saying - I don't know, but they are saying basically this was a progress report. Before that it's a 5
draft, it's a progress report. If you're now writing further - let's say it's a draft, but the fact of the matter remains that you have this draft, and then you have the other report. Clearly this other report - first of 10
all it doesn't deal as comprehensively with the evidence as this one does. It's less questionable (talking together).

MR JULY:

There is no explanation. Why did they leave out the information about the meeting of 5 15
November? That meeting DRAMAT does not dispute.

MR MOSING:

That was key. That's why I said MADILONGA's statement really corroborates the story. It was just on the dates that he wasn't sure. I 20
think he made a mistake about the exact date, but if you look at the records, the movement in and out, and the cellphone records in terms of what date he phoned, that fits in perfectly. And McINTOSH POLELA, who was a 25

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spokesperson, confirmed that he was called into a meeting where these people were, although he didn't really understand what the story was about - although he's trying to cover up a little bit. But I think he fully 5 knew what the story was. The strange thing is that even with this thing, because he was the spokesperson and he had to address the media on this thing, he didn't disclose it then, to say: There was this meeting. He should have 10 actually (?). So if you push him into a corner he probably will have to explain himself, because he phoned the media - remember that's when they came up with this story that there was a deportation, and all 15 that. In the light of the meeting he would have known that this was not a deportation.

MR JULY: So if it was there in the public, why do you delete it from the report, unless you want to come to a conclusion that is consistent with 20 what you are saying?

MR MOSING: But it was never in the public then. I think they never revealed, even to the Secretariat on three or four occasions, in the light of Parliamentary questions, in the light of the 25

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Civilian Secretariat, while the Minister was asking for explanations, they never ever revealed that there were ZIMBABWEAN Police who came here, and then there was a request and there was a meeting that took place, and as a result of that they did X, Y and Z. They never said that. I think they hid the fact that there was a ZIMBABWEAN delegation that came. And this was what MADILONGA actually revealed. They tried to cover it up by making a statement that (?) made initially in their investigation, to cover up the statement, where he basically said something to suit the story of the deportation. But that meeting was key. It informed the MALULEKE case, he also eventually - although he's not saying so now - that's where he got his (?). In fact from his progress report you can see that he's the one who said the meeting took place when the ZIMBABWEANS came, and then he was tasked to go and do this thing. That is why every time he is reporting back. So how do you change it now in your report, and you delete all reference to that meeting, or even reference to them coming into the country?

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Because that whole report isn't consistent with the evidence.

MR JULY: It is.

MR MOSING: If you look at this one and you look at that one, you will see this one is more in line with the evidence than the later one is. That should also be conclusive that this report is... 5

MR JULY: That's fine.

MR MOSING: Sandile, sorry, just on that report, so that there is no confusion, both of these are dated 22 January, but I think because there have been some changes maybe we must compare these two. As I indicated, I wrote "draft", and I think I wrote draft because he still had to do one or two things. Although the date is still the same, this was already like the end. You can see this thing is almost like a final thing. There was just maybe one thing or another that he had to add. 10 15 20

MR JULY: This one is the one that he signed.

MR MOSING: Yes, this one he also signed. But, as I say, because there were maybe one or two things, I just want to check where exactly it was. Because you can see it starts there already, 25

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where there is a bit of difference there. They will be identical, except maybe there was something that he - this was CHUMA, this was SIBANDA and NYENDA and NELSON CHAUKE ...

MR JULY: No, but this one could be the way that it came out when he printed the grid. 5

MR MOSING: Because this is now my copy, and we haven't really ...

MR JULY: Let's go to paragraph 4.3.

MR MOSING: 4.3 is: 10

"STATEMENTS OF HOME AFFAIRS OFFICIALS:
QABA, NDWANDWE, JACKSON, SKOSANA,
LODEWICKUS ..."

Then you have:

"STATEMENTS OF SAPS:
MADILONGA ..." 15

Maybe MADILONGA's statement - these two are the same. I doubt there will be anything changed in this one.

MR JULY: No, this one is the same, you see. 20

MR MOSING: I know there must have been just some small thing that he did, which then accounts for the fact that the documents are not exactly the same.

MR JULY: But it will just be a question of the timing. 25

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After that it was this.

MR MOSING: Yes, because like I say this one is just my draft. It was almost complete to the final one, so I think he may have just - perhaps it could be that MOSEANE(?), the addition of her. 5
Because he had to deal with the evidence. If you can see where he says anything about her - because I think the rest will ...

MR JULY: This is what you submitted to the NDPP?

MR MOSING: Yes. Like I say, what actually happened, was 10
I thought I hadn't kept copies, because I didn't make any.

MR JULY: You see, the difference between this one and this one, even if they differ in terms of the format, the conclusion is the same. 15

MR MOSING: Yes, and the statements are the same.

MR JULY: Then they come with another report, where the people who were also involved in the investigation are not even advised: We are now changing this report. Because even 20
MOUKANGWE was not advised.

MR MOSING: Yes, I don't think he would have ...

MR JULY: And they didn't even tell KHUBA - if you look, this was taken out, and I don't know why.

MR MOSING: KHUBA was also surprised.

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MR JULY: "On the 28th he was called by his former executive director, who gave him the following documents, saying they were received by the Secretariat of Police: Report on illegal rendition." 5

MR MOSING: You see that was the issue, because that report of the secretariat he wanted to put into the evidence as part of the docket. That was the whole domain thing. So we asked him where he got it, and that's when he explained 10 he got it from that lady who was in charge, MBEKI, I think it was.

MR JULY: Yes.

MR MOSING: He got it from her, because he wanted that really to be a part of the docket, because it 15 shows the whole matter. But is it now deleted from this one?

MR JULY: Yes.

MR MOSING: That's KHUBA's statement? Yes, here is his statement. No, he can't take that out, and it 20 was our advice that we must get that report in, because we took account of it. We read it and we knew what in there. Because it's an official version they gave, and now the investigation shows a different version. So 25

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in terms of fraud, you would want to say: You guys, who had a full opportunity to explain this case, said it was this. Now it's this. It would have shown that they had lied. So as far as I'm concerned we had lied to Parliament 5 and to the Minister then, in the beginning, because in other words they cover up the real story. The investigation is supposed to have covered what really happened, and that's why I wanted that report from the Secretariat to 10 be part of the docket. KHUBA wouldn't have left it out, because it was part of his evidence. Is it here where it is taken out?

MR JULY: The paragraph starts with: "On the 13th ..."

MR MOSING: This is his statement. 15

MR JULY: That's an analysis, that one. His statement will be ...

MR MOSING: But what does it say in the analysis?

MR JULY: No, no, they don't have a heading saying "ANALYSIS". 20

MR MOSING: Oh, they don't?

MR JULY: No.

MR MOSING: This report is completely ...

MR JULY: They just come up with a finding. Go to page 25. 25

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MR MOSING: It should be around page 24 or 25. I think that could have been the story, that his statement was not there, and I think we wanted him to give his side of it.

MR JULY: It says: "STATEMENTS OF SENIOR MEMBERS". 5

MR MOSING: Yes, "STATEMENTS OF SENIOR MEMBERS OF SAPS",

MR JULY: Then there is "STATEMENT OF HOW DIEPSLOOT" - this part is there.

MR MOSING: Yes.

MR JULY: INNOCENT KHUBA. So what makes a difference is 10 his statement, because after that his statement takes a lot of ...

MR MOSING: Here is an analysis of the evidence. So these few pages are the same, from what I do have.

MR JULY: Yes. 15

MR MOSING: And I know his statement is supposed to be in that thing, in the one we gave. Now I remember. That's why on this copy that I have, I wrote "draft", because it lacked his statement. Once he did that - and like I 20 said, in not making a copy I didn't anticipate something like this happening. Because we thought in good faith KHUBA would stand by that investigation and wouldn't be made to change it. In other words the original report 25

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that he signed - although he had signed this
one and I wrote "draft" on it - we said: This
one is incomplete and you need to summarise
your statement. I think maybe if you look at
the docket, when was his statement 5
commissioned? It was commissioned more or
less at the same time, because it was the last
thing he also did. Because he said although
he had a draft of what he had done, we said:
Do an investigating officer's statement, so to 10
speak, explaining, because in this case he
really needed to explain how this case
unfolded, because it would help anyone reading
the docket to understand what was going on.
They could be easily confused, because there 15
is a version here which we have to disprove.
Now I remember. I think that's why we didn't
even have this. You see, he didn't even
change the date, he kept the date. It took
him a day or two basically to finalise that. 20
I was a bit worried as to that one.

MR TOM: That one, as to the one you submitted to the
NDPP?

MR MOSING: Yes. You see what happened - and I'm not too
sure how you got a copy of that thing. 25

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ANTHONY MOSING

- MR TOM: In the media.
- MR JULY: No, no, no.
- MR MOSING: That one was official.
- MR JULY: It was given to us from the Minister's documents. 5
- MR MOSING: What I want to say is KHUBA actually told me that report - because it had to go to the Minister. Once the report was done, when they gave us, as the NPA, the report, they gave it to the Minister's office as well. That's what we understood. That's why they took our copy. 10
Unfortunately we didn't make copies. Even ZEISS VAN ZYL didn't make a copy. They took everything. That's why they wanted to take everything. They took everything, but now 15
fortunately, even if I don't have a copy, I've got a recent draft, and you can see it's dated. We've got that draft that they started with, and you've got the docket. If you now look at the new statement or report they have, 20
that report doesn't measure up to the evidence.
- MR JULY: Yes.
- MR MOSING: Unless they tampered with the evidence, because I think for you to change your 25

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recommendation like that, you would have had to tamper with the evidence.

MR JULY: That's what they gave, you see. Even the tampering is not consistent with their finding, because what they were doing was just to take out the reference to DRAMAT. 5

MR MOSING: Yes. But even if they tampered with the report, they wouldn't tamper with the evidence, because it's there.

MR JULY: You're right, they tampered with the report. 10

MR MOSING: So it means that if they want to insist that that is their correct report, once you review the evidence you will see that that report cannot be - why is there no reference? MADILONGA's statement, for instance, is still there. 15

MR JULY: Yes.

MR MOSING: They haven't changed it. They can't deface it. So it's still there, and it still shows that he phoned, and all that they took up. 20

MR JULY: I think we can go and eat now.

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COLONEL MOUKANGWE

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

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COLONEL MOUKANGWE

PRESENT: COLONEL MOUKANGWE - IPID 10
MR SANDILE JULY - Director, Werksmans
MS KERRY BADAL - Associate, Werksmans
MR SANDILE TOM - Associate, Werksmans

30 March 2015

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MR JULY: Today is 30 March 2015. In this room we have SANDILE TOM, an Associate from WERKSMANS, and KERRY BADAL, also an Associate from Werksmans. We are interviewing COLONEL MOUKANGWE about the report relating to the illegal rendition of the ZIMBABWEAN citizens. 20

Colonel Moukangwe, there are two reports in front of you.

COLONEL MOUKANGWE: Yes.

MR JULY: There is a report dated 22 January 2014, and 25 there is a report dated 18 March 2014. Do you

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see those two reports?

COLONEL MOUKANGWE: Yes, I see them.

MR JULY: Maybe, before we go to the details of these reports, can you explain what your role was in the drafting of the report and which one did you draft, or which report were you involved in? 5

COLONEL MOUKANGWE: The report of 18 March I was not part of. I don't know anything about it. The one of 22 January I know, and the reason I know about this is I am the initial investigator of this case docket. When it was transferred to IPID, I worked with the IO, MR KHUBA, in the investigation of this matter. When we drafted the report we would sit together and discuss what was outstanding and what we should be doing on the way forward. We drafted this, and the only outstanding thing at that time, if my memory serves me correctly, is that GENERAL DRAMAT's and GENERAL SIBIYA's witness statements were not obtained. 10 15 20

MR JULY: Why were they not obtained?

COLONEL MOUKANGWE: When we went to GENERAL DRAMAT's office, he said he wants to involve his attorney and he will only give a statement after discussing 25

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this with his attorney. Then GENERAL SIBIYA requested that he should be sent questions. MALULEKE refused, and he said he will speak in court, he won't give anything. That was the outstanding stuff as far as I was concerned. 5
I don't know whether there was any further investigation then in my absence, which led to the drafting of the other report in the new year, in 2014 - the one for 18 March. I don't know what it was that led to the drafting of 10
the new one, I'd be lying, but I know of this other one. And this is not the first one we drafted. Initially I drafted the report itself, not on IPID letterheads, but on SAPS letterheads. This one was not the only one we 15
drafted, because before this one there was one we drafted of 20 December. If I remember well, we drafted one on 20 December, and according to me this was the final one.

MR JULY: This was the final report? 20

COLONEL MOUKANGWE: That I know about. It was the final one.

MR JULY: You say you were involved in the actual drafting?

COLONEL MOUKANGWE: Yes.

MR JULY: Meaning that you ...

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COLONEL MOUKANGWE: I had input in what was drafted.

MR JULY: But at the end of this report it is signed by
MR KHUBA.

COLONEL MOUKANGWE: Yes, MR KHUBA is the official investigating
officer of the case docket, because it was now 5
no longer an SAPS matter, it was IPID's issue.
But because of the volume of the work we had
already done, they felt it was necessary for me
to assist in that issue. That is why I was
involved. 10

MR JULY: You went through the report.

COLONEL MOUKANGWE: Yes.

MR JULY: You went through this report, and were you
consulted by MR KHUBA when this report, which
is dated 18 March 2014, was submitted or signed 15
by MR KHUBA?

COLONEL MOUKANGWE: I spoke to MR KHUBA when we last drafted the
one for January. He only phoned me last week,
on Friday, saying that when I'm in
PHOLOKWANE, going to church, I must just give 20
him a call and see him. I'm sure it's nearly
a year that I didn't speak to him, so
I was not consulted, and I don't know anything
about it.

MR JULY: So if there is anything which was 25

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removed from this report, to come up with this report of 18 March, and there is information that has been removed, and which was contained in the original report, you don't know about that?

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COLONEL MOUKANGWE: I will never know about that.

MR JULY: I want us to go through this report. For instance, on page 21 of the report dated 22 January 2014 - maybe before we go to this report, are you certain that when this report was signed by MR KHUBA, it was submitted to the NPA as the final report?

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COLONEL MOUKANGWE: I won't be able to say it was submitted, but we went to the National Director of Public Prosecutions, because we were given two advocates to work with us on this issue. I was there with MR KHUBA and MR SESOKO. MR SESOKO is a legal person, he was a former prosecutor in BENONI. We went there, and when we were there the report was already drafted. That is what I can say with certainty, because when we were there the prosecutors who were dealing with us on this issue, knew about it, and had a copy of the report.

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MR JULY: So when the report was submitted to them, was

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it submitted as a temporary report, was it incomplete, or was it a final report?

COLONEL MOUKANGWE: It was a final, because we wanted warrants there, really, that's why we took our legal person, MR SESOKO. We were worried about why it seemed they were dragging their feet in giving us warrants of arrest for these people, because the people never wanted to cooperate. 5

MR JULY: When we spoke to MR KHUBA last week, on Thursday, being 26 March, he indicated to us that what necessitated the drafting of the new report was the evidence that came after this report was finalised - and with this I am referring to the report of 22 January 2014. But what we have not yet established is when this new information came into existence. 10 15

Let me tell you what he says was the new evidence. He says there was contradiction during the statements of the witnesses, in particular of those who were assaulted. They claim that GENERAL SIBIYA was at the scene when they were arrested and when they were assaulted. According to MR KHUBA new evidence 20 25

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was then established that in terms of the
cellphone records, when they were compared with
what the tower - the tower being what cellphone
company is being used, whether it's MTN or
VODACOM, but the tower indicated that GENERAL 5
SIBIYA's phones, which according to MR KHUBA
were the two phones he was using: the first
phone was the phone which he said was an
official phone, and the second phone he said
was the phone he found clandestinely, which 10
GENERAL SIBIYA was using. GENERAL SIBIYA did
not know that he was using that cellphone.
Based on the evidence that locates GENERAL
SIBIYA in SUNNYSIDE, he then decided to change
the report, because SIBIYA was not at the 15
scene.

COLONEL MOUKANGWE: In that one maybe he forgot something, because
we knew before that GENERAL SIBIYA's cellphone
shows he was in PRETORIA, but the people who
were operating with him said he is not using 20
one cellphone. So it might happen that the
official cellphones were at home, and maybe he
used the other one, which is just recorded here
on the statement. That is according to what
they said. But we knew about the information 25

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before, because we questioned them: How can you say SIBIYA was involved, the cellphone shows that ...

MR JULY: And how did you know about this information that SIBIYA's cellphones were in 5
SUNNYSIDE?

COLONEL MOUKANGWE: Because of the detailed billing that we did. We did a detailed billing on the two cellphone numbers that we were given, to show where the cellphones were at that time. They showed that 10
he was in PRETORIA at the time they mentioned in their statements.

MR JULY: So you're saying that the information that the cellphones were located in SUNNYSIDE can't be new information? 15

COLONEL MOUKANGWE: No, unless they are new cellphones. If they are the two original ones, it's not new evidence, because they knew about it. They knew when we went to meet them, the advocates at the NDPP, we knew about that. We had copies 20
of the detailed billing when we were there. We had a big file of the cellphone billings when we were there.

MR JULY: He also says in the new report you will notice 25
that there are warning statements from the

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implicated parties, which is GENERAL DRAMAT, GENERAL SIBIYA, and in the report that you signed there are no warning statements from these two.

COLONEL MOUKANGWE: In the report in which I was involved I never 5
saw them, but in the report in which I was
involved there were no warning statements of
GENERAL SIBIYA, GENERAL DRAMAT or COLONEL
MALULEKE. As I said before, they didn't want
to give a statement. GENERAL SIBIYA wanted 10
questions to be sent to him, GENERAL DRAMAT
said he was still going to speak to his lawyer,
and COLONEL MALULEKE refused. And they didn't
speak directly with me, he's the one who
spoke to me, but I was with him when he spoke 15
to them. So the issue of how they now
decided to bring statements - maybe it was just
after I was a far distance from the
investigation.

MR JULY: Do you remember if you asked for those 20
statements from them before you finalised the
report ...

COLONEL MOUKANGWE: Yes, we did.

MR JULY: ... which is dated 22 January?

COLONEL MOUKANGWE: We did. I even went to the office of GENERAL 25

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DRAMAT with MR KHUBA, to find out what was happening with this issue. That was the time when he instituted an investigation by one of his brigadiers there, according to the allegation that was in the SUNDAY TIMES, so that there must be an internal investigation to check why these people were deported, and all that stuff. 5

MR JULY: Were you at any stage given the warning statements by MR KHUBA - that there are warnings statements that we could not obtain, and now, as a result of those warning statements I am changing the report that we submitted to the NPA? 10

COLONEL MOUKANGWE: No, I was not part and parcel of the changing, and I was not consulted or involved in the new drafting of the last one, the purported final report. 15

MR JULY: If we start right at the beginning, the two reports look the same, except of course for the dates when they were finalised. But they look the same on page 1. Then from page 1 to page 21 they look the same. 20

MS BADAL: Mr July (indistinct) they are not the same. LS

MR JULY: Yes, I forgot about that. If you look 25

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at page 9 of the old report, that statements starts on page 8 in paragraph 4.4. Do you see that?

COLONEL MOUKANGWE: Yes.

MR JULY: That is LIEUTENANT COLONEL MADILONGA. 5

COLONEL MOUKANGWE: Yes.

MR JULY: What he says on page 9, everything looks the same up to the paragraph where it says:

"He will state ..."

It is the third paragraph on page 9, in the original one. Have you located that? And it says: 10

"He will state that he told Superintendent Ncube that he has to verify with his seniors about the arrangement. 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 Provincial Head, Protection and Security Services. 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 15 20 25

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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 cellphone and he responded by saying that he is aware of the Zimbabwean police and he must let them come." 5

That is what MADILONGA said. If you go to the report ... 10

COLONEL MOUKANGWE: Which one?

MR JULY: The second report, which is dated 18 March, that statement starts on page 8, where it says: 15

"He will state ..."

The paragraph that we've just read.

COLONEL MOUKANGWE: "He will further state that ..."

MR JULY: Yes, look at that on page 9. It's supposed to be the second paragraph. 20

MS BADAL: After GENERAL DRAMAT, here we have the sentence that ends in "suspects". Then it starts here: "For the period".

COLONEL MOUKANGWE: "For the period of two weeks he never heard anything from Superintendent 25

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Ncube..."

MR JULY: Yes, can you see that that information is not there?

COLONEL MOUKANGWE: Yes, it's not there.

MR JULY: It is not there? 5

COLONEL MOUKANGWE: It is not.

MR JULY: Were you present when LIEUTENANT COLONEL MADILONGA made this statement?

COLONEL MOUKANGWE: No, I was not present.

MR JULY: You were not present? 10

COLONEL MOUKANGWE: No, I was not present, but I read his statement.

MR JULY: And its content?

COLONEL MOUKANGWE: Yes.

MR JULY: Then in the second report there is no 15 explanation for why it has been removed, but it is not there.

COLONEL MOUKANGWE: No, it's not there.

MR JULY: Instead what you see there, and what comes 20 after that, instead of that paragraph, is where it says:

"For the period of two weeks ..."

Can you see that?

COLONEL MOUKANGWE: I can see that: 25

"... he never heard anything from 25

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COLONEL MOUKANGWE

Superintendent Ncube ..."

MR JULY: Yes. Then let's go further and see what else has been removed. If you look towards the end, there is a paragraph which starts with:

"While he was on the front passenger seat..." 5

Can you see that in the original?

COLONEL MOUKANGWE: Yes.

MR JULY: "While he was on the front passenger seat heading to the border gate, he told him that the Zimbabwean police who 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 an extradition agreement with Zimbabwe. He said that since the Zimbabwean Police entered the country they had been busy trying to trace the suspects." 10 15 20

Do you see that paragraph?

COLONEL MOUKANGWE: Yes, I can see that. LS

MR JULY: But if you look at page 9, that paragraph ... 25

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COLONEL MOUKANGWE

COLONEL MOUKANGWE: "While they were driving he realised that
there were other BMW ..."

MR JULY: It's not there.

MS BADAL: So this ends on "the back seat" here, and it
starts at "While they were driving ..." 5

MR JULY: It's supposed to be:
"While they were driving he realised that
there were other BMW ..."
The paragraph that begins with:
"While he was on the front passenger seat" 10
That has been removed.

COLONEL MOUKANGWE: Yes, it's not there.

MR JULY: Instead it starts with:
"While they were driving he realised that
there were other BMW cars ..." 15

COLONEL MOUKANGWE: Yes, I can see that.

MR JULY: Were you told about the changing of the
statement?

COLONEL MOUKANGWE: No, I was never told.

MR JULY: As the person who was assisting, and who 20
contributed to the drafting of that report?

COLONEL MOUKANGWE: I was never involved.

MR JULY: Maybe the other difference between this report
and the original report would be if you look at
page 21. You have already told us that you 25

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were never told about the changes, but we just
want to show you where the changes were made.
If you look at page 21, and you look at page 20
of the other report, paragraph 5.2, in the one
which is dated January 2014 paragraph 5.2 5
reads:

"Success report dated 04/02/2011:

The report was addressed to General
Dramat, General Hlatshwayo and General
Toka, with a heading that reads: 10

'CONSOLIDATED SUCCESS REPORT: MOST
WANTED FUGITIVE: WANTED FOR MURDER
AND ROBBERY: DPCI TOMS REF
3/12/2010 AND ZIMBABWE (BULAWAYO)
CR348/09/2010): WITNESS DUMISANI 15
NKOSI@NDEYA: ZIMBABWEAN NATIONALS
AND OTHERS.'

The report bears reference 14/02/01 and
was signed by Colonel Leonie Verster.
Paragraph 'A1' of the report states that 20
on 05/11/2010 General Dramat held a
meeting with Zimbabwean Police at DPCI
about the Nationals that shot and killed
one of their senior officers. Paragraph 25
3 states that Captain Maluleke was tasked

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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.

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Success report dated 11/11/2013 (A82/1-
82/2):

The report bears reference number 26/02/1
and again addressed to Deputy National
Commissioner DPCI. The person to whom
enquiries must be directed is Captain
Maluleke whereas the signatory is Col PJ
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."

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But if you look at the report of 18 March, in
particular the first part where it says:

"The report bears reference ..."

Do you see that?

COLONEL MOUKANGWE: Yes.

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COLONEL MOUKANGWE

MR JULY: That part is not there.

COLONEL MOUKANGWE: No, it's not.

MR JULY: It's not there. All you have is that "The report also covers ..." - you have the last sentence in that. 5

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

MR JULY: Yes, but the part which says: 10
"The report bears reference ... Paragraph 'A1' states that on 5/11/2010 General Dramat held a meeting with Zimbabwean Police ..."

That has been removed. 15

COLONEL MOUKANGWE: Yes, it's out.

MR JULY: Yes.

COLONEL MOUKANGWE: It's out of that one.

MR JULY: If you go to paragraph 5.3, on the same page of the January report, right at the end, where it 20
says "EMAILS BY CAPTAIN MALULEKE", it reads:
"EMAILS BY CAPTAIN MALULEKE:
He sent emails circulating more than 20
photos of both the suspects arrested and 25
the members involved in the operation.

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The emails were sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence. He also sent emails to Zimbabwean Police trying to find out how they travelled back home and that he is still tracing the remaining suspects." 5

But if you read what is written on page 21 of the 18 March report, it reads:

"EMAILS BY CAPTAIN MALULEKE: 10
He sent emails circulating more than 20 photos of both the suspects arrested and the members involved in the operation."

There is no reference to:

"Emails were sent to the PA of General Dramat." 15

Do you see that?

COLONEL MOUKANGWE: Yes, it's not there.

MR JULY: Then if you go to page 23 of the report, 5.5, there you have the cellphone record of MAJOR GENERAL SIBIYA, and this is what it says about these cellphone records, and that's the number of MAJOR GENERAL SIBIYA. 20

"Upon perusal of the cellphone records, it was discovered that Major General 25

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Sibiya communicated with officers who were involved in the operation, eg Captain Maluleke, and sent more than 20 SMSs to Major General Dramat. However, Major General Dramat never responded to the SMSs. The same automated SMSs were sent to Lieutenant General Lebeya at ... These SMSs were sent at various milestones of the operation, as deduced from witnesses' statements and documentary proof." 5 10

COLONEL MOUKANGWE: Then on that point you can see that when I say we already had the detailed billing of the cellphones when we wrote the report - there it comes. It's not something that only came when this one was written. 15

MR JULY: Yes.

COLONEL MOUKANGWE: By the time he wrote this, we already had the detailed billing, that's why we included that evidence in terms of Section 205 of the Criminal Procedure Act. It was there. That's why I said if it's another thing - maybe it's new cellphones or new issues, I don't know. But the cellphones that we had at that time, they are here. 20 25

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COLONEL MOUKANGWE

MR JULY: Hence in this report you are also not stating whether MAJOR GENERAL SIBIYA was present, but you are saying he was communicating?

COLONEL MOUKANGWE: Yes.

MR JULY: You are not saying you still have to discover whether MAJOR GENERAL SIBIYA was at the scene or not? 5

COLONEL MOUKANGWE: No, no. No, we never said that. So you can see the 205 was already there. The results were already received, because we couldn't include this in this report if we were still waiting for it to come as other evidence. That's why I said if there is a new thing, I will never know, because I was not present with that one. 10 15

MR JULY: Educate me about this 205 application. If you look at the report of 18 March, you suddenly see the blocks now. It's no longer written in this format - you see how it's written here?

COLONEL MOUKANGWE: Yes, I see that. 20

MR JULY: But now it's in blocks. Then it says:

"REASON FOR 205 APPLICATION."

What is this 205 application? LS

COLONEL MOUKANGWE: To get information on the cellphone, we have to apply Section 205 of the Criminal Procedure 25

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COLONEL MOUKANGWE

Act, so that the court must authorise us to do that.

MR JULY: But you already had?

COLONEL MOUKANGWE: Yes, we had already.

MR JULY: You already had, because for you to be able to 5
come to this conclusion, you already had the
205.

COLONEL MOUKANGWE: Yes, we had the 205. We already had it.

MR JULY: When it is put like this, as the reason for the 10
205 application, it's put as if it's a new
thing that ought to have been done, and which
was not done in the previous ...

COLONEL MOUKANGWE: No, we did it previously, otherwise we wouldn't
have paragraph 5.5 in the report which is said 15
to be the first report.

MR JULY: Let's look at that 205. It says:

"To test the version of the witnesses who
are alleged to have seen Major General
Sibiya at the crime scene."

Now, this is testing something different. What 20
we are saying here is that he was in constant
communication, so he knew - he had knowledge of
what was happening. But what they are saying
here, in this report, was to verify whether the
evidence the witnesses gave that SIBIYA was at 25

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the scene of the crime, was true or not.

Then it says:

"FINDINGS:

Major General Sibiya was never at the
crime scene or planning area as alleged
by members of Crime Intelligence." 5

COLONEL MOUKANGWE: It's difficult to say that, because now we
don't know, but those people are people who were
physically there. We don't know. For them,
the credibility of this must be tested in 10
court, if it must be tested. It can't be
tested by us, it must be tested in court in
cross-examination if they really believe
he was with him. For example, I don't even
know SIBIYA, I have never met him in my life, 15
so how can I say he was there if I don't know
him?

MR JULY: Didn't you know - the point that we are trying
to establish is, did you know at this point
that you heard that evidence about SIBIYA, but 20
according to the record SIBIYA was not at the
scene. Didn't you know when you were drafting
this report?

COLONEL MOUKANGWE: We knew. We knew about this, and even the 25
prosecutors were doubtful about the evidence,

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COLONEL MOUKANGWE

but how can we now say SIBIYA was involved while it shows he was at his home? Don't you think it's right that we leave SIBIYA, we don't charge him, but we charge DRAMAT and leave SIBIYA? That is the advice we got from the prosecutors, so we had the information. 5

MR JULY: Therefore, is this information new information, according to you?

COLONEL MOUKANGWE: No, it's not new information. This is not new, we had it here, and that's why we wrote about it in the report that is dated 18 January. 10

MR JULY: Let's go to the reasons again on DRAMAT.
"To verify whether he had interaction with the Zimbabwean Authority regarding the arrest of Zimbabwean Nationals. To clarify as alleged by the witnesses whether he received Zimbabwean police in relation to the murder case of a senior officer in Zimbabwe." 15

Then it says: 20

"The entire cellphone record of Lieutenant General Dramat does show any interaction with the Zimbabwean counterparts. However the fact that Zimbabwean police might have entered the 25

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country is confirmed by photographs, but there is no evidence that they were with General Dramat. The photos show them with members of the TRT, Captain Maluleke and members of Crime Intelligence." 5

COLONEL MOUKANGWE: But there is nowhere where we said DRAMAT took photos with the ZIMBABWEAN Police.

MR JULY: Exactly.

COLONEL MOUKANGWE: We never said he took photos with them. We said they were there, and according to the witness statement that we got, one of the members of Crime Intelligence was there when they were congratulated by the General, accompanied by his spokesperson, McINTOSH. When they say he took photos with them, if he did we don't know where they are, but the photos that we saw were the suspects and the ZIM Police who were there with the team that arrested them. But we didn't say GENERAL DRAMAT was also in the photos. 10 15 20

MR JULY: But you also discovered - and it's not stated in this new report - that there were several SMSs that were sent by both MALULEKE and SIBIYA to DRAMAT, but he never responded to those SMSs. 25

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COLONEL MOUKANGWE: Yes, he never responded. That's why I said we did ...

MR JULY: So you already had this report?

COLONEL MOUKANGWE: Yes, we already had it.

MR JULY: So there is nothing new to you? 5

COLONEL MOUKANGWE: No, it's not new to me.

MR JULY: You will notice that the cellphone records of MADILONGA in the new report, which you will find on page 24, where it says:

"To test his version in which he alleged 10
that he received a call from Captain
Maluleke on 8/11/2010 regarding the
deportation of Zimbabwean Nationals."

But here on page 24 of the January report it
states in the affirmative: 15

"He assisted Captain Maluleke to cross
the border with the suspects. He
contracted Lieutenant General Dramat when
he welcomed the Zimbabwean Police the
first time." 20

So that is not here.

COLONEL MOUKANGWE: Yes. I see it is confirmed here that:

"The interaction confirms the relation of
Madilonga ..."

MR JULY: No, no, here it is confirming MALULEKE. 25

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COLONEL MOUKANGWE: Only on MALULEKE?

MR JULY: Only on MALULEKE. If you look at that paragraph, it only makes reference to MALULEKE.

COLONEL MOUKANGWE: To MALULEKE, yes. 5

"He contracted General Dramat ..."

That is not there.

MR JULY: Mmm.

COLONEL MOUKANGWE: Yes, that one, where he contacted GENERAL DRAMAT, is not there. 10

MR JULY: And the same with the telephone calls of MALULEKE. If you go to page 23, it's the same thing with MALULEKE. If you read what you discovered from the cellphone of MALULEKE, it's that: 15

"Captain Maluleke also communicated with General Dramat in terms of outgoing SMSs at a very important milestone of the operation. However, Dramat never responded to the SMSs which he received 20 from Captain Maluleke. He also called a Zimbabwe number twice ..."

But if you look in this one about MALULEKE:

"To test the version of the witnesses who 25 alleged that Captain Maluleke led the

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operation."

It's a different issue.

COLONEL MOUKANGWE: Mmm.

MR JULY: How do you use the phone to determine whether
he led the operation? 5

COLONEL MOUKANGWE: You can't.

MR JULY: The leading requires a person to be there?

COLONEL MOUKANGWE: To be there physically. You can't use a
cellphone, because if I forgot it in my car, it
would show that I'm leading people, whereas I'm 10
sitting here. Because the towers will still
show the movement on the cellphone. The
movement of the instrument as it is, shows that
he was moving there. It doesn't mean it's
linked to the body of a person. 15

MR JULY: Exactly.

COLONEL MOUKANGWE: The instrument is only there. If the cellphone
shows that I'm in DURBAN, meanwhile I'm here,
which one is the correct one, the one in DURBAN
or this one? Because you can attest that I was 20
here with you. But the other one is an
assumption which needs substantiation or
statements by an individual.

MR JULY: We just wanted to demonstrate the report 25
which you drafted with MR KHUBA, and the

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information contained in that report - part of it was removed, and you say you were not consulted?

COLONEL MOUKANGWE: No, I wasn't.

MR JULY: And you say after the report was prepared, you met with the NPA, in particular ADVOCATE MOSENG ... 5

COLONEL MOUKANGWE: MOSENG, yes, and MOELETSI.

MR JULY: ... and MOELETSI.

COLONEL MOUKANGWE: Yes. 10

MR JULY: And the reason for the meeting was to get the warrants?

COLONEL MOUKANGWE: Yes.

MR JULY: Those were the warrants of arrest?

COLONEL MOUKANGWE: Yes. 15

MR JULY: And according to you this report was the final report?

COLONEL MOUKANGWE: Yes.

MR JULY: The one of 22 January 2014?

COLONEL MOUKANGWE: Yes. 20

MR JULY: It was not subject to further investigation?

COLONEL MOUKANGWE: No, there was nothing we could do, because VERSTER was refusing, was dodging us, and the Generals were not giving us their whole statement, so there was nothing else we could 25

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do.

MR JULY: What is the practice if people don't want to give you information? Does it mean that the report that you finalise, which excludes that information, is rendered incomplete or is an interim report? 5

COLONEL MOUKANGWE: It's complete, because it's what we have. We complete a report on what we have. We cannot anticipate what the person is going to say in future. Whether he's going to come or not, we can never know. 10

MR JULY: But what was critical for us was to find out the information in the so-called new information. You are saying you already had that information. The issue of the physical location of SIBIYA was already known to you at the time? 15

COLONEL MOUKANGWE: That was known. Unless they've got other statements that I don't know about, but that was known. Because we had 205 records at that time. They were not outstanding, we had them by the time we drafted this. That's why we had issues on cellphone reports, that's why we had issues where SMSs were not answered by GENERAL DRAMAT. We couldn't get that information 25

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without using Section 205.

MR JULY: There is something MR KHUBA referred to, which was when they received the cellphones they had to take them to experts.

COLONEL MOUKANGWE: For analysis. 5

MR JULY: For analysis, yes.

COLONEL MOUKANGWE: After the discussion with the prosecutors, they made a suggestion whether we should do the mappings. Cellphone mapping is where an analysis will show us that this was done at this, and make some points in a chart form. That's what we were requested to do. 10

MR JULY: But that was for the purposes of leading evidence?

COLONEL MOUKANGWE: For the purpose of leading evidence, it was not for the purpose of the report. It was for the purpose of leading evidence, and it would be easier for the prosecutors to pinpoint and show on a chart. 15

MR JULY: Okay. That's the end of this interview. If we need you, we will call you again. 20

COLONEL MOUKANGWE: Okay, thanks.

MR JULY: Thank you.

THE INTERVIEW ADJOURNS

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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	15
	MR KWAZI BUTHELEZI - Candidate Attorney	

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.

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. 5

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 10 15 20 25

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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. 5

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 10 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 15 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.

MR JULY: I will keep on interrupting you. I just want 20 you to confirm that he said he received it from ADV CHAUKE?

MR MZINYATHI: Yes.

MR JULY: Which is not correct, because the document was 25 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? 5

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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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 25 the progress in the matter?

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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? 5

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. 10 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, 20 25

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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? 55

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

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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 were 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. 5 10

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. 15

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 20 25

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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 25

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

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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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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. 5

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. 10

MR JULY: But in any event you were recommending a decision. It's not like you didn't make a decision. 15

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. 20

MR MZINYATHI: Yes.

MR JULY: So the issue of recommendation becomes too difficult. 25

MR MZINYATHI: Yes. After having done that - and this is also 25

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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 5
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 10
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 15
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 20
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 25
that. 13 March is the date of the memo that

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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 (?).

10

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.

15

I am duly seized with the matter and will return the case docket to the appropriate authority once a decision has been made.

20

You will be informed in due course."

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

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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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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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SIBONGILE MZINYATHI

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 5 together with the docket on 13 March for consideration and feedback."

I sent this to the NDPP via email and hard copy. Then after enquiring, the NDPP wrote to us - George? 10

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 15 is the author of the request.

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? 20

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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MR JULY: ... and then you CC'd 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. 5

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. 10

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 15 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.

MR BALOYI: But these are the internal workings of the NPA. 20 I suppose they do not form part of your investigation.

MR JULY: You see, we are where we are now because of the internal workings of all these institutions, 25 IPID, the NDPP. Actually the whole issue is

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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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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 10 January, because it was handed to him in 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 25 recommendation, but your recommendation is

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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 5
that?

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 10
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? 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 20
DPPs. All the DPPs report to the head of the
NPS.

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

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 5 working with this document.

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 10 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? 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 20 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 25 mentioned that you received a parcel - I think

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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. 5

MR MZINYATHI: 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 10 thing. In fact GEORGE told me that he didn't even read the report.

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

MR MZINYATHI: Okay, please. 15

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* 20 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. 45
Already we have our own view about what should 25

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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 25
are not evidence and they are not going to be

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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.

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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

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certain issues I would want to look at he might
have overlooked. For instances, these reports
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

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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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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.

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

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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?

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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, 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 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 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 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.

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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. 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.

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

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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 25
received a letter - hence I said I don't really

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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. I said: Look, I think you misunderstood me. 20 25

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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 5 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 10 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 15 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 20 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, 25

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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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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? LS
- MR JULY: The initial decision. That's what he said. 25

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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 the 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 25
conclusion, when other people, including him,

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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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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? 5

MR JULY: Page 9 of the 18 March report. 10

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. 15

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". 20

MR BALOYI: "General Dramat to assist them in tracing the suspects." 25

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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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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.

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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' ..."

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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 ..."

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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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this thing in blocks. It's not the same, .if you look at it. Do you see at paragraph 5.5 on page 23...

MR MZINYATHI: Of the second report?

MR JULY: Yes, of the second report. If you look at page 5 23 of the first report, the information is not quoting details. They talk for example about:

"REASON FOR 205 APPLICATION

To test the version of the witnesses who are alleged to have seen Major General Sibiya at the crime scene." 10

Then it says:

"Major General Sibiya was never at the crime scenes or planning area as alleged..." 15

But that is not the evidence about SIBIYA. SIBIYA's evidence is stated in the - there are witnesses, there are guys from TOMS ...

MR BALOYI: ... who saw him in a black BMW.

MR JULY: There are guys from TOMS who know SIBIYA. 20

MR BALOYI: Actually you recall that the operation was on two occasions, and on both occasions there are witnesses who say - there are some contradictions, especially with TOMS. Some say no, he was there on the first day, some say 25

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GEORGE BALOYI
SIBONGILE MZINYATHI

they are not sure. But the eye witnesses are clear that he came out of his BMW, and they asked him, I think, where to detain them, or something to that effect.

MR MZINYATHI: Yes. 5

MR BALOYI: I mean the evidence is clear there. Then on the second operation his name is also mentioned. We felt even if the cellphone records place him elsewhere, we have real evidence. At a later stage, during trial, we will get a cellphone analyst who will probably give an explanation. I mean, it could be that someone else had his cellphone. That is explainable. 10

MR JULY: But the thing is this, how do you go around the evidence - even in SIBIYA's own evidence he says he was tasked by the national office to provide personnel for this operation. He does not deny the operation. He was tasked by the national office to provide personnel, and he provided the personnel, therefore he knew about the operation. The physical presence we will have to deal with - whether he was involved in the assault or not. But on the other ones of kidnapping and all those things, all that we 15 20 25

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SIBONGILE 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. 15

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. 20

THE INTERVIEW ADJOURNS

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ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Title: Independent Police Investigative Directorate Standard Operating Procedures	IPID Policy Number: 001-POL-PR2
	Effective Date: 01 April 2013



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This SOP repeals all the previous SOPs and shall be read and implemented in conjunction with the Memorandum of Understanding (MoU) with the SAPS and MPS, Firearm Control SOP, Registers and the Case Flow Chart.

1. PURPOSE

The purpose of this Standard Operating Procedure is to establish policy and methods by which cases should be received, registered, processed and disposed of, while being cognizant of the provisions of the Constitution of the Republic of South Africa Act, 1996; the Independent Police Investigative Directorate Act 1 of 2011; the South African Police Service Act 68 of 1995, as amended; the Criminal Procedure Act 51 of 1977, as amended, the Regulations promulgated under both the South African Police Service Act and the Independent Police Investigative Directorate Act and other relevant legislation.

2. POLICY

It is the policy of the IPID to:

- 2.1. Ensure that investigative assignments to IPID staff are made in a clear and unambiguous manner;
- 2.2. Ensure quality investigations and that investigations are conducted with integrity without fear or favour;
- 2.3. Require investigative staff to provide regular reports regarding investigations to supervisors;
- 2.4. Ensure that supervisors actively manage the investigative activities of their subordinates;
- 2.5. Ensure that investigations are carried out in a coherent and standard method within the IPID;
- 2.6. To comply with the turnaround time agreed to in respect of the investigation of different classes of cases; and
- 2.7. Ensure compliance with established accountability mechanisms.

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3. DEFINITIONS

For the purpose of this SOP the following words/ expressions shall mean:

Act – means the Independent Police Investigative Directorate Act, Act 1 of 2011;

Acquitted (Criminal) – means a member was found not guilty of a criminal offence and discharged;

Acquitted (Departmental) - means a member was found not guilty of departmental misconduct;

Assistant Director Investigations (ASDI) - means a person appointed at a level lower than the Deputy Director Investigations;

Annual Brought Forward (ABF) – means a case carried over from the previous financial year, not older than 12 months;

Backlog – means cases carried over from previous financial years older than 12 months;

Brought Forward (B/F) – means a date by which a file must be submitted to a supervisor for evaluation of compliance with the directives, as per “E” clip on the case file;

Case Classification – Refers to the manner in which cases are classified in terms of legislation in terms of Sec 28 of the IPID Act;

28. (1) The Directorate must investigate:

- (a) any deaths in police custody;
- (b) deaths as a result of police actions;
- (c) any complaint relating to the discharge of an official firearm by any police officer;
- (d) rape by a police officer, whether the police officer is on or off duty;
- (e) rape of any person while that person is in police custody;
- (f) any complaint of torture or assault against a police officer in the execution of his or her duties;
- (g) corruption matters within the police initiated by the Executive Director on his or her own, or after the receipt of a complaint from a member of the public, or referred to the Directorate by the Minister, an MEC or the Secretary, as the case may be; and
- (h) any other matter referred to it as a result of a decision by the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case may be, in the prescribed manner.

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(2) The Directorate may investigate matters relating to systemic corruption involving the police.

Case Investigative Journal (CIJ) - refers to a journal used to record all directives and activities undertaken, on the IPID file, IPID docket and CMS, which journal must always be filed in the "C" clip of both the docket and the file;

Case Investigative Report (CIR) - refers to investigative reports that include the Interim Case Investigative Report, Final Case Investigative Report as well as the Closure Report;

Case Worker – means any official who handles cases and includes a Data Capturer / CMS Clerk, Investigator, Senior Investigator, Principal Investigator, Assistant Director Investigation, Deputy Director Investigations and Director Investigation;

Closed as Referred – means the manner in which cases that fall outside the mandate (Section 28 of the IPID Act) are closed as per ED guidelines;

Closure of a case – means the final disposal of a case where investigation, court processes and disciplinary processes have been concluded and the ED/PH is able to conclude that the file can be closed as Acquitted (Departmental/Criminal), Convicted (Departmental/Criminal), Declined, Dismissed, Closed as Referred, Unsubstantiated and Withdrawn by the Complainant/victim/referral authority or the Prosecutor, after which the file is ready for archiving;

Closure Report – means the Report of a case where the investigation, court processes and disciplinary processes have been concluded and the ED/PH/DI is able to conclude that the file can be closed as Acquitted, Convicted, Declined, Discharged, Dismissed, Referred, Unsubstantiated and Withdrawn, after which the file is ready for archiving;

Case Management System – means an IPID database used for the electronic recording and processing of cases;

Case Control Number (CCN) - means a unique computer generated number upon registration and recording of a case in the CMS. The number is relevant for use in all future correspondence by and between IPID and its stakeholders;

Cases Intake Committee (CIC) - refers to a committee that is constituted by no less than three persons, (DI, DDI, ASDI and any available Case Worker). In case of unavailability of personnel, the sitting by the DI or DDI or ASDI or PI will constitute a valid sitting. (As a last resort the PH may assist and if no other staff is available, the PH alone will constitute a valid sitting)

Completed investigation – means an investigation which involves a comprehensive effort to interview the complainant, the victim, witnesses and suspect SAPS/MPS member, the identification, location and acquiring of relevant physical evidence and upon which the conclusion is based on the evidence obtained, excluding technical reports;

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Convicted (Criminal) – means a member has been found guilty of a criminal offence;

Convicted (Departmental) – means a member has been found guilty of Departmental misconduct;

CPA - means the Criminal Procedure Act 51 of 1977;

Death in custody – means death whether natural or unnatural, which occurred while the deceased was in the custody of the SAPS or MPS;

Death as a Result - means the death of any person, including a member of SAPS/MPS or the action of SAPS/MPS, that was caused, or is reasonably believed to have been caused, by a member of the SAPS/MPS while acting in his or her capacity as a member of the SAPS/MPS, and shall include a death that occur in connection with -

- (i) an attempt to effect an arrest or to prevent an escape;
- (ii) a SAPS/MPS member's actions taken in private defence in the execution of his/her duties;
- (iii) a motor vehicle accident involving one or more SAPS/MPS vehicles (marked or unmarked) during the execution of their duties.;
- (iv) mass action where the SAPS/MPS is present;
- (v) any action or inaction by a SAPS/MPS member which amounts to a criminal offence or misconduct; and
- (vi) any action that caused death where a SAPS/MPS state asset was involved.

Declined – means a decision taken by the DPP, SAPS or MPS not to institute criminal or disciplinary proceedings against the member;

Deputy Director Investigations (DDI) – means a person appointed at a level lower than Director Investigations;

Directive(s) – Instructions/guidelines issued to the Case Worker by the Supervisor;

Director Investigations (DI) – means a person appointed as a Head of Investigations at provincial level;

Dismissed – means a case cannot be investigated because of lack of co-operation by the complainant/victim/referral authority; the complainant/victim cannot be traced or the case was investigated by the IPID before and there is no new evidence or facts; or the suspect is deceased;

DPP – refers to the Director of Public Prosecutions;

Exhibit – refers to any item of evidential value collected or obtained during the course of investigation;

Final Case Investigative Report – means an Investigative report which documents the entire investigation and contains the conclusion, summary of affidavits and technical

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reports, written recommendations to SAPS/DPP with regard to the actions of the SAPS/MPS member concerned;

Full Investigation – refers to where a Case Worker takes over a docket/copies of the docket from the SAPS, conducts an independent enquiry and assessment and proceed with any other search/enquiry for further evidence to enable him/her to make a finding;

High profile cases – refers to an incident which involves a high ranking member and/or a person with a high standing in the community and a matter which draws public interest or high media coverage;

IPID – means the Independent Police Investigative Directorate;

IPID Case Form – refers to an official form for the registration of Cases;

IPID File – Refers to a file (Z20) that contains all evidential documents, correspondence, investigative journal and QCF, which consists of A-E clips;

IPID Docket – Refers to a docket that contains all evidential documents, correspondence and the investigative journal. It consists of A-E clips. This docket is used to refer the IPID investigation to the DPP, SPP and to Court;

IPID 7-2 – refers to an official form, used by a case worker on standby for the recording of crime scene information on all section 28 cases of the Act;

Immediately – means at once, without hesitation or delay or as soon as it is practicable to act;

Interim Case Investigative Report – means a case investigative report where the investigation has been completed but where a recommendation cannot be made to the DPP due to outstanding technical reports; however recommendations may be made to the SAPS;

Manual registration number – means a temporary number allocated to a case while the CMS is off-line and which will be updated immediately when the CMS is on-line;

Member – means an official appointed in terms of the South African Police Service Act 68 of 1995, as amended, and includes a member of the MPS;

Misconduct – Includes any act or omission by a member which constitutes a violation of rules, regulations, and standing orders, code of conduct and national orders;

MPS – means a Municipal Police Service established under section 64A of the South African Police Service Act 68 of 1995;

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NPS – refers to the National Prosecuting Service which is a body within the National Prosecuting Authority and includes the Director for Public Prosecutions (DPP) and the Senior Public Prosecutor (SPP);

Offence – includes any violation of common or statutory law;

Official hours – means normal business hours as contemplated in the Public Service Act, 1994 (promulgated under Proclamation No. 103 of 1994), (PSA) and includes hours stipulated by the IPID Flexi Time policy;

Outside Mandate Case – means a case:

- Which does not involve a member of the SAPS/MPS;
- Which occurred prior to 1 April 1997;
- Which is older than 12 months;
- That was adjudicated upon by a court of law; and
- That relates to a service delivery complaint where the complainant/victim has not exhausted internal SAPS case mechanisms up to the office of the Provincial Commissioner and are not referred to the IPID by the Minister or the Member of the Executive Council;
- Any matter not within the scope of Section 28 of the IPID Act;

PAJA - refers to the Promotion of Administrative Justice Act 3 of 2000 which may be used by a victim of domestic violence where IPID deals with an application for exemption by SAPS;

Police action – refers to an act or omission by a member of the SAPS/MPS which is alleged to lead to a person's death;

Post Investigative Monitoring (PIM) – The continuous evaluation and monitoring of cases where the status of the case is "Completed" but the case is not yet ready for closure (Cases where DPP and SAPS/MPS feedback is awaited or cases on the Court Roll or Pending disciplinary outcomes; Cases completed with Interim report while awaiting technical reports)

Preliminary investigation – refers to an enquiry of limited scope undertaken to verify whether or not an allegation merits full investigation;

Programme Manager (PM) - means any person who has been appointed as the Head of the Programme;

Provincial Head (PH) – means an IPID Official appointed to head a Provincial Office;

Recommendation (Negative) – Recommendation is made that disciplinary/criminal prosecution should be instituted;

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Recommendation (Positive) – Recommendation is made that no disciplinary/criminal prosecution should be instituted including inquest recommendations and a feedback letter should be sent to the SAPS/MPS;

Referred – means a case that is referred to the most appropriate organisation or institution by the ED/PH;

Referral Authority – refers to the Minister, MEC, Executive Director, Secretariat for Police;

SAPS – refers to the South African Police Service as contemplated in the South African Police Service Act 68 of 1995;

SAPS Docket – refers to a docket that is obtained from SAPS by a Case Worker and contains all evidential documents, correspondence and investigation diary. It consists of A-D clips. This docket is used to refer SAPS investigations to the DPP, SPP and to Court;

Service Delivery Complaint - refers to a complaint which alleges that a member of the SAPS or MPS failed to perform his/her duties or performed his or her duties in an improper manner, and where the complainant/victim has exhausted all internal SAPS complaints mechanisms, up to the level of Provincial Commissioner;

Supervisor – means any person who supervises a Case Worker (of any level);

Systemic corruption - Systemic corruption is an institutionalised endemic manipulation of a system by individuals or networks or organisations, taking advantage of weakness in the process and systems for illicit gains, where there are leadership deficiencies, collusion and abuse of power

SOP - means the Standard Operating Procedure;

Technical Reports – refers to reports of an evidential value that are generated by experts required to reach an investigative conclusion, including but not limited to, FSL reports (Forensic Science Laboratory) post mortem reports, LCRC reports, pathology reports, medical reports, reports in terms of sections 212 and 215 of the CPA and a report in terms of section 34(3) (a) of the Prevention and Combating of Corrupt Activities Act 12 of 2004;

Standby Notification Reference Number – means a reference number issued immediately upon notification, by the Case Worker on standby to SAPS/MPS member, consisting of the Provincial Office abbreviation, date (yymmdd) and time (24 hour clock) of notification, e.g. GP1204012250;

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Torture – means any act by which severe pain or suffering, whether physical or mental, is *intentionally* inflicted on a person for such purposes as obtaining from him or her or a third person *information or a confession*, punishing him or her for an act that he, she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, whether such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising from, inherent or incidental to lawful sanctions;

Unsubstantiated – means there is no evidence to support the allegations contained in the case and IPID cannot make a recommendation of wrongdoing against any member;

Withdrawn by complainant/victim/referral authority – means the complainant/victim/referral authority indicated that he or she is no longer interested in proceeding with the case; and

Withdrawn by Prosecutor – means the Prosecutor has decided not to continue criminal proceedings.

4 APPLICATION

This SOP applies to all notifications and/or cases lodged with the IPID or initiated by the IPID against members of the SAPS/MPS by any person or organisation, alleging that a member committed an act or an omission which constitutes an offence and/or misconduct.

5. DUTIES AND RESPONSIBILITIES

The duties and responsibilities assigned to various officials and Committees:

5.1 The Executive Director (ED)

The Executive Director, in addition to the duties and responsibilities as contained in section 7 of the IPID Act 1 of 2011 and such other duties as may be imposed in the Regulations promulgated under that Act, must:

- 5.1.1 Ensure that there are systems in place for the lodging, receiving, processing, recording and disposal of cases against members;
- 5.1.2 Provide for the development and enforcement of policies to enable an environment that is conducive to lodge a case and receive cases reported;
- 5.1.3 Ensure compliance with the provisions of the IPID Firearm Control Standard Operating Procedure.

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5.2 Programme Manager (PM)

The Programme Manager must, in addition to any duties imposed under section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act:

- 5.2.1 Maintain an up-to-date SOP;
- 5.2.2 Determine investigation standards;
- 5.2.3 Identify priority areas to be attended during a financial year;
- 5.2.4 Conduct audits annually to ensure compliance with the SOP;
- 5.2.5 Monitor programme performance monthly, quarterly and annually;
- 5.2.6 Provide feedback on the programme performance;
- 5.2.7 Provide systems for the registration and processing of cases;
- 5.2.8 Maintain data integrity;
- 5.2.9 Ensure that the monthly reports and the data base are quality assured;
- 5.2.10 Ensure and comply with the provisions the IPID Firearm Control Standard Operating Procedure;
- 5.2.11 Coordinate and supervise interprovincial task team investigations and draft terms of reference for relevant task team.

5.3 Provincial Head (PH)

The Provincial Head, in addition to the duties and responsibilities as contained in section 21 of the IPID Act 1 of 2011 and such other duties as may be imposed in the Regulations promulgated under that Act, must:

- 5.3.1 Ensure that there are systems in place for the lodging, receiving, processing, recording and disposal of cases against the members;
- 5.3.2 Ensure compliance with the provisions of this SOP, the IPID Firearm Control Standard Operating Procedure and the ED guidelines;
- 5.3.4 Ensure that the relevant province conduct workload verification on a monthly basis and compile a Monthly Report;
- 5.3.5 Ensure data integrity, which is consistent with the CMS monthly, quarterly and annually;
- 5.3.6 Complete/Close cases on the Case Management System (CMS).

5.4 Director Investigations (DI)

The Director Investigations must, in addition to any duties imposed under section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act, must:

- 5.4.1 Supervise an investigation conducted by the Deputy Director Investigations;

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- 5.4.2 Ensure that the Case Intake Committee (CIC) meets daily to evaluate cases;
- 5.4.3 Ensure that cases are registered and updated on the CMS in terms of the strategic objectives;
- 5.4.4 Ensure that cases are investigated and completed in terms of the strategic objectives;
- 5.4.5 Ensure data integrity, which is consistent with the CMS monthly, quarterly and annually;
- 5.4.6 Review investigation reports, assess its quality, raise queries, if any, endorse recommendations to the SAPS and DPP and sign off on the recommendations;
- 5.4.7 Evaluate the decision by the SAPS/DPP and decide on further action to be taken;
- 5.4.8 Approve/disapprove completion of an investigation;
- 5.4.9 Approve/disapprove closure of the file for archiving;
- 5.4.10 Whoever is acting as the DI, must attach a copy of the Acting letter when closing or completing an investigation except where the investigation was done by the person acting;
- 5.4.11 Ensure that he/she has filled in the quality control form (QCF);
- 5.4.12 Co-ordinate the submission of a quality assured monthly report;
- 5.4.13 Determine and record B/F dates, directives and investigate targets and ensure that the information is captured on the CMS, in the event where the DDI is investigating the case;
- 5.4.14 Immediately upon being notified by the Case Worker, notify the PH, the National Spokesperson, the PM Investigation and the ED in writing of a high profile case, conviction and arrest;
- 5.4.15 Ensure that the province conduct workload verification on a monthly basis and compile a Monthly Report;
- 5.4.16 Ensure compliance with the provisions of the IPID Firearm Control Standard Operating Procedure;
- 5.4.17 Complete/Close cases CMS.
- 5.4.18 Ensure that the province conduct file audits on a quarterly basis and compile a Report which is separate from the Monthly Report;

5.5 Deputy Director Investigations (DDI)

The Deputy Director Investigations must, in addition to any duties imposed under section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act, must:

- 5.5.1 Ensure that cases are captured and allocated in line with the strategic objectives;
- 5.5.2 Convene and preside over the CIC;
- 5.5.3 Determine and record B/F dates, directives and investigative targets and ensure that the information is captured on the CMS;

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- 5.5.4 Ensure that prescribed registers are in place and kept up to date;
- 5.5.5 Lead and/or undertake investigations on high profile cases;
- 5.5.6 Review case reports pertaining to investigations where case worker providing report is directly reporting to DDI;
- 5.5.7 Co-ordinate the submission of a quality assured monthly report to the DI;
- 5.5.8 Ensure proper investigation of service delivery complaints lodged against the IPID;
- 5.5.9 Ensure that he/she has filled in the quality control form;
- 5.5.10 Ensure, before the DI can close the file that the case worker has complied with the information as contained on the quality control form (QCF) that guides the investigation process. The QCF must be attached on the "D" clip of the file;
- 5.5.11 Ensure that QCF is completed by the Supervisors and Case Workers;
- 5.5.12 Ensure that the Supervisors and the Case Workers comply with the provisions of 7.8 below;
- 5.5.13 Ensure that every activity undertaken by the Supervisor and Case Worker in the IPID file and docket is entered in the case investigative journal (CIJ);
- 5.5.14 Ensure that a Referral Register (RR4) containing all cases referred to the SAPS is sent to the Provincial Commissioner's office and IPID National Office monthly;
- 5.5.16 Conduct workload verification on a monthly basis and report in monthly report;
- 5.5.17 Conduct quality control before the file is archived;
- 5.5.18 Ensure compliance with the provisions of the IPID Firearm Control Standard Operating Procedure;
- 5.5.19 Complete/Close cases while acting as DI, notwithstanding the fact that a person might be closing/completing a case that he/she supervised;
- 5.5.20 Ensure that a case that was investigated by the person's supervisor, while he/she is acting as DI, is not completed/closed;
- 5.5.21 Whomever is acting as the DDI must ensure that an acting letter is attached in the files that were attended to by the acting DDI;
- 5.5.22 Send a Recommendation Register (RDCAR9/19/22/28/29), subject to the approval of the PH, containing all cases referred to SAPS to the Provincial Commissioner's office and IPID National Office monthly. Hardcopies of the recommendations sent to SAPS (and proof that they were forwarded) are to be forwarded to the National Office on a monthly basis;
- 5.5.23 Ensure that a Referral Register (RR4), subject to the approval of the PH, containing all cases referred to the SAPS is sent to the Provincial Commissioner's office and IPID National Office on a monthly basis.
- 5.5.24 Conduct community outreach programme and cell inspections for the Provincial Office.
- 5.5.25 Meet with Provincial SAPS and Secretariat monthly to discuss progress on recommendations made to SAPS by IPID.

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5.6 Case Workers

The Case Worker must, in addition to any duties imposed under section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act:

- 5.6.1 Receive and screen a case;
- 5.6.2 Consult with the complainant/victim/referral authority (only walk-in, written, emailed or faxed cases will be registered. Telephone cases will be accepted as a last resort);
- 5.6.3 Complete an IPID registration form, and ensure that the complainant/victim confirms the correctness of the information and appends his/her signature/mark or thumb print;
- 5.6.4 Register the case manually on a prescribed Case Control Register (CCR) as well as on the CMS and upload the notification received from SAPS/MPS or a signed IPID registration form, fax or email;
- 5.6.5 Acknowledge receipt of a case and issue an acknowledgement letter/SMS/e-mail to complainant/victim/referral authority;
- 5.6.6 Acknowledge receipt of a case and issue an acknowledgement letter/SMS/e-mail to next of kin (if information available);
- 5.6.7 Receive a file allocated for further investigations from the supervisor or CIC;
- 5.6.8 Update the CMS; generate letters to the complainant/victim/next of kin/referral authority and relevant stakeholders, indicating that he/she had been assigned to investigate the case;
- 5.6.9 Conduct investigations and submit file/docket for inspection as directed in writing in the CIJ;
- 5.6.10 Comply with brought forward dates as determined by the supervisor/CIC;
- 5.6.11 Initiate completion of investigation, by submitting a file/docket with recommendations to the supervisor for a decision;
- 5.6.12 Submit the file/docket to SAPS/DPP for a decision on prosecution of a member;
- 5.6.13 Follow-up on the recommendation forwarded to the DPP/SAPS, on a monthly basis, and attach proof of correspondence on the CMS;
- 5.6.14 Update CMS and generate progress letters to the complainant/victim/referral authority and relevant stakeholders; such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report should never contain the merits or demerits of the case;
- 5.6.15 Feedback on active cases should be done at least every 30 days and feedback on completed cases should be done at least every 90 days or when the status of the case change, including but not limited to, when feedback is received pertaining to the criminal case or DC process;
- 5.6.16 After closure of the case a final correspondence must be sent to the stakeholder detailing the outcome of the case within 30 days, failure to comply with this, must be recorded in the CIJ and CMS;

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- 5.6.17 Ensure CMS is updated and initiate closure of case file/docket;
- 5.6.18 Report feedback to stakeholders/complainant/next of kin;
- 5.6.19 Complete the quality control form where appropriate;
- 5.6.20 Enter every activity undertaken in the IPID file and docket in the CIJ (manual entry in file and updates on CMS);
- 5.6.21 Immediately report to the PH any high profile case;
- 5.6.22 Comply with the provisions of the IPID Firearm Control Standard Operating Procedure;
- 5.6.23 Ensure that prescribed registers are in place and kept up to date;
- 5.6.24 Any failure to complete cases within the period as per the regulation, reasons must be noted as per the applicable regulation in the CIJ and CMS.

5.7 Supervisor

The Supervisor must, in addition to any duties imposed under section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act:

- 5.7.1 Have the supervisory role over all responsibilities as outlined in the Case Worker section above;
- 5.7.2 Allocate files and give directives to the Case Worker;
- 5.7.3 Conduct file inspections prior to completion of the monthly report;
- 5.7.4 Determine and record B/F dates and ensure that B/F is adhered to;
- 5.7.5 Ensure that he/she has filled in the quality control form;
- 5.7.6 In case of the possibility of arrest a Case Worker should preferably obtain a warrant of arrest, in the event of an arrest without a warrant, the Case Worker should consult with the DI or PH as well as Legal Services before effecting the arrest. In high profile cases the ED and PH should always be consulted prior to the arrest;
- 5.7.7 The EH of MPS, the Station Commander as well as the Provincial Commissioner of SAPS is to be informed of any intention to arrest a Member prior to effecting the arrest;
- 5.7.8 Ensure that every activity undertaken by the Case Worker in the IPID file and docket is entered in the CIJ (manual entry in file and updates on CMS);
- 5.7.9 Establish manual registers for obtaining and returning SAPS dockets to Police Stations for each cluster in the Province and ensure the safe keeping of such registers. The register must be the same as Docket Register (DR10);
- 5.7.10 Ensure that the Case Workers comply with the provisions of 7.8 below;
- 5.7.11 Immediately report to the DI any high profile case, conviction and arrest as well as any death of a suspect of a high profile case;
- 5.7.12 Check the reports and recommendations by the Case Worker before submitting to the DI;
- 5.7.13 Ensure compliance with the provisions of the IPID Firearm Control Standard Operating Procedure;
- 5.7.14 Conduct workload verification on a monthly basis and compile a Monthly Report;

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- 5.7.15 Complete/Close cases while acting as DI, notwithstanding the fact that a person might be closing/completing a case that he/she supervised;
- 5.7.16 Ensure that a case that was investigated by the person's supervisor, while he/she is acting as DI, is not completed/closed;
- 5.7.17 Compile individual monthly report inputs and complete and sign a verification certificate in terms thereof;
- 5.7.18 Ensure that QCF is completed by the Supervisors and Case Workers;
- 5.7.19 Ensure that prescribed registers are in place and kept up to date.

5.8 Case Intake Committee (CIC)

The Case Intake Committee must, in addition to any duties imposed under section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act:

- 5.8.1 Receive new cases from Case Workers;
- 5.8.2 Discuss new cases to ensure that they are properly classified;
- 5.8.3 Give directives on what preliminary investigation must be conducted;
- 5.8.4 The chairperson must note the directives in the case investigative journal and the CMS;
- 5.8.5 Allocate the file to a Case Worker;
- 5.8.6 Should ensure that the file is allocated within the time specified and if not a reason must be recorded in both the CIJ of the physical file as well as the CMS;
- 5.8.7 Be constituted by no less than three persons, (DI, DDI, ASDI and any available Case Worker). In case of unavailability of personnel, the sitting by the DI or DDI or ASDI or PI will constitute a valid sitting. (As a last resort the PH may assist and if no other staff is available, the PH alone will constitute a valid sitting);
- 5.8.8 In the event a sitting constituted out of one person, that person cannot assign the files to themselves;
- 5.8.9 No minutes will be kept of the sitting.

6. CASE INTAKE AND INVESTIGATION PROCESS

6.1 Registration Sub-Process

The case registration process (Case flow diagram) must be used as a guide and note must be taken of the following:

- The left column indicates all role-players in the case registration process;
- The registration process follows as outlined in the case handling process;
- The computer icons represent the steps where information must be captured on the CMS;
- The drums represent the server where captured information is stored;

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- On step "1" the Complainant/victim/referral authority lodges the case or the IPID receives notification;
- On step "2": **Consultation Register (CR2)** must be utilised to capture consultations conducted;
- On step "3", a **Case Control Register (CCR3/8/9)** must be utilised to capture the case;
- On step "4" **Referral Register (RR4)** must be utilised to capture all cases referred to other institutions or organisations which do not fall within the mandate of the IPID;
- On step "5" the complainant/victim/referral authority receives acknowledgment of receipt of the case;
- On step "6", The CIC reviews, allocates and gives broad directives, an **Allocation and Brought Forward Register (ABFR6)** must be utilised, CMS journal to be updated;
- In case there is an internal transfer of a file from one case worker to another because of either a long leave, transfer, promotion, resignation and/or death of the case worker, the **Internal Transfer Register (ITR6)** must be utilised;
- On step "7" referral to Case Worker must be done;
- The left column indicates all role-players in the case registration process;
- The registration process follow as outlined in the case handling process;
- The computer icons represent the steps where information must be captured on the CMS;
- The drums represent the server where captured information is stored.

6.2 Investigation Sub-Process for Section 28(1)(a) and (b)

The Investigation sub-process (Case flow diagram) must be used as a guide and note must be taken of the following:

- The left column indicates all role-players in the case registration process;
- The registration process follow as outlined in the case handling process;
- The computer icons represent the steps where information must be captured on the CMS;
- The drums represents the server where captured information is stored;
- On step "8", the SAPS notify the IPID of a death in police custody and a docket is opened. The DDI/Case Worker/Supervisor receives a factual report/IPID7. A file is opened and the information is captured on the **Case Control Register (CCR3/8/9)**;
- On step "9" the Case Worker receives telephone notification and furnish the SAPS member with a Standby Notification Reference Number (SNRN) and record the number on the IPID 7-2 form; a case/notification must be registered on the **Case Control Register (CCR3/8/9)**;
- On step "10" the Case Worker attends the crime scene and interviews witnesses, identifies the deceased, notifies next of kin, obtains other details and takes over the docket. The **Scene Register (SR10)** is utilised, for exhibits the **Exhibit Register (ER10)** is utilised. The Case Worker takes over the docket and utilises the **Docket Register (DR10)**. The Case Worker must comply with the provisions of 7.8 below;

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- On step "11" the Case Worker receives the file and complies with the directives utilizing Allocation and Brought Forward Register (ABFR6); and updates the CMS;
- On step "12" the Case Worker attends the Post Mortem and utilises the Post Mortem Register (PMR12);
- On step "13" a Report is prepared and the Supervisor reviews the report and then sends it to the DI/PH; if it's an Interim Case Investigative Report continue to step 14, if a Final case Investigative Report continue to step 17;
- On step "14" the DI/PH reviews the Interim Case Investigative Report and endorses recommendations or raises queries. If the recommendations are endorsed, the Completion Register (COMR9/14/32/34) must be utilised and the CMS be updated;
- On step "15" the Case Worker obtains the outstanding reports and attends to queries if any;
- On step "16" the Case Worker prepares the Final Case investigative Report to the DPP/SAPS and forwards the report to his/her immediate supervisor, the Completion Register (COMR9/14/32/34) is updated;
- On step "17" the Supervisor reviews the report for quality assurance, the DI/PH reviews/ approves the DPP/SAPS report and utilises the Recommendation, Decision, Conviction and Acquittal Register (RDCAR9/19/22/28/29);
- On step "18" the SAPS/DPP receives the reports;
- On step "19" the SAPS/DPP decisions registered making use of the Recommendation, Decision, Conviction and Acquittal Register (RDCAR9/19/22/28/29) and any feedback on disciplinary and/or criminal cases is updated on the CMS and give relevant feedback to any stakeholder;
- On step "20" the Case Worker attends to Court/DC queries if any and updates the Court Register (CAR20);
- On step "21" closure of the file/docket is initiated with closure report, the DI approves closure and makes use of Close Case Register (CC22/32/36), after capturing the feedback pertaining to the court case or the DC outcome;
- On step "22" the DDI conducts quality control and utilises the Archive Register (AR23/36). If there are exhibits the Exhibit Register (ER10) is updated. Exhibits are disposed of.

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6.3 Investigation Sub-Process for Section 28(1)(c)–(h) cases (Investigation of Criminal and Misconduct matters), including Section 28(2) systemic corruption matters

The Investigation sub-process (Case flow diagram) must be used as a guide and note must be taken of the following:

- On step "23", the DDI/ASDI/Case Worker utilises the Allocation and Brought Forward Register (ABFR6), the directives and investigative targets are given;
- On step "24", Case Worker receives file and requests docket from the SAPS if necessary;
- On step "25", the SAPS provides the docket or copy of the docket to the IPID, the Case Worker takes over the docket/copy of the docket and conducts the investigation and provides feedback based on the agreed due dates. Utilisation of Docket Register (DR10) is made, the Case Worker must comply with the provisions of 7.8 below;
- On step "26", a letter is written to the complainant/victim/referral authority informing him/her about the progress, such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report should never contain the merits or demerits of the case;
- On step "27", the complainant/victim/referral authority receives the status details about the case he/she has lodged with the IPID;
- On step "28" the Case Worker prepares a report, the Supervisor reviews the report and the DI approves/disapproves the recommendations and utilises the Recommendation, Decision, Conviction and Acquittal Register (RDCAR9/19/22/28/29). If approved the file/docket goes to the SAPS/DPP, and the Completion Register (COMR9/14/32/34) and CMS is updated.
- On step "29", the Prosecution declines to prosecute or raise queries, the Recommendation, Decision, Conviction and Acquittal Register (RDCAR9/19/22/28/29) is updated;
- On step "30", the status/decision is captured on the system;
- On step "31" if there is a change in the status of the matter the complainant/victim/referral authority is notified with respect to the recommendations made, the Recommendation, Decision, Conviction and Acquittal Register (RDCAR9/19/22/28/29) is updated;
- On step "32", the complainant/victim/referral authority receives a letter from the IPID about the status of the matter. The process as contained on step 23 is followed and thereafter the Closed Case Registers (CC22/32/36) is utilised, thereafter the DDI conducts quality control and utilise the Archive Register (AR23/36).

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7. PROCEDURES

7.1 Procedure for filing documents in an IPID file and docket

NO	PROCEDURE
1.	All evidential documents e.g. statements, technical reports etc. must be filed in the "A" clip of the IPID file (including docket);
2.	All correspondence (internal and external) e.g. Progress Reports, Recommendations to DPP and SAPS, CIR and Acting letters, must be filed in the "B" clip of the file and docket;
3.	Investigative journals must be filed in the "C" clip of the file and docket;
4.	The QCF form must be filed in the "D" clip of the file;
5.	The Brought Forward Control Sheet must be filed in the "E" clip of the file;
6.	All documents must be numbered and filed in numerical order;
7.	All documents must be uploaded on the CMS.

7.2 Procedure for the registration of cases

NO	PROCEDURE
1.	A Case Worker must immediately upon receipt of a case, whether in person, by fax, by telephone or by e-mail screen the case to determine whether or not it falls within the mandate of the IPID (Reg 3(1));
2.	If a case falls outside the mandate of the IPID, the Case Worker must record it in the CMS as an Outside mandate case as well as in the Consultation Register (CR2) and Case Control Register (CCR3/8/9) refer it to a relevant institution or organisation – a Referral Register (RR4) must be utilised to capture all cases referred to other institutions or organisations which does not fall within the mandate of the IPID. If it is a service delivery case and the case worker is in doubt if the case should be recorded as a referred case, then he/she must consult with the supervisor before registering such a case. After registering the case the Case Worker must print the IPID registration form and ensure that the complainant/victim/referral authority append his or her signature, then upload the IPID registration form, letter, fax or e-mail onto the CMS;
3.	If the case falls within the mandate of the IPID, the Case Worker must record the case as a Section 28(a)-(g) in the CMS as well as in the Consultation Register (CR2). After registering the case the Case Worker must print the IPID registration form and ensure that the complainant/victim/referral authority append his or her signature (where

	applicable), then upload the IPID registration form, letter, fax or email onto the CMS;
4.	Then, the Case Worker must print the acknowledgement letter and hand/send it to the complainant/victim/referral authority via the requested method;
5.	Open a file and file the IPID registration form, QCF form as well as the copy of the acknowledgement letter/SMS and refer the file to the CIC immediately, and
6.	The allocation is done by the CIC; the CIC must complete the Allocation and Brought Forward Register (ABFR6) and also update the allocation details in the CMS.

- 7.3. Procedure for the investigation of a case i.t.o. Section 28(1)(a) or (b) (Deaths in custody or as a result of police action) of Act read with Regulation 4 and 8

Telephonic/Faxed notifications

1.	A case worker on standby/call (being automatically authorised to attend crime scenes) must immediately upon receiving a telephonic notification of a death, notify the PH/DI and attend the crime scene as soon as it is practicably possible to do so. In the event that a crime scene cannot be attended, permission for the non-attendance of the crime scene must be obtained from the PH or DI and reason must be noted in the CIJ file as well as the on CMS;
2.	Obtain and record all relevant information regarding the location of the crime scene, the time that the notification was made, the time of death, the SAPS/MPS member reporting the incident on IPID Form 7-2.

Arrival at the crime scene and cooperation with SAPS/MPS member in charge of crime scene

3.	Advise the SAPS/MPS member in charge, to preserve the crime scene and to keep it intact until the IPID case worker on standby/call, arrives at the crime scene;
4.	Introduce himself/herself by production of a valid IPID appointment certificate to the SAPS/MPS member in charge of the crime scene and take over the scene;
5.	Receive a briefing on what transpired on the crime scene;
6.	Inspect any wounds or bruises on the body of the deceased and make note of each and exact location (if any) on IPID Form 7-2;
7.	Identify the deceased and record his/her name, surname, age, gender;
8.	Ensure that all vital clues and forensic evidence have been marked and photographed on their original position by the Local Criminal Record Centre (LCRC);

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9.	Collect or ensure the collection of exhibits from the crime scene for processing by the Forensic Science Laboratory (FSL); ensure that the exhibits are booked in with the SAP 13 at the Police Station within that jurisdiction;
10.	Identify all witnesses to the crime and obtain their particulars for interview as soon as it is practically possible;
11.	Obtain particulars of the members involved for future interview.

Post scene Investigation

12.	Ensure that the exhibits (obtained by IPID case worker) are sent to the Forensic Science Laboratory (FSL) within 48 hours;
13.	Upon receiving exhibits back from the FSL, the exhibits need to be returned to the Police Station for it to be booked back into the SAP13;
14.	Visit all the identified witnesses to conduct interviews and obtain statements;
15.	Establish the identity of the person who allegedly caused the death of the victim and obtain a warning statement in the case of Section 28(1)(b) cases;
16.	Visit the next of kin to notify them of the incident and your role as an IPID investigator; and interview them to obtain any information that may assist in the investigation;
17.	Ensure that the IPID Form 7-2 is fully completed with all the required crime scene information (this includes obtaining the signature of the SAPS members at the scene);
18.	Transmit the IPID Form 7-2 to the Case Worker responsible for registration of cases and ensure that a file is opened. The IPID Form 7-2 must be transmitted to the Case Worker responsible for registration on the morning of the first working day following the attendance of the crime scene. After registering the case the Case Worker must upload the IPID Form 7-2 onto the CMS;
19.	Upon the closure of a case and the return of a docket to the Police Station a disposal order should be issued to the SAPS.

Post Mortem

20.	Attend post mortem on the date, time and place identified for purposes of observing the conducting of the post mortem; in the event the post mortem cannot be attended an entry must be made on the CIJ manual file and the CMS as to why the PM could not be attended;
21.	Advise the pathologist of any investigations you would like to concentrate on;
22.	Ensure the LCRC is present at the Post Mortem and that photos of the Post Mortem is taken (if required);
23.	Ensure that all vital clues and forensic evidence have been marked and photographed on their original position by the LCRC;

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24.	Inform the Pathologist of observations made at the crime scene, in the event of any inconsistencies with his findings or, where there is disagreement with the Pathologist report, this to the Supervisor;
25.	Document and file detailed notes on the observations made during the Post Mortem.

Further investigation

26.	Upon receipt of the File, assess evidence contained in the file, conduct outstanding investigations as per directives and make a finding on the outcome of the investigation;
27.	Where resources are utilised from multiple offices, the jurisdiction will remain within the province where the matter arose, but custodianship and supervision will reside with the CD: Investigation and Information Management who will establish task teams and terms of reference;
28.	Update the CMS and generate a progress letter to the next of kin and relevant stakeholders; Progress letters should be forwarded monthly on the status of the case until the case is completed, thereafter quarterly or when there is a change in the status of the case; such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report should <u>never</u> contain the merits or demerits of the case;
29.	Compile an interim CIR and compile a Recommendation Report to the SAPS; if a final CIR is created first, then compile a Recommendation Report to the SAPS/DPP or recommend closure;
30.	Refer to Supervisor for review and recommendation of completion or closure;
31.	Refer to the DI/PH for completion and/ or closure. (If case completed/closed by DI – PH should still be informed as per Regulation 4 (3)(i));
32.	Upon receipt of the outcome of the Recommendation, update the CMS and refer the case to the DI/PH for closure.
33.	All investigations contemplated in terms of these Sections should be completed within 90 days and if not reason should be provided and noted in the CIJ and CMS and approved by supervisor and DI/PH as per Regulation 4(6).

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GLEN ANGUS

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

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GLEN ANGUS

PRESENT: GLEN ANGUS - IPID 10
MR SANDILE JULY - Director, Werksmans

31 March 2015

MR JULY: Good morning. Today is 31 March 2015. Mr Angus, what is your position in ... 15

MR ANGUS: I am the Director of Investigations for IPID in the MPUMALANGA office.

MR JULY: Mr Angus, the reason why I have called you, as I told you off the record, is because during our interview with MR KHUBA he indicated that you were present in a meeting, and we don't know the date of the meeting, where they were discussing - not the content of the report, but you were present when the report was talked about. We don't know the 25

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details of that discussion. It was you, MR
SESOKO, MR McBRIDE and MR KHUBA. So we have
requested to consult with you because your name
was mentioned. You will then tell us what
transpired in that meeting and where it took
place. 5

MR ANGUS:

Okay. My name is GLEN ANGUS. On 5 March 2014,
in the late afternoon/evening, I was
boarding a flight from NELSPRUIT to
JOHANNESBURG. There was a call on my phone 10
from a number I didn't know. I didn't answer
the call because I was busy boarding at the
time. I switched off my phone, and when I got
off the plane in JOBURG there was a WhatsApp
message on my phone. The message said: "I'm 15
Mr McBride". Because he had just started at
that department, I hadn't met him, didn't
know him, or anything like that, and I had
never seen before. It was MR McBRIDE. He
understood I was coming to PRETORIA for a 20
meeting. There was a Civilian Secretariat for
Police meeting that was going to be taking
place at BIRCHWOOD, next to the airport in
JOHANNESBURG, and I was on my way for that
meeting the next day, the 6th. He understood 25

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GLEN ANGUS

I was on my way to JOBURG for a meeting, but he wanted to see me at his office at 8:00 in the morning. So I immediately called the number, because I thought it was just good manners to inform him now that yes, okay, and maybe to find out what the reason was for the meeting at the end of the day. 5

I gave him a call, then he just introduced himself on the phone, and said to me: We will discuss it tomorrow morning, but it's something sensitive, you need to be at my office at about 8:00 but I might be a few minutes late. The next morning, on the 6th, I went to our National Office. I was there at about 8:00 - just before 8:00. I'm not quite sure of the time he arrived, but we met - he's got a small boardroom there. We met, and it was just him and I who first met. Basically he again introduced himself, and gave background. Then he said to me he has had a look at my background. I was a little bit surprised, because I mean I had never met him before, and I don't know him. 10 15 20

He had obviously been reading my CV, or looking in my file, or whatever. Maybe it was because 25

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GLEN ANGUS

I was also the lead investigator in that CATO
MANOR case in DURBAN, so he obviously knows my
background there as well, what I did there and
how I was involved. So I didn't think too much
of it, but I was also a little bit suspicious. 5
If a new person is telling you that he knows
everything about you, then you get suspicious
about things. It's just the investigative mind
working.

He didn't go into any details of what case it 10
was, or anything like that, he just said to me
that there was a sensitive case ongoing, and
that he would like to have my input, to have a
look at the case and see if everything has been
done correctly in the case, have all the steps 15
been covered, so that there are no gaps left,
or whatever, in the investigation.

As I said, he didn't go into the content of the
investigation. I asked him who was dealing
with the case, and then he mentioned to me MR 20
KHUBA. I can't recall him mentioning any other
names, but obviously MR KHUBA. MR SESOKO would
obviously also then be involved, because he was
Head of Investigations, National. When he said 25
MR KHUBA, then we all knew, because it was

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GLEN ANGUS

general knowledge in the Department that KHUBA
was busy doing this Rendition investigation
thing. But what it entailed, who was being
investigated, and whatever, I am honest with
you I really had no idea. I didn't have a clue 5
what it was, because I had my own issues to
deal with with CATO MANOR, and those things.
So the issue for me was I wasn't even in the
slightest interested in what other people were
doing, because I had my own work to do, and I 10
was the Acting Provincial Head for MPUMALANGA
at the time as well. I had a lot of work on my
table, and I wasn't really interested in other
people's stuff.
That's basically what he and I discussed in 15
about ten minutes, if that. Five minutes of
introductions, and then a few minutes talking
about it. Then he called MR KHUBA and MR
SESOKO into the meeting. As I mentioned now,
I wasn't really interested or really taking 20
notes. I didn't even make notes, to be honest,
and my notes look anything like that. I was
just sitting there. He was speaking to SESOKO
and KHUBA, and I was basically just a third 25
party in the meeting. He was talking about

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GLEN ANGUS

things. He had a file on the table in front of
him, but what was in the file, or whatever it
was, I wouldn't have a clue. He didn't open it
and show me any documents, or anything like
that. I never saw any documentation or 5
anything. He was discussing with them how far
they are, what is going on, are there
reports? As far as I can recall - and I'm
being honest about this, I cannot recall
exactly - I think KHUBA indicated to him that 10
there is a report, and he has provided it to
SESOKO, or he is in the process of providing it
to SESOKO, or something like that - along that
line.
Then he indicated to them that he wanted me to 15
run with them, just to check that everything
was in order. I sensed a slight bit of - you
know, in terms of that sort of body language:
What now? Immediately that suspicion.
Unfortunately - and it's not even relevant here 20
- I'm sort of known in the Department as being
one of those who is not interested in
everyone's issues, and those things. For me
it's just that we do the job, we get on with 25
the work, and if you overstep the boundaries,

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GLEN ANGUS

we'll tramp on your toes and get on with it. That's me. I'm not one of those who wants to play games, and this, that and the next thing.

MR JULY: And it would have come as a surprise that you had to second guess the work that had been done. 5

MR ANGUS: Exactly. I think that is what the feeling was there. Although at that stage we were all at the same rank, I'm still their junior in terms of them being longer in those ranks than me. So it was them sort of looking at me to say - and they know my attitude as well. They sort of looked at me to sort of say: Okay, but why? I think they perhaps thought I maybe had something with McBRIDE, or whatever, but I don't know McBRIDE. The issue for me was that I was also feeling a little bit uncomfortable about the set up, but at the time, if your new HOD is saying to you: This is what I want you to be doing, I'm saying: Okay, fine, I'm hearing what you're saying, and I'm sort of oh, okay, whatever. After that they were talking, and McBRIDE was asking them questions. As I say, I cannot even remember the details, and

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GLEN ANGUS

I'm very honest about that.

Then we went up to SESOKO's office, but it was very uncomfortable because they were not really speaking to me either, and I felt very much like the outsider. When we got to the office, they were saying that they don't understand. I said: Look, guys, with all respect ... 5

MR JULY: You went to SESOKO's office?

MR ANGUS: Yes, me, SESOKO and KHUBA. Now they were saying to me that they don't understand. I said: Look, I don't understand either. The boss called me, I had to be here this morning at 8:00, I'm here, he told me I must go with you guys now and have a look at what is going on. I told them straight, and said: I'm uncomfortable about this, and I really don't want to get involved in this. I don't know what it's about, I don't know, but why must I be second-guessing your work, is there something that is wrong, or whatever? They were saying no, and this and that, they were still busy with the investigation, they've still got to do this, there was something about the plotting that needed to be done, the 10 15 20 25

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GLEN ANGUS

Analyst Notebook, and all of that type of stuff.

Now, I know Analyst Notebook, and I know how those things work, and everything. I said: Okay, it's fine. They said the next morning KHUBA was going to go to the service providers, and he was going to go and collect the information of the plotting of the cellphone numbers, and all of that stuff. I said: No, that's fine, let me go with you, because what else am I supposed to be doing now? 5 10

The next morning - by chance we found out that we were staying at the same hotel near the airport, a TOWNLODGE or CITILODGE because the conference was in that direction. So I didn't speak to them for the rest of the day, I left head office and went to the hotel and carried on. The next morning, just after breakfast, I met KHUBA outside, and I went with him in his car. We went to a place somewhere in JOBURG - I don't even know where it was. On the way there in actual fact we didn't even talk about the case, that I can recall. He spoke about how Analyst Notebook works, and this and that. I didn't want to cut him short, 15 20 25

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GLEN ANGUS

because I thought he was just trying to ease the tension maybe. So I just left it, as much as I know how it works and what it's all about.

We got to the venue, we went and waited for the chap. The chap who was dealing with the stuff came out, we went into their boardroom, and he had it on a projector screen, or whatever. Then there was something on the table. He was talking about it, I was standing looking - you know, I wasn't really particularly interested in that, I'm being really honest with you.

MR JULY: This is the cellphone analysis?

MR ANGUS: Yes, just saying that this cellphone number was here, you can check it was here at this time, and it was there, on the backdrop of a map, and everything else, plotting it to different areas. Obviously from that there is a lot of investigation that needs to be done, because now you need to go and confirm all of these things.

At that stage the issue for me was, yes, McBRIDE wanted me to see if these people had done everything correctly, or are they doing the things correctly, if I understood him

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GLEN ANGUS

correctly. I mean, I don't want to speculate. Now I was looking at this, and thinking to myself: But these people have still got a lot of work that needs to be done, if it was at this stage, because from Analyst Notebook 5 it's one of your beginning stages of doing your plotting, and everything. There is still a lot of work that needs to be done after that.

My view then was: What am I going to be doing 10 now, I've got a thousand other things to be doing, and I don't think I should be carrying on and getting involved here.

After that we left, and I asked him to drop me 15 at the hotel, where my car was - in actual fact the rental car. I went to the hotel, he dropped me, I picked up the car and I went straight to the venue at BIRCHWOOD. When I got to BIRCHWOOD it was just after 11:00. I went in there, and the people were on a tea break, 20 and I was just chatting to a couple of chaps there. Then I waited and McBRIDE arrived a while later. I'm not sure exactly what time he arrived, but it was just after 11:00 or 25 roundabout there. He arrived, there were some

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other people with him, and KHUBA and SESOKO arrived together. I don't know where they met, because I left KHUBA at the hotel.

Then I went and spoke to MR McBRIDE alone. I said to him: Sir, with all respect, you've requested me to look at this stuff, but as far as I'm concerned there is a lot of work that these people still need to do if they've only got the Analyst Notebook now. What other investigation they have done, I don't know, because I haven't looked at the stuff and I don't know what there is, but my view is at this stage let's not have me get involved with them here; let me not be reviewing what they have done or be looking at what they have done, rather let them finish what they need to be doing. Once the investigation is finished, if you feel it needs to be reviewed again, then rather set up a team - and I can be part of that team - of two or three guys, and then together we can look at this whole process and see if everything is kosher, everything is right, the procedures and prescripts, and we'll give you our inputs for you to decide how to take it forward. Whether you agree or disagree

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GLEN ANGUS

is up to you as the HOD. He said he appreciated what I was saying, it was fine, not a problem, and that was it. I said: Thank you very much, and I left, got in the car and went to the airport. On the way to the airport he sent me a WhatsApp about an incident that was happening in CAPE TOWN, where two policemen were allegedly assaulting a chap in the street. Because he said in the WhatsApp he was trying to get hold of SESOKO, but he can't, could I send this attachment to SESOKO. I sent it to SESOKO, and I replied back to him: It's done. After that I never ever spoke to him again for a very long time, unless I was at head office and it was: Hello, how are you? That's it.

In terms of the Rendition thing, that was my involvement. That's it. I don't know - I have never seen reports, I don't know who is what, or whatever, I can only say what I have seen on the news and this and that, and that's it.

MR JULY: Tell me now, from your experience with the reports - and I'm asking ...

MR ANGUS: I don't have a problem giving you an opinion,

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GLEN ANGUS

but it's an opinion in terms of work experience.

MR JULY: Yes, in terms of your work experience if you have a report, and the report goes to the NPA, at what stage do you take it to NPA? Do you take a draft report to the NPA or do you take a report on the basis of which you say: There is a *prima facie* case here for you to prosecute, and anything else - if you need more evidence, investigation can still be done? 5 10

MR ANGUS: No. I guessed you would be asking this question. Basically, if we're busy with a case, maybe a high-profile case, as this was, you might have members of the NPA on the prosecution team. I am going to talk from experience and how I've been doing it, and I'm not sure exactly how they did it with this case. 15

MR JULY: They did, they had an NPA team of two advocates, MOSENG and MOELETSI. 20

MR ANGUS: Okay, MOSENG is very experienced, so I'm sure he would have guided them correctly. Why I'm saying that, the way that I work with my CATO MANOR investigation, is that I have a team of seven advocates in the NDPP's office who are 25

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GLEN ANGUS

involved at the prosecution team. MOSENG was
there in the beginning, but then he was just
more advising in terms of the POCA Act. But
how we worked then, we would take our dockets,
go and work on the investigation, and we would 5
then meet and they would be briefed from my
side as to where we are, what we're doing and
everything else. We would sit with them for a
couple of days and go through the dockets and
everything else. If they required any sort of 10
a preliminary report, then we would give them
a preliminary report. But it's a preliminary
report, there are no recommendations on that.

MR JULY: On the preliminary report?

MR ANGUS: On the preliminary report we didn't make any 15
recommendations. Now, my view would be that if
it's a draft report or a preliminary report,
you would not be making recommendations.

MR JULY: It makes sense.

MR ANGUS: Because at that stage it's just sort of a 20
progress report. You're saying: This is where
we are, this is what we have currently. You
could perhaps say: This evidence is leading in
this direction, but you wouldn't go to the 25
point of really saying that you're recommending

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GLEN ANGUS

1, 2 and 3 against a person. At that stage of your preliminary report - and at any stage of the investigation on high profile - the advocates or whoever from the NPA might ask you: Can you give us an update report, which is basically another preliminary report? Then you would draft a report, following on from your previous one, as to the advancement you've made, and then provide that. But, as I say, again I'm not sure how they were dealing with it and what their briefs were between them and their advocates. 5

But from our side we never ever made recommendations to that effect. The only time we dealt with recommendations was when we reached a point where we realised: Here is what we've got, if we go further, we're going to mess up. Let's rather stop here with what we've got, this is what we've got, and we can prosecute on what we've got, and there is sufficient evidence. Then we make our recommendations. 15

MR JULY:

Tell me, if you then make that recommendation, and it turns out later that there is a piece of information or pieces of information that you 25

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GLEN ANGUS

did not include in the report where you made the recommendations, how do you deal with that? Does it make that a preliminary report, or does it ...

MR ANGUS:

No, it does not make it - I haven't had that 5
type of situation, but I have had a situation where you have done a final report, or what I call a final report - a DPP Report - and then the DPP might request you to go and look at something additional. Then when you have that 10
brief back from the DPP to say: You need to look at additional stuff in terms of this, then you would go and do that. When you come back, you can take that report and can add that in, but then you indicate it's Report No. 2 of this 15
one of that, so that at the end of the day they are seeing this one is your first report, this one is your second report, which is a follow on of that, but the two reports are basically together. You're not going to take the first 20
report and say it's now a draft, because it's not a draft. It was your report at that stage, and if there are additions that must be added, you add those additions to it, and then ... 25

MR JULY:

... you make reference to it?

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GLEN ANGUS

- MR ANGUS: You make reference to it, yes. That is how we have dealt with those type of situations, but I have never had a situation where it's a draft and then I have put in a second ...
- MR JULY: I think it confirms what we know. I'm not sure 5
if you know a COLONEL MOUKANGWE, who said exactly that, to say they met with the NPA and gave them a report, which was a final report. And exactly what you are saying, certain issues were raised about the cellphones, because there 10
was this evidence that this SIBIYA guy assaulted some of the people who were arrested. The question was: How did he assault these people if the cellphone says he was in PRETORIA? 15
- MR ANGUS: Which makes sense, yes.
- MR JULY: That led them to say: No, no, go and look at this.
- MR ANGUS: Was his cellphone with someone else, did he have his cellphone with him for 24 hours, and 20
can that be confirmed and proved?
- MR JULY: Yes.
- MR ANGUS: Obviously that would be following up on information the DPP would be requiring, for 25
them to assess the report. Then you would

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GLEN ANGUS

obviously give feedback on that as well. Whether you do it in an additional report, or whether you're going to do it in an update of that same report or whatever - but yes, it depends on what your brief was with the DPP at that time. 5

MR JULY: That's fine. I was satisfied with what you told me over the phone, when we discussed it, but like I said when a person comes here and says I would like you to talk - we don't want to be accused of: We told them to go and speak to so-and-so and they decided not to. 10

MR ANGUS: You're a hundred percent correct in that. I mean, I've been doing investigations for many, many years. You're a hundred percent correct, and I do the same with my investigators as well. If a name is in the statement somewhere, you will interview that person, whether the person adds value or not. Then you make a note in the diary to say: This person is not adding value, and this is basically what they said. So you're a hundred percent correct, and I don't have an issue with that, because that's exactly what I said as well, after I had spoken to you. And I'm going to be honest, I phoned 25

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GLEN ANGUS

my Legal Services, and said: Guys, this is what I've been told. No, they are going to come back. I spoke to my boss in the office as well, and said to her: Look, this is the situation, I am going to JOBURG to go and meet with these people, because at the end of the day I do not want a situation arising where they are reporting to the Minister, and they turn around and tell the Minister: No, Mr Angus does not want to cooperate. 5 10

Unfortunately I'm not one of these people - I've said it, and it's on record as well - I'm not someone who plays games. I'm serious about my job, and I'm not going to be pulled into other people's issues, or whatever. I'm not saying there are agendas, or whatever, but I'm not involved and I don't want to get involved in other people's things. For me it's you give me my job, I take the job, I've got the mandate and I go and do my work. I'm not interested in little side shows, because side shows don't take you anywhere, they just distract you along the way. 15 20

So the issue for me was that I needed to come here and get the facts on the table about what 25

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GLEN ANGUS

my involvement was. Otherwise it's going to be hanging in the air the whole time: Your name is mentioned, what did you do and where did you fit in?

- MR JULY: Can I just confirm the dates? 5
- MR ANGUS: It was the 5th when I got the call.
- MR JULY: On the 5th?
- MR ANGUS: The 5th. It was in the evening, but I'm not sure of the exact time. As I say, I've changed phones since then and the message is gone now. 10
- MR JULY: This would have been 5 March?
- MR ANGUS: 5 March 2014. It was in the evening. I'm trying to think what time my flight was. My flight was roundabout 5:00 or 5:30 and I think we were a little bit delayed. But you can say 15 roundabout 6:00 or so.
- MR JULY: And then you met with him on the 6th?
- MR ANGUS: I met with him on the 6th. I was at his office at about 8:00, and I'm not sure if he arrived at roundabout 9:00 or so, because I remember 20 his PA still saying he was running late. I'm not quite sure of the exact time, but then the rest of the day, after I had left - because it wasn't long. I think if we were in his office 25 for about fifteen minutes when KHUBA and SESOKO

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GLEN ANGUS

arrived it was long. If I was in MR SESOKO's office for more than ten or fifteen minutes it would have been long. After that I had things that I was doing at head office, and then I left. So I'm not sure of the exact timing and time spans to that, but I know on the 7th, when I flew back, I went to the airport and got an earlier flight. Because I wasn't going to go into the conference three-quarters of the way through, I was going to be wasting my time, and I had my deputy there anyway, so he could just come and brief me. Then I decided I would catch an earlier flight, and I went back to the airport. It was at about 12:00 or so that I was at the airport and I got an earlier flight, and went back. 5
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In a nutshell that's exactly what my involvement was. That's why I said to you on the phone as well that I'm surprised that people are saying they heard you, or whatever. I'm surprised. I'm really, really lost. But if it helps you in some way ... 20

MR JULY:

No, no, it does. Whether it adds value, it is important that you were called, and we will note exactly that, that there is nothing much 25

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GLEN ANGUS

except that you were called, you have never seen the reports, you just saw the file, but you don't know the content of the reports.

MR ANGUS:

Even the file that McBRIDE had on his table was not a thick file, it was just a thin little 5
file. So what was in there, I really would not know. I don't want to speculate. The issue for me is rather just to speak to the facts. What he wanted me to do, how - I really don't know, I never asked, and I just felt I had to 10
get out of this thing. I had other things I was dealing with, that I felt were my priority, and I really didn't have time to be caught up in something else that was going to distract me. I mean, this CATO MANOR is keeping me busy 15
24/7 and I really don't have time to ...

MR JULY:

Are you still busy with that?

MR ANGUS:

Yes, the people were in court yesterday. We've got 23 June as our next date. But you see, you mustn't believe what is in the media. 20

THE INTERVIEW ADJOURNS

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INNOCENT KHUBA

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

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INNOCENT KHUBA

PRESENT: MR INNOCENT KHUBA - IPID
 MR SANDILE JULY - Director, Werksmans 10
 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 15
 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 20
 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 25
 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. 5

MR JULY: But why did MR SESOKO sign? 10

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. 15

MR JULY: So he participated in the report, and would McBRIDE have signed that report had he not participated in the report? 20

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. 25

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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. 5

MR JULY: 3 March. Then who gave you a call to say that
MR McBRIDE wanted the report?

MR KHUBA: It was MR SESOKO.

MR JULY: MR SESOKO?

MR KHUBA: Yes. 10

MR JULY: You emailed the report to MR SESOKO?

MR KHUBA: Yes.

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

MR KHUBA: No, I do not know. 15

MR JULY: But you met with McBRIDE the day after you
emailed the report?

MR KHUBA: That's correct.

MR JULY: Which was the 5th?

MR KHUBA: Yes. 20

MR JULY: When you met with him on the 5th, what did you
discuss?

MR KHUBA: We discussed the report. He wanted to know -
he wanted me to outline the process of
investigation from the beginning to the end, 25

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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

of it.

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

MR KHUBA: Yes.

MR JULY: You had another meeting on the 6th? 5

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. 10

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. 15

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. 20

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, 25

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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?

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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.

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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 10 15 20 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.

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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.

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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 - 10
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 (?). 15
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...

MR JULY: Did he tell you about his discussion with the 20
previous matter?

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 25
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 5
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? 10

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? 15

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 20
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 25
that I couldn't talk to McBRIDE. I still

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INNOCENT KHUBA

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 25
drove, and while we were driving, I reminded

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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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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. 5 10

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. 15 20

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? 25

MR KHUBA: Probably the question should be: If you alone 25

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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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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.

MR JULY:

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

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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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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 not going to sit behind the computer. 5

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 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 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. 10 15 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 10
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 purposes ...

MR JULY: And then he said: The boss is happy with this 15
one?

MR KHUBA: With this one. If I remember, and I cannot 20
say with certainty, the day we signed, he 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 25
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

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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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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 docket? 5

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 had that part. 15
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? LS

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 5
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. 10

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 15
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 20
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 25
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 25
leave the Minister out of it. I never

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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 of these things I started to think. 5

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, 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 intention of returning it to you in any event. 10 15

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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Office note

IN RE: SO-CALLED RENDITION MATTER (PROJECT X)-DIEPSLOOT CAS 390/07/2012

DPP JHB REF: 9/2/4/1 (2014/236)

1. BACKGROUND -TIMELINE

- a. Received internal memorandum from the Head Special Projects Division, Office of the NDPP dated 14 February 2014. The exact date of receipt is unclear as no official stamp or date had been affixed to this effect.
- b. According to office note by adv Van Zyl SC this must have been late in February 2014.
- c. Before any decision could be taken by this office messrs Khuba and Angus from IP/D collected all the dockets from Van Zyl SC on 7 March 2014 and signed for receipt thereof.
- d. On 18 June 2014 Van Zyl SC phoned mr Khuba who told him that his head mr McBride had instructed him that the dockets must be returned to the NDPP and it was duly done
- e. On 23 June 2014 Van Zyl SC once again spoke to mr Khuba who informed him that it was never his intention to return the dockets to him.
- f. On 27 June 2014 adv Mosing of the Special Projects Division of the Office of the NDPP told Adv Van Zyl SC that the dockets were never returned to him.
- g. These series of events were then brought to the attention of the NDPP by letter dated 3 July 2014.
- h. On 20 August 2014 the NDPP officially responded to the letter by the DPP Adv Chauke, by apologizing for the late response and indicating that he, the NDPP, is in the process of considering the matter and that Adv Chauke may close his file.
- i. On 31 March 2015 the NDPP wrote another letter to the DPP informing him that he had subsequently referred the matter to the DPP North Gauteng who recommended that the accused including Dramat and Sibiba be prosecuted for *inter alia* kidnapping and defeating the ends of justice. The letter of the DPP Pretoria is dated 6 March 2015.
- j. This letter of the NDPP *inter alia* states that the matter is now returned to Johannesburg because the matter now resorts under the jurisdiction of the DPP Johannesburg since 1 December 2014 as from that date Diepsloot falls under Johannesburg North (Ranburg) in terms of Government Notice No 861 of 31 October 2014. The NDPP also indicated that further investigation should be conducted in the matter.
- k. On 1 April 2015 the Head: National Prosecution Services (NPS) send a letter to the DPP Johannesburg to conduct specific further investigation.
- l. On 10 April 2015 Adv Chauke requested me to advise him on certain aspects after I have looked at the documentation in this matter.

2. It is clear that this matter is being regarded as a "hot potato" and therefore the case is being sent from pillar to post.

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- a. There are certain legal issues that need to be address before we even go to the facts of the matter.

4. DISCUSSION OF MATTER

a. JURISDICTION

- i. It is trite law that jurisdiction cannot be conferred retrospectively.
- ii. When these crimes were committed during 2011 all these crimes resorted under the jurisdiction of the DPP North Gauteng. Even the court appearances were done at Atteridgeville falling under the DPP Pta's area of jurisdiction.
- iii. The demarcation altered the position as from 1 December 2014. It does not alter the jurisdictional position prior to 1 December 2014, which to my mind remains with the DPP Pretoria. This fact cannot now conferred jurisdiction on the DPP Jhb for all crimes committed prior to 1 December 2014 especially where decisions were previously take by the DPP Pta or prosecutors resorting under him.
- iv. Furthermore the majority of crimes were committed under the jurisdiction of Pretoria and not Johannesburg. It furthermore seems that crucial phone calls implicating Dramat, were also made between Beit Bridge and Pretoria, falling within the jurisdiction of Pretoria.
- v. We must also clearly distinguish between Court jurisdiction and Prosecutor jurisdiction. The best way to explain this is by way of example. The Regional Court jurisdiction is in accordance with the boundaries of the provincial province, Gauteng. This means for instance that it will be within the jurisdiction of the court being the Regional Division of Gauteng (meaning the whole province). On the other hand the prosecutors' jurisdiction has been divided with reference to the seats of the two High Courts in this province of Gauteng. The fact that the DPP of Pta is appointed in the provincial division of the High Court, does not give him more or concurrent jurisdiction over the cases falling within the jurisdiction of the DPP of Jhb being the Local Division. These areas are two distinct areas and the DPP Pta cannot overrule decision taken by the DPP of Jhb merely because he is appointed at the Provincial Division of the High Court in Pta. If that would have been the case, it would never have been necessary for the DPP Pta to request permission to centralize matters from Jhb within his area of jurisdiction. Therefore it means that a specific court might have jurisdiction to do the trial based on the principal of concurrent jurisdiction but that the prosecution's jurisdiction must also be established through with reference to the specific area of jurisdiction. There is no such thing as "concurrent jurisdiction" with reference to the jurisdiction of a DPP. In the old days there were indeed instances where two cities would have concurrent jurisdiction. However at that stage only one DPP or Attorney-General was appointed for the whole area and the smaller area was being controlled by a Deputy who fell under the control and supervision of the AG of DPP. That is a totally different

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scenario than the current one. It is therefore my opinion that the DPP Pta has no concurrent jurisdiction on any matters falling under the DPP Jhb and that the DPP Jhb is totally independent from any interference by his Pretorian colleague.

b. FUNCTUS OFFICIO

- i. I am also of the view that a prosecutor can very seldom resort to a claim of being *functus officio*. Prosecutors are frequently taking decisions and by virtue of this they can alter their decision at any stage, especially in view of new evidence coming to their attention or representations being lodged. This happens on a daily basis at all prosecutor's offices and is nothing strange.
- ii. The fact that a file has been closed therefore does not bar the DPP or prosecutor to revisit the decision initially taken. This can be done and in fact is being done frequently at this office.

c. POWERS OF NDPP

- i. It must be established whether the NDPP has any inherent powers to prosecute or not. Are the powers of the NDPP curtailed to reviewing decision taken by his subordinates, the DPPs or does he possess inherent power to prosecute.
- ii. In order to answer this we must look at the relevant legislation empowering the NDPP.
- iii. The Constitution dictates in sec 179(1)(a) that the NDPP heads the national prosecuting authority. Sec 179(2) states that the national prosecuting authority has the power to institute criminal proceedings on behalf of the state ect.
- iv. Sec 179(5)(c) gives him the power to intervene in a prosecution and subsection (d) the power to review any decision of a DPP after consulting the relevant DPP.
- v. The NPA act, no 32 of 1998 echoes these provisions. Sec 20 states that the power to institute and conduct prosecutions vests in the prosecuting authority and all subordinate officials shall exercise these powers under the control and direction of the NDPP.
- vi. Sec 22 of the NPA Act specifically deals with the powers of the NDPP.
- vii. He heads the national prosecuting authority
- viii. Have authority over ALL the powers conferred or imposed by the Constitution or any other Act.
- ix. It is therefore clear that the NDPP has inherent and original powers to prosecute.
- x. Sec 22(2)(c) of the NPA act gives the NDPP the power to review a decision to prosecute or not after consultation with the relevant DPP and after taking representations of the accused, the complainant and ANY other person or

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- xi. The question now is whether the NDPP may consult other DPPs and not only the relevant DPP, when reviewing the decision? In principle there can be no objection for the NDPP in order to take a decision, to ask other DPPs for a recommendation provided that the relevant DPP is also consulted as required. In terms of the sec 22(3) he may even direct that an offence be decided and prosecuted within the jurisdiction of another DPP.
- xii. Sec 22(4)(a)(i) and (ii) gives the NDPP wide powers to ask for reports and submissions from a DPP.
- xiii. It therefore seems that the NDPP is entitled to request a report from this office in order to assist him in taking a final decision in this matter.
- xiv. In para 3 of his letter to Adv Chauke dated 31/03/2015, he request the DPP to urgently advise him on his decision. Although the phrase is a bit ambiguous it is capable of a construction that the DPP make a recommendation to the NDPP in the same vein as the DPP of North Gauteng has done. This matter is one of those matters where the NDPP has to exercise his inherent and original powers and where he should take the final decision.

5. RECOMMENDATION

- a. I therefore am of the view that this office cannot pass the bug back to the NDPP on the score of jurisdiction or even that the DPP Pta has taken a decision because it is clear that Pretoria only made a recommendation to the NDPP.
- b. However before any decision is taken the required further investigating must be conducted as instructed by the NDPP as well as the subsequent letter from the Head of the NPS.
- c. The way forward is to draft a letter to the new investigating officer, apparently now someone at the DPCI, to investigate further in line with the queries issued by the NDPP and the NPS. How any subordinate I/O from DPCI can investigate a case against the National and Provincial Heads of the DPCI, is beyond comprehension.

Mr H. S. L.S

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17.04.15

~~ROBERT~~ McBRIDE

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

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ROBERT McBRIDE

PRESENT:

MR ROBERT McBRIDE	IPID	
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

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MR JULY:

Mr McBride, my name is SANDILE JULY, I'm an attorney conducting this interview. This is SANDILE TOM, who is an Associate here, then we have KWAZI BUTHELEZI, who is a Candidate Attorney, and that is KERRY BADAL, who is an Associate here.

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MR McBRIDE:

Okay.

MR JULY:

We were supposed to start this meeting at 12h00, but we are late. The reason for us being late is that we were stuck in traffic. We do apologise. Today is 17 April 2015, and we are talking to MR McBRIDE.

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Mr M. J. SJ LS

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MS Y5-MS-010

MEETING

HELD AT:

DATE: 2015-04-01

Offices of Werksmans Attorneys

TRANSCRIPT OF MEETING HELD BETWEEN

MR MATTHEWS SESOKO

and

WERKSMANS ATTORNEYS

PRESENT:

1. Mr Sandile Tom – Werksmans Attorneys
2. Mr Sandile July – Werksmans Attorneys
3. Mr M Sesoko – Chief Investigator, IPID
4. Ms K Badal - Werksmans Attorneys
5. Mr K Buthelezi - Werksmans Attorneys

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M SESOKO
WERKSMANS ATTORNEYS/mb

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MR TOM: ... there is no one that you amended?

MR BUTHELEZI: No, because I was still working on it.

MS BADAL: I did write on the top here the extra ones that we found.

MR TOM: Okay.

MS BADAL: The pages.

MR TOM: No, it is fine. I think what we should do... (intervenes)

MR BUTHELEZI: I can go inside... (intervenes)

MR TOM: I am Sandile Tom, an attorney with Werksmans Attorneys and an associate to Mr Sandile July who is the lead or senior partner
10 in this report.

MR SESOKO: Okay.

MR TOM: And with me I have Ms Kerry Badal who is also an associate attorney with Werksmans. We work with Mr July.

MR SESOKO: Okay.

MR TOM: During the course of this investigation.

MR SESOKO: Uhm-uhm.

MR TOM: And we have Mr Kwazi Buthelezi, he is a candidate attorney in the Employment Department. He works with myself, Kerry and Mr Sandile July.

20 MR SESOKO: All right.

MR TOM: Yes. Today is 1 April 2015. Yes Mr Sesoko, would, as it has been mentioned before by Mr July that we had consulted with Mr Innocent Khube and... (intervenes)

MR SESOKO: Ja, I think first of all what I want to raise is, I want to know the status of the inquiry.

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M SESOKO
WERKSMANS ATTORNEYS/mb

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MR TOM: Okay.

MR SESOKO: Whether am I here as a suspect in a criminal investigation, or a disciplinary investigation, because when I went through the terms of reference, the Minister says you must investigate whether there was a misconduct or crime committed. So I need to establish what is my status.

MR TOM: Yes, your status. Mr Sesoko, you are not a suspect in criminal proceedings or proceedings to be conducted, to be either conducted by the Minister or IPID for that matter. This investigation is to understand as to what, why do we have these two reports which have conflicting information in a way or which have recommendations that are different.

MR SESOKO: Okay.

MR TOM: You know, so our mandate is to establish those facts you know... (intervenes)

MR SESOKO: All right.

MR TOM: As to why do we have the two different investigation reports.

MR SESOKO: Okay.

20 MR TOM: Yes.

MR SESOKO: No, it is fine.

MR TOM: Okay, Mr Sesoko. Like I said before you, you posed a question on the status and the purpose of the investigation, we had consulted with Mr Innocent Khuba.

MR SESOKO: Ja?

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M SESOKO
WERKSMANS ATTORNEYS/mb

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MR TOM: Who is the person who compiled or drafted or created the investigation report you know, into the illegal rendition of Zimbabwe nationals.

MR SESOKO: Ja.

MR TOM: You know, so can you tell us about your involvement in the drafting you know, for instance in the drafting of the report, in the creation of the two reports?

MR SESOKO: Okay. First of all it is important to indicate to you that I know nothing about the two reports.

10 MR TOM: Okay.

MR SESOKO: I only know one report.

MR TOM: Okay.

MR SESOKO: My involvement in this matter was first when it was received, because this person Mukhangwe from the police came with a docket to my office indicating that he was referred to my office at the behest for the then Minister, that he must hand over the investigation to IPID. At the time I was the acting head of investigations national, so I cannot make that call. That is the call for the executive director and at that time it was Ms Mbeki, she was acting as the executive director.

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MR TOM: Is that Koekie Mbeki?

MR SESOKO: Koekie Mbeki.

MR TOM: Okay.

MR SESOKO: I took the docket and went to Ms Koekie Mbeki with the covering letter. I cannot remember, I think there was a covering

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letter there and indicated to her that there a Mr Mokhangwe from Crime Intelligence brought this document, he says at the request of the Minister, the request that we must investigate this matter.

MR TOM: Okay.

MR SESOKO: So you know, then Ms Mbeki must then make a call in that respect.

MR TOM: Okay.

MR SESOKO: And then Ms Mbeki then came back to me to say no, we will investigate this, she has decided that we will do the
10 Investigations.

MR TOM: Okay.

MR SESOKO: At that time or the year or so earlier when, before Ms Mbeki's time when Mr Beukman was still there... (Intervenes)

MR TOM: Who is he? What is his name?

MR SESOKO: He was the then executive director before he was removed and Ms Mbeki came to act. So the request came then from the Secretary of Police to say we must investigate the rendition case, then Mr Beukman requested me to appoint a team that will investigate and then I appointed Mr Khuba.

20 MR TOM: Okay.

MR SESOKO: To lead the team that will investigate. That was about a year earlier.

MR TOM: A year earlier?

MR SESOKO: Ja, and then a year and then after I appointed we had a meeting with the Secretary and Mr Beukman and the Secretary said

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no, the Minister said we must hang on, he will give us that investigation when he is ready.

MR TOM: Okay.

MR SESOKO: And then that team never got to work on that investigation, because there was that issue that we must hang on.

MR TOM: Hang on.

MR SESOKO: And no documents were given to us or anything of that nature.

MR TOM: At that stage?

10 MR SESOKO: At that stage.

MR TOM: Okay.

MR SESOKO: So fast forward a year or so later, that is when Mr Mokangwe from Crime Intelligence comes to my office and say he has got this instruction that this must be investigated by us and that instruction comes from the Minister when he approached then Ms Mbeki to say here is the docket, here is the instruction and then Ms Mbeki then after, a few days after she came back and she said no, it is fine, we can investigate it and I had informed him that this request came earlier, but and I had appointed Mr Khuba to
20 Investigate... (Intervenes)

MR TOM: To investigate.

MR SESOKO: But nothing got to happen because you know, I have got anything?

MR TOM: Okay.

MR SESOKO: Then he said no, we can proceed the way it was

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Initially arranged that Mr Khuba... (intervenes)

MR TOM: Khuba.

MR SESOKO: Investigate. That is how Mr Khuba got involved in the investigation.

MR TOM: Okay.

MR SESOKO: And then I think during that period, Mr Khuba informed me that he got instruction from Ms Mbeki at the time that he should just investigate on his own, I should not get involved in the investigation. So I never got involved.

10 MR TOM: Yes.

MR SESOKO: And then the only time I got involved then was when Mr McBride was appointed. When Mr McBride was appointed, he asked for all high profile cases.

MR TOM: And when was that?

MR SESOKO: And asked all people who were involved in the investigation of high profile cases, to brief him on these cases.

MR TOM: Okay.

MR SESOKO: And the high profile case at the time was the Marikana investigation. It was the Cator Manor investigation, it was
20 the Riah Phiyega investigation which I was conducting, I was investigating or sent out an investigation and it was this rendition matter where Mr Khuba was involved.

MR TOM: Yes.

MR SESOKO: So Mr McBride was then briefed on... (intervenes)

MR TOM: Yes, on the matters?

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MR SESOKO: On the matters.

MR TOM: Yes.

MR SESOKO: And I briefed him on the Riah Phiyega matter and then Mr Khuba briefed him on the rendition.

MR TOM: Yes.

MR SESOKO: Sorry Mr Sandile (inaudible), do you mind if I ask a question?

MR TOM: I do not mind at all.

MS BADAL: Sorry Mr Sesoko, in what manner was Mr McBride
10 briefed? So this was during March 2014... (Intervenes)

MR SESOKO: Yes.

MS BADAL: After he was appointed?

MR SESOKO: Yes.

MS BADAL: Was he provided with a copy of the report, because the initial report was already available January 2014, so in order to brief him I am assuming he was provided with a copy of the report?

MR SESOKO: I do not know how Mr Khuba briefed him.

MS BADAL: Okay, Mr Khuba says that he provided you with a copy of the report to provide to Mr McBride in order to brief him on high
20 profile matters.

MR SESOKO: Yes, I am saying the briefing on the rendition happened before between Mr Khuba and Mr McBride.

MS BADAL: Okay, so... (Intervenes)

MR SESOKO: So the copy of the report that Mr Khuba provided me... (Intervenes)

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MS BADAL: Yes.

MR SESOKO: To provide to Mr McBride, was provided to Mr McBride, so there was... (Intervenes)

MS BADAL: So did he, oh, so he e-mailed the report to you and you e-mailed it to Mr McBride?

MR SESOKO: Yes, I cannot remember if I e-mailed or I... (Intervenes)

MS BADAL: Or you provided him a copy?

MR SESOKO: Printed it out and provided it to him, ja.

10 MS BADAL: Okay.

MR SESOKO: But that is how it happened. But the briefing happened between him and the same way the briefing on the Riah Phiyega matter happened between me and Mr McBride, and so too the others also briefed him in the same way. And then I think after the briefing, that is when Mr McBride then said we can work together to finalise the report, because my understanding was that Mr Khuba had indicated that there is information, further evidence that he had received that he was still putting onto the report. So we then have to work together.

20 But also the fact that in terms of our own internal processes, when a report is done you, it is done by the investigator and then the supervisor must also do quality control and then recommend... (Intervenes)

MS BADAL: And were you the supervisor?

MR SESOKO: Yes, in this case I was the supervisor.

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MR TOM: Okay.

MR SESOKO: So the report was done by Mr Khuba.

MR TOM: Okay.

MR SESOKO: In fact at some point he even e-mailed the report to me and then went on my desktop as he was you know; putting all the further evidence that he had and also doing the analysis. So my role basically was to guide him, so for instance we would go through the report and then he would indicate this is how he has analysed this, how he would analyse and then I would ask him questions, why that, why that, why that, why do you put that?

You know, what would be the strength of that evidence, what would be witness of that evidence? That is the kind of process that we went through, even in the analysis that would be the kind of process that we went through until such time that the report was concluded.

MS BADAL: Okay. Mr July, just to bring you up to speed, we just asked Mr Sesoko to explain his involvement in the reports. I think initially he says that he has no knowledge of the first report, but he was involved in a supervising capacity in the second report.

20 MR SESOKO: It is the final report on that (inaudible), yes.

MS BADAL: All right, final report.

MR JULY: Okay.

MR SESOKO: Uhm.

MR JULY: What we were told by Mr Khuba is that, I am not sure the extent of your knowledge on the first report, but sort of you knew

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about a report and because you were sort of senior in terms of your acting position and therefore you had from time to time to talk to and how you also knew about that first report... You see that first report why even when you were doing the second, the so-called second report... (intervenes)

MR SESOKO: The final report.

MR JULY: Is based on that original report.

MR SESOKO: Uhm.

MR JULY: All right, that is what it is based on. So it will be very
10 difficult to say you did not know about that report, because it is that report that Mr Khuba said you interrogated with him and he was different to you because you are a legal person, you have been a prosecutor for years. He is not a lawyer, you asked him questions about this evidence may not stand. I will give you one example, that this surveillance will not stand, it was the issue of the location of General Sibiya at the time of the crime, whether where was Sibiya at that time.

So you would then say as a lawyer how do you then charge Sibiya for assault if there is evidence which is the cellphone evidence
20 which says Sibiya was in Sunnyside when the scene of crime is Diepsloot, as an example. So you were sort of a legal person who would interrogate that to say this evidence cannot stand.

So it was based on that report and the question of I hear you talking about the final report, when you question, when we, there are two people who were critical in actual fact in this report, it is Mr

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Khuba and Colonel Mokangwe.

MR SESOKO: Ja.

MR JULY: Colonel Mokangwe and which is something bad Mr Khuba did not mention, was that at the time when they went to NPA, they went to NPA to get the warrant. At no stage was that report when it was given to NPA, called an interim report. We then called yesterday Mr Angus. Mr Angus then says whether it is an opinion or what, but it is a practice, you can never have a so-called interim report which has got recommendation. What you do when you go to NPA, you will
10 have a report which may lead to be updated but it does not change the status.

That report status is that it is a report. If new evidence comes up, it is either you add to that report and you will make reference to that report, but what happened in this particular one, there is a report which was submitted in January. Subsequent to the report been submitted there was a meeting with NPA asking for a warrant. Yes, NPA raised issues about the assault in the Sibiyi, right, and then they would be asked to go and look for more information on that ground. We are still going to speak to Mr
20 Moegsien. The Minister has given permission to do that, the Minister of Justice.

MR SESOKO: Ja.

MR JULY: The understanding is very clear from Mokhangwe, that when they went there, they went to get a warrant. They wanted to find out why is the (inaudible) right not coming up and Moegsien said

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no, go and get this and this and this. And that report, if it was intended to be interim, it would have been written interim report and even Mr Khuba, Mr Khuba never mentioned this as an interim report. His understanding is that the report was submitted, then there was new evidence according to Mr Khuba.

MR SESOKO: Uhm.

MR JULY: That is what he says. He is not saying we submitted a report which is an interim report which was going to be changed. He said we submitted a report and based on the new evidence, we had
10 to look at that report and then looking at that report, now we have got this information. We did not have the warning statement from Sibiya, we did not have warning statement from Dramat, we did not have...

Well there is an issue about whether the section 205, this informs because Mokhangwe said it is not true that the cellphones did not have that information. They were in possession of that information, they knew exactly what was the problem about the location of Mr Sibiya and scene, so it cannot be said that the cellphones was new information which necessitated the change of the report.

20 MR SESOKO: You will appreciate that all what you are saying to me is what you are informed by Mr Khuba.

MR JULY: Yes.

MR SESOKO: So I cannot talk to that, I can only talk to what I know and in terms of the process that we follow in our environment, an investigator writes a report.

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MR JULY: Yes.

MR SESOKO: Myself as a supervisor, I go through the report.

MR JULY: Yes.

MR SESOKO: And then, I would then raise issues with the report where I have got issues with the report, you know, as I have indicated in this case that we did the same thing with Mr Khuba.

MR JULY: So you would have... (intervenes)

MR SESOKO: This issue, the issue of the cellphones, the issue of the... You know, all this evidence that was outstanding, is something
10 that he himself informed me about, it is not something that I raised with him.

MR JULY: Ja, I can assume, (inaudible) when I am interrupting.

MR SESOKO: Ja.

MR JULY: You would then have seen the report that was submitted on 22 January 2014?

MR SESOKO: No, no, I... (intervenes)

MR JULY: If you are saying the practice is that, then is that you would see the report and then you will make comments on the report.

MR SESOKO: I have indicated earlier that... (intervenes)

20 MR JULY: Yes?

MR SESOKO: Mr Khuba himself is the one who informed me that the previous acting ED said he must not involve me in the investigation.

MR JULY: Yes.

MR SESOKO: So I was never involved, I was never involved in supervising that investigation. So the only time when I spoke with

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Mr Khuba on the rendition matter, that is when there was sort of a vacuum because the then acting executive director was not in the office. Mr Khuba was not sure what to do because he had to send progress reports and so forth.

MR JULY: Yes.

MR SESOKO: So he needed advice, so that is the only time I spoke to him about the report in terms of he needed to know what he must do in terms of serving the report. You know I cannot remember the exact conversation in that regard, but that was... (Intervenes)

10 MR JULY: This report that you are talking about?

MR SESOKO: That was the only time, but never... (Intervenes)

MR JULY: The 22nd?

MR SESOKO: He never gave me that report.

MR JULY: Yes.

MR SESOKO: Because if it had come through my office, it would have had my signature.

MR JULY: Okay.

MR SESOKO: You, from what I am seeing from the (inaudible) is that the report has Mr Khuba's signature, so if it went through me it would
20 have had his signature and then my signature confirming what is in that report.

MR JULY: Okay.

MR SESOKO: So that report I did not see. The report that I saw is the report that Mr Khuba came with when McBride was here now in IPID, that he came with to my office that he has been working on and

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then he then put it on my desktop whilst working on it and then that is when we were engaging with that report... (intervenes)

MR JULY: So, so, so... (Intervenes)

MR SESOKO: And then the issues that were mostly that we dealt with was especially on the analysis of the evidence, because he had already done everything, so I would question that and that to see do we have a strength here or not, you know why do you reason in this way there and not, you know.

MR JULY: Yes.

10 MR SESOKO: Maybe you need to add that there in terms of your analysis and so forth.

MR JULY: Mr Khuba submits a report to NPA.

MR SESOKO: Yes.

MR JULY: All right, he asks you questions before he submits the report but he does not give it to you?

MR SESOKO: No.

MR JULY: You do not see this report?

MR SESOKO: No, I remember I was not supposed to get involved.

MR JULY: Yes. He asked whatever questions that he was asking
20 about that report. It goes to NPA, then later on McBride comes in.

MR SESOKO: Uhm.

MR JULY: McBride asked Khuba about this report. Khuba then said okay, let us go through the report. Khuba says it is you, it is him, it is McBride.

MR SESOKO: Uhm.

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MR JULY: You go through the report.

MR SESOKO: Uhm-uhm.

MR JULY: The issues have been raised, the first issue by McBride was the involvement of Mokhangwe, as to are we not supposed to be independent when we do this investigation?

MR SESOKO: Uhm.

MR JULY: Why the involvement of Mokangwe, Colonel Mokangwe? He then explained that, that from time to time we do use the police which was then confirmed by Mr... (intervenes)

10 MR SESOKO: Angus.

MR JULY: Angus, to say even the Cator Manor while he has police (inaudible) with, he has people from NPA that he has in as well. Then he then says, you went through that report. As you were going through the report, questions were been raised, there was exchange of documents. There is somewhere where he mentioned the e-mail of a document, but what we do not show, we are not sure about which we are still going to talk to Mr Khuba, is what he e-mailed to you, the report that he signed or is the report that sought to be discussed, because... (intervenes)

20 MR SESOKO: I never received a signed report.

MR JULY: Yes.

MR SESOKO: From Mr Khuba.

MR JULY: Yes.

MR SESOKO: The only signed report... (intervenes)

MR JULY: No, no, no... (intervenes)

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MR SESOKO: That I received from Mr Khuba or the only report that was signed by Mr Khuba that I know, is the report that I also co-signed.

MR JULY: No, no, that is what I am referring to.

MR SESOKO: Uhm-uhm.

MR JULY: That is what I am referring to. I am referring to that report.

MR SESOKO: Yes.

MR JULY: You remember the report you are discussing, Khuba has submitted the report. That you say, was never given to you but the content of what was discussed, even if the copy that you had was not the signed one, it had already been submitted. We can show you that is the same report, because it is the report which was submitted on 22 January. When you look at the front, how it starts and how the content is, it is everything except that information which has been taken away.

It is the same report, it is not a new report. So if Khuba came before you with a report which was not signed, I am telling you now that there was a report there that was submitted when he was asking you about that information that he was asking you, asking for advice, he then submitted that report. So now it is that report that he brings before you, so now what I am saying is this, he then says he signed the report, the one that you signed as well. That is what I am talking about, the one that has been signed by McBride as well.

MR SESOKO: Uhm.

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MR JULY: He says he, there was an exchange of e-mails, he e-mailed it to you and then he worked it on your computer when he was here, because you are slow when it comes to computer, McBride, well McBride was not working on it, he was writing notes, McBride. Now what we did not ask to Khuba because he said he signed the last page.

Now we want to know the report that was e-mail to Khuba, by Khuba to you, is it the same report that you guys signed, you ended up signing, or is it the report that he submitted to NPA?

10 MR SESOKO: I do not know. Khuba e-mailed a report to me.

MR JULY: Yes.

MR SESOKO: And then that is the report that we worked on in terms of analysis and all that, all the changes that were done on that report that is not, is different from what is e-mailed. So that is the one that we worked on, that is the report... (intervenes)

MR JULY: Do you still have a copy of the e-mailed report, the one that he e-mailed?

MR SESOKO: I am not sure about it, I probably will have to check my e-mails.

20 MR JULY: Okay, okay.

MR SESOKO: I am not sure, but that is the report because remember when he forwarded it to me, he was forwarding it to me in order to work on it.

MR JULY: To work on it.

MR SESOKO: On my desktop.

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MR JULY: Let me then... I made a (inaudible) to you before I left you.

MR SESOKO: Ja.

MR JULY: We were off record.

MR SESOKO: Uhm-uhm.

MR JULY: I said to you we put the two reports which we are going to do the same thing with you before Mr Khuba and Mr Khuba was surprised and he said I am really concerned, it is a pity that we do not have the transcript now.

10 MR SESOKO: Uhm-uhm.

MR JULY: We would give you that transcript and listened to what Mr Khuba says. He said, I am surprised and I am very much concerned if there is information which has been deleted in the report. Yes, we worked on the report but the deletion of information from the statements that were made by certain witnesses, I have a problem with that. He even went further and say, what did he say about the...?

I will remember what he said about that information, he said as far as he is concerned, what changed was the analysis, not the statement. His analysis based on the advice that he was then receiving and the questions that were asked by Mr McBride and your input as a legal person, then he had to change his analysis. The changing of the statements of the individuals, it is a problem for him. Now we need to take you through the report, to the next copy.

MS BADAL: (Inaudible) next copy.

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MR JULY: The next copy, Ja.

MS BADAL: No, the...?

MR JULY: No; no, that is not one.

MS BADAL: The reports.

MR TOM: Oh, son,

MR BUTHELEZI: Ja, we do.

MR JULY: This one is missing page 1...

MS BADAL: Page 1 is missing from the actual report.

MR BUTHELEZI: Ja.

10 MR JULY: From the actual report?

MS BADAL: Ja.

MR BUTHELEZI: Yes.

MR JULY: (Inaudible).

MS BADAL: Ja.

MR JULY: We will (inaudible) that page first.

MS BADAL: I think page 9 is the one you are searching for.

20 MR JULY: Ja. We asked Mr Khuba, his response as I have said, we took him through the report but when we took Mr Khuba through the report, we took him through the, we started on page 23 which is part of 5.2, but now we will start on page 9. This we did not put to Mr Khuba, because we discovered this later after we spoke to him. Yesterday we started with Mr Khuba.

MR SESOKO: Uhm-uhm.

MR JULY: On page 23 which is 22, 21, Ja page 21 and 21 is the report which was signed by Mr Khuba alone, where it says page 21,

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the one which was signed by him alone.

MR SESOKO: You say I must open page 21?

MR JULY: Yes, page 21.

MR SESOKO: Okay.

MR JULY: Then if you open page 20 of the second report, we started there with Mr Khuba. We said if you look at that document Mr Khuba, in particular 5.2 now where it says the report bears reference 140201 and was signed by Colonel Leonie Verster, paragraph (a)(1) of the report states that:

10 "On 5 November 2011, General Dramat held a meeting with the Zimbabwean police at DPCI offices about the nationals who shot and killed one of their senior officers."

We said, do you know that that information has been removed on paragraph 5.2? He says no, I do not know and I do not know why it was removed because in this analysis at the end, there is a talk about the meeting, but there is a lack of information about what exactly was discussed in that meeting, but the meeting in the content in this, is being removed and he indicated he does not know who removed that information. Do you have any idea as to who removed the information?

20

MR SESOKO: I do not know, because the report that I worked on with Mr Khuba, is this report and this report... (intervenes)

MR JULY: The one which is dated...?

MR SESOKO: Yes, this is the one that I, bears my signature.

Handwritten initials and signatures: SJ, LS, and a signature.

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MR JULY: The one that bears your signature?

MR SESOKO: Yes.

MR JULY: But let me demonstrate to you, that you were working on a report on the report. There was a report that was the basis of this report, because from this page that we are referring to up to page 9, is the same thing.

MR SESOKO: Uhm-uhm.

MR JULY: Is the same report, there is nothing that says this report, we will start it from scratch, the same wording, the same paragraphs,
10 It is the same report, this one.

MR SESOKO: Uhm.

MR JULY: This report, starting from paragraph 1, background. Even the layout is the same thing, the layout. So what was been corrected? You need to accept that Mr Sesoko, that what was been corrected, even if you did not have signed off this original report, it is this report that you were working on.

MR SESOKO: I do not dispute if it could have been that report. All what I am saying is that Mr Khuba, he is the one who sent the report to my computer so that I can work on it, he is the one who was doing
20 the typing on the report. I never engaged in any typing or anything. He was sitting on my desk doing all the changes as we were talking and then after we were satisfied that the report is what it should be, then he printed out the report and then he signed the report, I also signed the report and then we put the report into the route sheet that went to the office of the AD.

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MR JULY: We will when, if we have time, give you that part where Mr Khuba says I only signed after the report was finalised, I only signed the last page. If there is anything as if he knew, well he knew because he said there was a report on the papers that this report has been changed and I was saying these people are talking nonsense, these newspaper people are talking nonsense, the report has not been changed, it is the same report, then he is, when we took him through that he said it is not me, I did not delete any information except to deal with the analysis.

10 And then he said if there is any change in the report, I do not know anything about it. Now this is a person who is the author and he is talking about any change in the report, meaning this one.

MR SESOKO: Uhm-uhm.

MR JULY: This one, not this one that is pertaining to the new report. He is talking about this one. This is the report that he was working on it.

MR SESOKO: Uhm.

MR JULY: And that is why he is talking about he is surprised and concerned about the deletion of the information in the existing report.

20 That is what he said. So if then you do not know, Mr Khuba does not know. We already said Mr McBride was not with you guys when this report was finalised, then we do not know who deleted the information... (intervenes)

MR SESOKO: Look... (intervenes)

MR JULY: From this report.

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MR SESOKO: My recollection of how this transpired, after we had worked on this report with Mr Khuba, he signed the report.

MR JULY: Yes.

MR SESOKO: And I signed the report, and then after I signed the report and then it was now after it had gone back and forth between... (intervenes)

MR JULY: Yes, the three of you.

MR SESOKO: The three of us, and then when all these mistakes that we identified were rectified and then he signed, the same day that he signed, that is the same day that I also signed the report. And then I then put it on our route sheet to go to the ED for his final approval.

MR JULY: Ja.

MR SESOKO: So that is the process that...

MR JULY: Ja.

MR SESOKO: I followed.

MR JULY: Okay, so maybe for completeness sake then, because we cannot take the matter further as to who removed what if you say you do not know, but Mr Khuba was very much concerned and surprised about the removal of the report, of the information. Paragraph, page 20 9 of that document, if you go back to the one which was submitted to NPA on 22 January, page 9... (intervenes)

MR SESOKO: Which one, this one?

MR JULY: The 22nd.

MS BADAL: 22nd.

MR JULY: -22 January, this one here. If you look at page 9 and you

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open page 9, it actually starts on page 8 of... Ja, if you look at page 9, page 9 which is the third paragraph... (Intervenes)

MR SESOKO: Page 9 of this report?

MR JULY: Yes, of the 22nd.

MR SESOKO: Okay, this one?

MR JULY: Yes.

MR SESOKO: Uhm-uhm?

MR JULY: It reads, I am reading where it says he will, it starts with he will, second paragraph, third sorry, there is one who starts with
10 before, you leave that... (Intervenes)

MR SESOKO: He will state?

MR JULY: He will state that.

MR SESOKO: He told Superintendent (Inaudible), ja.

MR JULY:

"He told Superintendent (Inaudible) that he has to verify with his seniors about the arrangements. He was given the number of Anwa Dramat by Superintendent (Inaudible). He called Colonel Ratselane to verify the information, but he requested that he should call
20 (Inaudible) Makusha who was provincial head, protection..."

(Inaudible)?

MALE SPEAKER: No, he was requesting (Inaudible).

MR JULY:

"He then called him on his cellphone and explained to

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him that there are police from Zimbabwe who (inaudible) the meeting with General Dramat. Brigadier Mukushu 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 cellphone and he responded by saying that he is aware of the Zimbabwean police and he must let them come."

MR SESOKO: Uhm.

10 MR JULY: That is what (Inaudible) said. Now if you look at this report on page 9 of this report, where it starts, the second paragraph which starts with for the period of two weeks, can you see that?

MR SESOKO: For the period of two? Okay, yes.

MR JULY: Of two yes. That paragraph is supposed to be before that, but it is not there. What I have just read to you... (Intervenes)

MR SESOKO: Ja?

MR JULY: Was removed, part of it was removed.

MR SESOKO: Uhm-uhm?

20 MR JULY: Right, and then I am trying to demonstrate to you what Mr Khuba was concerned about, that the information in this report was removed while in fact according to him, no information was supposed or ought to have been removed.

MR SESOKO: Uhm.

MR JULY: Then you have the last part on page 9.

MR SESOKO: Uhm-uhm.

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MR JULY: Which starts, while he was on front passenger which is the 22 January one, yes:

"While he was on the front passenger, (Inaudible) heading to the border gate, he told him that there is Zimbabwean police whom he assisted some years back. We are looking for suspects in connection with the death of Chief of Police..."

MR SESOKO: Mzibane.

MR JULY: Chief Mzibane.

10 "And now they have found them. He told them that he was sent by his big bosses to assist in deporting them because the country does not have an (Inaudible) agreement with Zimbabwe. He said that since the Zimbabwean police entered the country, they had been busy to trace the suspect."

MR SESOKO: Uhm-uhm.

MR JULY: That information is supposed to be where that paragraph on page 9 ends with the backseat. Can you see that?

MR SESOKO: Uhm-uhm.

20 MR JULY: It is supposed to come in immediately after that.

MR SESOKO: Ja.

MR JULY: But what comes after that instead, is the while which is in the next page, which is page 10 of this report.

MR SESOKO: Uhm.

MR JULY: Yes. Ja, so there is a lot of this, too much information

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has been sending to Mosing, and there were progress reports that were sent to the then acting ED and I think also to the Minister, you see.

That is the understanding that I have from Mr Khuba and so when the issue of the new evidence that he had come up, he then said, Moegsien is aware of that fact, then there is this new evidence.

MR JULY: Ja. Do you... (intervenes)

MR SESOKO: And when, that is when he said that he when he requested the dockets from Mosing for this information and Mosing
10 has told him that the dockets are now with another advocate, you see.

MR JULY: In your experience in the Interim report, but now it is clear to me what you are referring as interim report. You did not know about this report?

MR SESOKO: I have never seen it, I have seen it for the first time in the media.

MR JULY: Ja, so ja, I do not think my question then will clarify it, because if at least if you knew, I told you you would say this report was an interim report, but what was interim according to you, there were information, the updates that he was given to Mosing, but there
20 was a point where he said he wanted to submit a report and then he came to you. You do not know whether that report was submitted or not?

MR SESOKO: Uhm.

MR JULY: Okay. Mr Sesoko, I do not think we can take any further.

MR SESOKO: Uhm.

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MR JULY: Do you agree?

MR TOM: I agree, Mr July.

MR SESOKO: So I, like I said, I can only say what I know and remember, this was not the first investigation we did on... I also appointed him on investigation regarding Sibiya that came from parliament, because there were people who were concerned that there was nothing happening with that investigation and reported it to parliament. And I appointed a team from North West to investigate to that.

10 MR JULY: Yes, yes, he did mention that.

MR SESOKO: And then Sibiya complained that those, that team was biased. I removed that team and appointed Khuba. At that time, the provincial office in Gauteng, the then provincial head Ms Siphoka Semalehle, had done a report to the prosecuting authority where he exonerated, she exonerated Sibiya of any wrongdoing.

Mr Khuba who did the investigation came with new information, and then he did a report, he did a report that says Sibiya must be charged for those assaults and that is the second report that went to the prosecuting authority based on that evidence, you know.

20 So for me as long as there is new evidence, we cannot hide that evidence from the prosecuting authority.

MR JULY: Ja. No, definitely, definitely.

MR SESOKO: You know,

MR JULY: And whenever there is new evidence, there will always be new evidence but it will never change the status of the report.

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MR SESOKO: Yes, and also you know... (Intervenes)

MR JULY: All that happens, is that there is new evidence which you may have to see how do you deal with it.

MR SESOKO: Exactly.

MR JULY: And then you will update the prosecution... (intervenes)

MR SESOKO: Exactly.

MR JULY: Team to say, listen it does not make... (Intervenes)

MR SESOKO: Based on what we have.

MR JULY: That report what you submitted, less of a report.

10 MR SESOKO: Ja.

MR JULY: But when you were saying you were working with this report and this according to you they ignored, is because you were not aware of this report...

MR SESOKO: That one I saw for the first time in the media, that signed report.

MR JULY: Okay.

MR SESOKO: The only report that I knew... (Intervenes)

MR JULY: Is this one.

MR SESOKO: Was signed by Mr Khuba and myself and...
20 (Intervenes)

MR JULY: Mr Khuba was not honest with you, because...
(Intervenes)

MR SESOKO: That is.

MR JULY: I do not know why Mr Khuba does not tell you; go to the meeting and see, you will see the report that we are working on now

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or that report that I told you about, that I wanted to give to NPA or the Minister, I have done that. Now he should have told you, he should have taken you into his confidence and say I have submitted a report. At least you would have been working on this report on the understanding that this report, there is a report which has been submitted.

MR SESOKO: Uhm.

MR JULY: Now you will believe that there was no report and the wording of this report is the same.

10 MR SESOKO: Ja, look... (intervenes)

MR JULY: Except for places where information is removed.

MR SESOKO: Yes. The report that, there was an unsigned report that was also in the media.

MR JULY: That is the one that he is talking about, we can...
(Intervenes)

MR SESOKO: Yes, I am not sure if you are aware of that.

MR JULY: No, no, no, no, I am not aware of that.

MR SESOKO: There is an unsigned report by Mr Khuba that it was in the media already in 2013.

20 MR JULY: Okay.

MR SESOKO: You see. That report I am aware of because he did indicate that in his discussions with Moegsten, that is where they were going based on the evidence that was available at the time and that report in terms of recommendations, mirrors this one.

MR JULY: But that is why then I am saying Mr Khuba even makes

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things worse, dishonesty, he was questioned about because at that point he should have said to you, you see that report which was leaked, which was unsigned? I have since signed the report. It is different, this is what I have signed on is the same.

MR SESOKO: Uhm.

MR JULY: You cannot have a situation where I am in interaction with you, (inaudible) lead and you appoint the report. The next thing when I sign the report, I do not tell you, I go and submit a report and then come to you and pretend as if we are starting a new report. It cannot
10 be. There, there is no honesty.

MR SESOKO: Ja. Well you must also understand from our point of view... (Intervenes)

MR JULY: Yes.

MR SESOKO: Was that and from his briefing was that all the reports that have been going to, that was shared between him and Mosing and the ED, were all progress reports... (Intervenes)

MR JULY: No, we talk... (Intervenes)

MR SESOKO: Of (inaudible) criminal reports.

MR JULY: We will talk to Mosing, but whatever reports were there,
20 were progress, were then finalised by this report. Once he puts his signature on this report, if you had reports and the updates to report, then he signed this report, then he made recommendations on this report, this was a final report.

MR SESOKO: Uhm.

MR JULY: But he was not fair in that... (Intervenes)

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MR SESOKO: Look, you see that is why I am saying when, the issue of the report like I was saying in terms of our internal processes, the person who must sign is the investigator and the supervisor, is the approving authority. So in a provincial setup it would be the investigator, the supervisor and the provincial head. If it is a case of national importance, it would be the investigator, it would be the head of investigation national, it would be the executive director.

You see, that is what the final report should contain, all those signatures because every (inaudible) must go through that quality control so everyone is happy that whatever goes to the outside stakeholder is what everyone agrees to.

MR JULY: Okay.

MS BADAL: Mr July, do you mind if I just ask two questions?

MR JULY: Uhm.

MS BADAL: Mr Sesoko, just for my clarity just to understand as well, so you say that you have not seen the first report until you saw it in the media. When you were provided with a report it was the version that you worked on to give in the second report. So just to clarify, the portions that Mr July read to you on page 9 and page 21 that he said was deleted from the first report, that appeared in the first report but not in the second, when you were provided with this report by Mr Khuba, were those portions already removed?

Were those portions that Mr July read out are absent in this report, were they missing already?

MR SESOKO: You know like I said, I would not know because I did

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not see that report.

MS BADAL: But you have seen this report.

MR SESOKO: So this report is what I have signed, I can only confirm what is in this report because that is what I have signed and this is the report that was worked on by Mr Khuba. Everything that is in this report, is what Mr Khuba worked on. I played only in a... (intervenes)

MS BADAL: A supervisory.

MR SESOKO: Advisory and supervisory role.

MS BADAL: So you, oh so in your role as supervisor, would you have
 10 regard to the actual statements that were summarised in this report?
 Did you put those... (intervenes)

MR SESOKO: No, no, unless I query something. Remember that...
 (Intervenes)

MS BADAL: Okay.

MR SESOKO: Remember that the reason we do these reports, is just
 to make it easier for the prosecuting authority. This report does not
 give direction to the prosecuting authority it is simply for them to have
 a quick sense of what is happening in the case so that when they go
 to the actual dockets, then they have a sense. So that is the purpose
 20 of this report, so in terms of summarising the statement and so forth,
 unless when I go through a statement, the summary of that
 statement, I think something is amiss, then I will question the
 investigator and say but what does this mean, or I will say can I see
 the statement?..

MS BADAL: Okay:

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MR SESOKO: If it does not make sense to me, then I will go through the statement to see that it correlates with the summary that is put then.

MR JULY: (Inaudible).

MR SESOKO: So that is the only time that I will do that, but other than that I would mostly go on what is in the report and if the report makes sense to me, then I can okay the report.

MR JULY: Okay. Mr Sesoko, let us not waste your time.

MR SESOKO: Okay.

10 MR JULY: Thanks for coming.

MR SESOKO: Okay, thanks.

[End of recording]

MEETING ADJOURNS

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CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that as far as it is audible, the foregoing is a true and correct transcript of the digitally recorded proceedings in the matter of:

MR M SESOKO

and

WERKSMANS ATTORNEYS

FORUM OF ORIGIN	:	Meeting
TRANSCRIBER	:	M Botha
DATE COMPLETED	:	11 February 2016
NUMBER OF PAGES	:	39

TRANSCRIBER

:

M Botha

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TRANSCRIBER'S NOTE

PARTIES Meeting between M Sesoko & Werkmans Attorneys

CASE NUMBER Not applicable

TRANSCRIBER M Botha

REASON FOR REPORT

No documentation was provided, therefore names of which the spelling could not be confirmed from the Internet were spelt phonetically.

Botha

M BOTHA
TRANSCRIBER

11 February 2016



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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG PROVINCIAL DIVISION, PRETORIA**

CASE NO:

In the matter between:

**THE INDEPENDENT POLICE INVESTIGATIVE
DIRECTORATE**

First Applicant

ROBERT MCBRIDE

Second Applicant

and

MINISTER OF POLICE

First Respondent

MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION

Second Respondent

FOUNDING AFFIDAVIT

I, the undersigned

ROBERT MCBRIDE

do hereby make oath and state as follows:

- I am an adult male and the Executive Director of the Independent Police Investigative Directorate ("IPID" or "the Directorate"), situated at 114 Madiba Street, Pretoria.**

COMMISSION OF INQUIRY
INTO STATES CAPTURE

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- 2 I am the Second Applicant in this matter and am duly authorised to represent the First Applicant in my official capacity as its Executive Director.
- 3 The facts set out in this affidavit are within my personal knowledge unless otherwise stated or apparent from the context. Where I make legal submissions, I do so on the advice of my legal representatives.

THE NATURE OF THIS APPLICATION AND URGENCY

- 4 This is a two-part application arising from my threatened suspension as Executive Director of IPID by the Minister of Police ("the Minister"). For the reasons set out herein, this suspension would be unlawful and unconstitutional, and would fundamentally undermine the independence of IPID.

Part A and urgency

- 5 In Part A, the applicants seek urgent interim relief, interdicting the First Respondent (the Minister of Police) from suspending me from the position of Executive Director of the First Applicant, IPID, pending the outcome of Part B of this application.
- 6 Part A is brought on an urgent basis. I only received notice of the Minister's intention to place me on precautionary suspension on Wednesday, 11 March 2015. I was given until the close of business on

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Thursday, 12 March 2015 to respond. As a matter of caution I have made representations to the Minister in this regard. However, in view of the facts that follow, it is clear that the Minister has prejudged the issue and that there is no realistic possibility of my representations being successful before him. It is thus inevitable that, absent the interdict sought in these proceedings the Minister will imminently take a decision to suspend me.

7 This application has accordingly been set down for 10:00 am on Friday 13 March 2015. I appreciate that this affords the respondents very limited time to answer this application. Should the respondents require further time to answer this application, I am prepared to accord them such further time. However, this is conditional on the Minister undertaking not to suspend me pending the outcome of Part A of this application.

8 The urgent prevention of any further steps being taken to suspend me unlawfully is necessary not only to protect my rights, but also to preserve the independence and effective functioning of IPID and to prevent further unlawful Ministerial interference without delay. IPID is an indispensable, constitutionally required investigative body, which is mandated to investigate police misconduct and offences. Its investigations extend to the highest offices in South Africa. It must be given substantial protections to carry out its mandate without political interference.

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9 The Executive Director is at the very heart of IPID's ability to function effectively to fulfil its constitutional mandate, and is critical to ensuring the proper conduct of investigations by IPID. Under section 7 of the IPID Act (read together with sections 22(1), 24(1), 28(1)(g) and (h)), the Executive Director manages and directs IPID; controls the Directorate's funds and expenditure; appoints the staff; controls and directs the investigation and management of cases; is responsible for referring criminal matters to the National Prosecuting Authority or other responsible authority; and provides strategic leadership to the Directorate.

10 Should it be effected, my suspension as the Executive Director of IPID would likely have immediate deleterious consequences for the effective functioning of IPID. This is especially so in the current political climate and given the extent of Ministerial interference in the independent institutions in the criminal justice sector. The suspension of the Executive Director would, in all likelihood, be followed by the Minister's appointment of a new acting Executive Director, who could fundamentally undermine the effective functioning of the institution and impede high profile investigations. This is demonstrated by the events that have followed the suspension of the Head of the Directorate for Priority Crime Investigation (the DPCI or the Hawks), Lieutenant-General Dramat and the appointment of Major-General Ntsemeza as the Acting National Head of the DPCI. These events are detailed in the founding affidavit filed by the Helen Suzman Foundation in the

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Constitutional Court on 25 January 2015, which is attached as annexure RM5 to this application. I refer in particular to paragraphs to 35 to 49 thereof.

Part B

11 In Part B, the applicants seek the review and setting aside of the Minister's decision to initiate a process to suspend me as Executive Director of IPID. The applicants challenge this decision as unlawful and unconstitutional on the grounds that –

11.1 The Minister does not have the power to suspend the Executive Director of IPID, as this would contravene the independence of IPID enshrined under section 206(6) of the Constitution. Alternatively, even if the Minister has the power to suspend the Executive Director, the Minister has exercised this power unlawfully by creating a reasonable perception that IPID's independence is under threat;

11.2 The Minister's decision is vitiated by ulterior purpose or improper motive and bad faith; and

11.3 The Minister's decision is irrational and unreasonable.

12 In Part B, the applicants also seek an order declaring the following provisions to be unconstitutional and unlawful to the extent that they purport to authorise the Minister to suspend or remove the Executive Director of IPID, in contravention of s 206(6) of the Constitution:

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12.1 section 6(6) of the Independent Police Investigative Directorate Act, No. 1 of 2011 ("the IPID Act");

12.2 section 17(1) and 17(2) of the Public Service Act, 1994; and

12.3 paragraph 2.7(2) of chapter 7 and paragraph 18 of chapter 8 of the Senior Management Service Handbook, 2003.

13 The review under Part B is brought on the basis of the principle of legality and the Promotion of Administrative Justice Act 3 of 2000 ("PAJA").

14 This affidavit is filed in support of the relief sought in Part A and Part B of the notice of motion. However, in view of the extreme urgency within which this application has been drafted and launched, I reserve the right to file supplementary founding affidavits should the need arise.

THE PARTIES

15 The First Applicant is THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE (IPID). IPID is an independent institution, required and protected under s 206(6) of the Constitution. It is constitutionally mandated to investigate any alleged misconduct of, or offence committed by, a member of the South African National Police Services ("the SAPS"). IPID is established under s 3 of the Independent Police

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Investigative Directorate Act, No. 1 of 2011, which came into operation on 1 April 2012.¹

16 I am the Second Applicant and the **EXECUTIVE DIRECTOR OF IPID**, appointed in terms of s 6 of the IPID Act. I have held this position since March 2014. The responsibilities of the Executive Director of IPID are set out *inter alia* in s 7 of the IPID Act. These entail the strategic and financial management of the Directorate, appointments and oversight of staff, and the control and direction of investigations conducted by the Directorate's investigators.

17 The First Respondent is the **MINISTER OF POLICE**, cited in his official capacity. The First Respondent's office is located at Wachthuis, Pretoria, and these papers will be served at the Minister's office and on the State Attorney at SALU Building, 316 Thabo Sehume Street, Pretoria. The First Respondent is the official whose intended actions and powers in respect of IPID are the subject of this application.

18 The Second Respondent is the **MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION**, cited in his official capacity as the member of the National Executive responsible for the administration of the Public Service Act, 1994 and the delegated laws promulgated thereunder, including the Senior Management Service Handbook, 2003 ("SMS Handbook"). No relief is sought against the Second Respondent. The Second Respondent is cited only for such interest as he may have in the

¹ GN 3 in GG 35081 of 10 February 2012.

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constitutional challenge to the Public Service Act and the SMS Handbook under Part B of this application. The Second Respondent's office is located at 13th Floor, 120 Plain Street, Cape Town, or 116 Prosa Street, Pretoria, and these papers will be served on the State Attorney at SALU Building, 316 Thabo Sehume Street, Pretoria.

THE FACTUAL BACKGROUND

19 On Wednesday, 11 March 2015, I was informed in a notice that the Minister of Police intended to place me on precautionary suspension. I attach the suspension notice as annexure RM1. The suspension notice did not specify the legal basis for the proposed suspension, but made various allegations of "serious misconduct" on my part as Head of IPID. I address these allegations of misconduct below, all of which are firmly denied.

20 The suspension notice advised me that any written representations as to why I should not be placed on suspension were to reach the Minister's office by no later than close of business on Thursday, 12 March 2015. As a matter of caution, earlier this afternoon, my attorneys delivered written representations to the Minister in reply to the notice. I attach a copy thereof as annexure RM2. However, in view of the facts contained in this affidavit, it is clear that the Minister has prejudged the issue and that there is no realistic possibility of my representations being successful before him. It is thus inevitable that, absent the interdict

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sought in these proceedings the Minister will imminently take a decision to suspend me.

21 Accordingly and given the urgency of the matter, I was advised by my legal representatives to launch the present application.

22 The Minister's allegations of misconduct on my part (detailed in the suspension notice) concern my role as Executive Director of IPID in the referral of the IPID Investigation Report into the illegal rendition of Zimbabwean nationals.

23 The Investigation Report, dated 18 March 2014, was signed off by me on 9 April 2014.

24 The Investigation Report is of a highly political and sensitive nature. It addresses the alleged involvement of the Head of the Directorate for Priority Crime Investigation ("DPCI", otherwise known as "the Hawks"), Lieutenant-General Dramat, as well as Major-General Sibya of the DPCI, in the unlawful rendition.

24.1 The preliminary draft of the report (of 22 January 2014) suggested that Dramat and Sibya were involved in the unlawful rendition, and recommended that they be criminally charged with kidnapping and defeating the ends of justice.

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24.2 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).

24.3 I attach copies of these reports as annexures RM3 and RM4.

25 By now it is a matter of public record that the Minister (together with other senior members of the SAPS and new acting appointees to the DPCI), has zealously pursued the suspension of both Dramat and Sibya from the DPCI since December 2014. Of serious concern is that these actions followed the DPCI becoming seized (under Dramat's direction) with high profile investigations. I attach, in this regard, as annexures RM5 to RM7,

25.1 A founding affidavit (without annexures) filed by the Helen Suzman Foundation ("HSF") in the Constitutional Court on 25 January 2015, which details the steps taken to suspend Dramat at paragraphs 18 to 29 and Sibya at paragraphs 40 to 42;

25.2 The High Court judgment of Prinsloo J of 22 January 2015, which found *inter alia*, that the Minister's suspension of Dramat was unlawful and unconstitutional. The judgment details the facts surrounding Dramat's suspension, and includes a summary (at paragraph 11) of Dramat's written representations in response to the Minister's decision to suspend him (dated 24 December 2014). These representations indicate that Dramat perceives his suspension to be a response to the independent discharge by him

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of his duties to investigate certain high profile cases, and an effort by the Minister to obstruct these investigations; and

25.3 A collection of media articles describing the nature of the DPCI's high-profile investigations, initiated under Dramat's leadership.

26 The Minister's accusations that I have acted improperly – *inter alia* by issuing the Investigative Report that ultimately cleared Dramat and Sibiya of involvement in the unlawful rendition; by informing Dramat and Sibiya's legal representatives accordingly; and by seeking to explain the findings in the Investigative Report to the Parliamentary Portfolio Committee on Police – must be viewed in the context of the Minister's evident agenda to have Dramat and Sibiya removed from the DPCI.

27 The Minister's intention to suspend me is a clear stratagem to undermine or suppress the IPID Investigation Report which does not implicate Dramat and Sibiya, and which undermines the draft and leaked report on which the Minister has relied to justify his suspension of them. This is a blatant abuse of power that fundamentally threatens the independence of IPID.

28 That the Minister is intent on undermining or suppressing the IPID Investigation Report, for no legitimate reason, is further evidenced by:

28.1 The Minister's persistent reliance on the findings and recommendations contained in the preliminary draft of the IPID Investigation Report to publically justify (including before

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Parliament) and pursue his suspension of Dramat as the Head of the DPCI. Notwithstanding having complete knowledge of the existence of the preliminary report; the investigative process which lead to the final report, as well as the contents of the final report, (including its recommendations), the Minister has insisted on placing reliance solely on the preliminary draft of the report. In this regard,

28.1.1 I attach as annexure R18, a copy of a letter sent by the Minister to the Parliamentary Portfolio Committee on Police dated 29 January 2015, and refer to paragraph 5 thereof.

28.1.2 I also refer to what is stated at paragraph 52 below, where I explain why it is certain that, by this stage, the Minister clearly had knowledge of the final IPID investigation report.

28.2 The Minister's initiation of his own investigation (to be conducted by Werksmans Attorneys) into the unlawful rendition of the Zimbabwean nationals. I attach hereto, as annexure R19, a copy of the Appointment Letter and Terms of Reference for the investigation dated 23 February 2015.

29 Against this background, I turn to address the grounds upon which the Minister's decision to initiate suspension proceedings against me is sought to be reviewed.

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18.**THE GROUNDS OF REVIEW**

30 The Minister's decision to initiate a process to suspend me as Executive Director of IPID is unlawful and unconstitutional on three grounds:

30.1 First, the Minister does not have any lawful power to suspend the Executive Director of IPID – i.e., a power to suspend that does not contravene the independence of IPID enshrined under section 206(6) of the Constitution. Alternatively, even if the Minister has the power to suspend the Executive Director, the Minister has exercised this power unlawfully by creating a reasonable perception that IPID's independence is under threat.

30.2 Second, the Minister's decision is vitiated by an ulterior purpose or improper motive; and

30.3 Third, the Minister's decision is irrational and unreasonable.

31 I address each in turn.

The Minister has no power to suspend the Head of IPID

32 The independence of IPID is expressly required and protected under section 206(6) of the Constitution. This provides:

"(6) On receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police service in the province."

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33 The IPID Act gave effect to the provisions of section 208(6) of the Constitution, by establishing and assigning functions to an Independent Directorate at a national and provincial level. Under the IPID Act –

33.1 IPID is independently financed from money appropriated by Parliament (s 3(3));

33.2 The independence and impartiality of IPID is expressly protected under s 4 of the IPID Act, which provides that:

"4(1) The Directorate functions independently from the South African Police Service.

(2) Each organ of state must assist the Directorate to maintain its impartiality and to perform its functions effectively."

33.3 The objects of the IPID Act, set out in s 2, further emphasise the importance of the independence of the Directorate. Section 2 provides that the objects of the Act are, *inter alia* –

"(b) to ensure independent oversight of the South African Police Service and Municipal Police Services;

...

(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;

...

(g) to enhance accountability and transparency by the South African Police Service and Municipal Police Services in accordance with the principles of the Constitution."

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33.4 There are important safeguards in the manner in which the Executive Director of IPID is appointed under s 6, and in the provision for reporting to Parliament under s 7(12), which are plainly designed to prevent undue political influence in the office of the Executive Director.

34 The Constitutional Court has found that a fundamental aspect of the institutional independence (or "structural and operational autonomy") of an agency is the security of tenure of its members, and especially its National Head. Security of tenure requires protection against termination of employment or suspension at the discretion and behest of the Executive.

35 In *Glenister v President of the Republic of South Africa* 2011 (3) SA 347 (CC) ("*Glenister II*"), Moseneke DCJ and Cameron J (writing for the majority of the Constitutional Court) found that, under the SAPS Act, the DPCI lacked the independence required of an independent anti-corruption unit. The majority noted (at para 213) that the lack of independence of the DPCI "was reflected [...] most signally in the absence of secure tenure protecting the employment of the members of the entity and in the provisions for direct political oversight of the entity's functioning."

36 The majority explained that what is required is "insulation from a degree of management by political actors that threatens imminently to stifle the

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Independent functioning and operations of the unit" (at para 216). The importance of the security of tenure in ensuring the independent functioning of the unit was underscored, as the majority noted that –

"... the lack of specially entrenched employment security is not calculated to instill confidence in the members of the DPCI that they can carry out their investigations vigorously and fearlessly. In our view, adequate independence requires special measures entrenching their employment security to enable them to carry out their duties vigorously" (at para 222).

37 In the context of IPID, it is especially important that the Minister of Police does not have a broad power to suspend the Executive Director. Given that IPID's function is to investigate complaints of misconduct by members of the SAPS and to maintain effective oversight over the SAPS, it is essential that IPID remains strictly independent of the SAPS. This must include the Minister of Police, who is politically responsible for the SAPS, and whose executive and political interests are thus bound to the fate of the SAPS.

38 In *Helen Suzman Foundation v President of the RSA; Glenister v President of the RSA* 2015 (2) SA 1 (CC), the Constitutional Court declared that the power to suspend and remove the National Head of the DPCI from office, vested exclusively in the Minister in terms of section 17DA(1) and (2), must be done away with (see paragraph 110). The Constitutional Court held that an unrestrained power to suspend, without objective and verifiable criteria, undermines the requirement of independence and is not constitutionally permissible (see paragraph 85).

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- 39 The Constitutional Court's findings in *Helen Suzman Foundation* follows its approach in *Van Rooyen v The State* 2002 (5) SA 246 (CC), where the Court considered the requirements for the lawful suspension of magistrates. The Court found that the legislative scheme for the suspension of magistrates pending investigation sufficiently guarded against discretionary or arbitrary suspension by the executive, and was constitutional. In reaching this conclusion, the Court emphasised the following aspects of the scheme: (i) the decision to investigate allegations was to be taken by the Magistrates Commission, which enjoys a degree of institutional independence from the executive; and (ii) that "the Commission would have to have reliable evidence before it to warrant such action and it would have to conduct its affairs in a manner consistent with natural justice" (paragraphs 170 to 175).
- 40 The Minister has not indicated the source of the power upon which he purports to rely in giving me notice of the proposed suspension. However, I am advised and aver that there is currently no law which empowers the Minister to suspend the Executive Director of IPID while meeting the requirements of a constitutionally acceptable suspension power, as prescribed by the Constitutional Court in *Glenister II*, *Helen Suzman Foundation* and *Van Rooyen*.
- 41 In the alternative, even if the Minister has a lawful suspension power, the Minister's decision to suspend me, viewed in the context of events preceding this decision, would lead a reasonably informed, reasonable

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member of the public to conclude that IPID's independence is under threat.

42 In *Glenister II*, the Constitutional Court confirmed that the question whether an institution is sufficiently independent must also consider the public's confidence in the independence of the institution. It stated at para 207 that:

"This Court has indicated that—the appearance or perception of independence plays an important role in evaluating whether independence in fact exists. This was said in connection with the appointment procedures and security of tenure of magistrates. By applying this criterion we do not mean to impose on Parliament the obligation to create an agency with a measure of independence appropriate to the judiciary. We say merely that public confidence in mechanisms that are designed to secure independence is indispensable. Whether a reasonably informed and reasonable member of the public will have confidence in an entity's autonomy-protecting features is important to determining whether it has the requisite degree of independence. Hence, if Parliament fails to create an institution that appears from the reasonable standpoint of the public to be independent, it has failed to meet one of the objective benchmarks for independence. This is because public confidence that an institution is independent is a component of, or is constitutive of, its independence."

43 It follows, that even if the Minister's suspension power is lawful in the abstract, the manner in which the Minister exercises this power will be unlawful where it gives rise to a reasonable apprehension of an attempt to undermine the independence of IPID. The events preceding the Minister's decision to pursue my suspension would certainly create this reasonable perception of undue political interference.

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44 For these reasons, the Minister's initiation of suspension proceedings against me is unconstitutional and unlawful. It is reviewable under the principle of legality and under s 6(2)(f)(i) and 6(2)(l) of PAJA.

The Minister has acted for an ulterior purpose or improper motive and in bad faith

45 As I have explained, the Minister's intention to suspend me is calculated to undermine or suppress the IPID Investigation Report that vindicates Dramat and Sibiya, and upon which the Minister has relied to justify his suspension of them.

46 The Minister's decision is not motivated by any legitimate reason, nor by the reasons given in the suspension notice. Rather, the Minister's decision is motivated by his concern to undermine and suppress the IPID Investigation Report for illegitimate political reasons and in bad faith.

47 The conduct of the Minister is a blatant abuse of power, which is reviewable under the principle of legality and s 6(2)(e) of PAJA.

The Minister's decision is irrational and unreasonable

48 The irrationality and unreasonableness of the Minister's decision is evident from the Minister's spurious allegations of misconduct on my

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part, which were detailed as justifications in the suspension notice of 10 March 2015.

49 I deal with each allegation in turn, and explain why not a single one of them provides a rational basis for the decision.

50 The first allegation (in paragraph 5 of the Suspension Notice) is that I breached my statutory responsibility to act with independence and impartiality by informing Dramat and Sibya, through their legal representatives, in writing, that they had been cleared by the IPID investigation into the illegal rendition of Zimbabwean Nationals. This allegation is devoid of merit.

50.1 IPID's written communications with the legal representatives for Dramat and Sibya were made in response to requests for information under the Promotion of Access to Information Act, Act 2 of 2000, ("PAIA"), which were received by IPID on behalf of Dramat and Sibya, respectively. I attach copies of the PAIA requests, as well as IPID's communications with the respective legal representatives, in respect thereof, marked Annexures RM10.1 to RM10.6.

50.2 With regard to the communication with Sibya's legal representative, IPID's letter dated 9 January 2015 (Annexure RM10.3), which was dispatched at the direction of the Information Officer and myself, responds to Sibya's PAIA request by denying access to IPID's report on the basis that it could compromise the

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ongoing investigations and, furthermore confirms that *"the IPID did not recommend for the suspension neither did the IPID recommend for the prosecution of Major General Sibya In its report to the NPA, based on the information and the evidence gathered during the investigation conducted by the IPID"*. The content of this communication is entirely consistent with, *inter alia*, my statutory responsibility to act with independence and impartially. The response is entirely reasonable and factually correct.

50.3 With regards to Dramat, I confirm that IPID has not complied with Dramat's PAIA request in respect of access to the IPID report and recommendations in respect of Diepsloot CAS390/7/2012. In addition to IPID's communication in respect of Dramat's PAIA request, I had also agreed to meet with his legal representative (on 4 January 2015). At the meeting I confirmed that IPID had submitted its report and recommendations to the National Director of Public Prosecutions ("NDPP") and that a decision was pending, that the NDPP had not made a decision on the matter, and that Dramat was not implicated in any offence by IPID's findings or recommendations.

50.4 My communication and interaction with Dramat's legal representatives are entirely in keeping with my statutory responsibility to act with independence and impartially. It was reasonable of me to provide the aforesaid information to Dramat's

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legal representatives. The information provided is factually correct.

51 The Minister's second allegation (at paragraph 6 of the Suspension Notice) is that I acted improperly when I provided the aforesaid information to the legal representatives for Dramat and Sibiya, because I *"knew very well that IPID did not clear Lieutenant General Dramat and Major General Sibiya because [I] had in [my] possession the original report by IPID dated 22 January 2014, which recommended that Lieutenant General Dramat and Major General Sibiya be criminal charged with kidnapping and defending the ends of justice"*. This allegation is completely disingenuous and is revealing of the concerns expressed above in respect of the Minister's motives and bad faith.

51.1 The IPID Investigation Report of 18 March 2014 was signed by myself, Mr Mathews Sesoko (Chief Director: Investigation & Information Management) ("Mr Sesoko") and Mr Innocent Khuba (Provincial Head: ICD Limpopo) ("Mr Khuba") upon conclusion of IPID's investigation. The findings and recommendations therein are based on a thorough scrutiny of all the available evidence.

51.2 I want to make it abundantly clear that the final IPID 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.

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51.3 The preliminary draft of the IPID Investigation Report of 22 January 2014 – disingenuously referred to by the Minister as the “Original Report” – contained and was based only on the evidence and findings available to Mr Khuba at the time. The preliminary draft of the Investigation Report was exactly that: a preliminary and draft report prepared by Mr Khuba based on the evidence available to him at the time.

51.4 IPID did not conclude its investigation after the preparation of the preliminary report, but persisted in collecting and verifying evidence. It is not unusual for preliminary findings and recommendations arising from an investigation to develop and change, as and when information becomes available, or is either verified or discredited. This is the very nature of an investigation process.

51.5 The preliminary draft of the IPID Investigation Report was also still subject to consideration and review by Sesoko as well as myself. Notably, the preliminary report did not have regard to warning statements subsequently obtained from Dramat and Sibya, or, to evidence which emerged after the date of the Preliminary Report.

51.6 The IPID Investigation was conducted in co-operation with Advocate Anthony Mosing and Advocate Billy Maelatsi, 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

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involved in the investigation throughout, and were provided with regular preliminary reports by the Investigating Officer, Mr Khuba. Interaction with the NDPP in IPID investigations is not unusual. Even after conclusion of IPID's investigation, the NDPP may request IPID to extend its investigation in relation to certain aspects, or, to investigate new aspects which may have arisen. As a result of such interaction, the NDPP had access to the preliminary report, and was intimately aware of the further investigations that gave rise to IPID's final report.

52 The third allegation (at paragraph 7 of the notice) is that I "failed to disclose to me [the Minister] that there were 2 IPID reports, the conclusions of which were contradicting each other". This allegation is simply incorrect, and is particularly disconcerting as the Minister was fully aware of the existence of and status of both the preliminary draft and the final draft of the IPID investigation Report.

52.1 In the Information Note, dated 10 March 2014, that I submitted to then Minister of Police, E N Mthethwa, I indicated that we were preparing the final report on the matter and reviewing the totality of the available evidence to ensure that recommendations were appropriate and based on proven facts. I further indicated that the file with the final recommendations would be forwarded to the NDPP shortly. A copy of the information note, dated 10 March 2014, is attached as annexure RM11;

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52.2 On 24 November 2014, the Minister addressed correspondence to me under the heading "*The Zimbabwean Rendition documents*". A copy of the letter is attached marked Annexure RM12, and reads: "*The Executive Director of IPID is hereby requested to provide the Minister of Police with copies of the dockets in colour, exhibits thereto, ~~progress reports~~ and the final report in this matter*" (my emphasis). The Minister was, clearly, aware of the existence of progress reports as well as final reports and requested to be provided with all.

52.3 On 26 November 2014, I complied with the Minister's request by providing him with the case docket that was forwarded to the NDPP, including the final IPID Investigation Report. I was at pains to point out in the information note (attached as RM13) that the investigative conclusions in the report were based on a thorough analysis of all the available evidence, notwithstanding several other "*preliminary reports that were prepared*".

52.4 At no point did I create the impression to the Minister that the findings and recommendations contained in the preliminary draft of the report were the same as the findings and recommendations contained in the final report.

52.5 Notwithstanding having complete knowledge of the existence of the preliminary report; the investigative process which lead to the final report, as well as the contents of the final report, (including its recommendations), the Minister has insisted on placing reliance

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solely on the preliminary draft of the report. The Minister (through his spokesperson) confirmed publicly that the decision to suspend Dramat on 22 December 2014 was done "after receiving a report of the IPID". A copy of a media report, dated 24 December 2014 is annexed marked Annexure RM14.

53 The fourth allegation (paragraph 8 of the notice) is that, in the first week of March 2015, I requested the Parliamentary Portfolio Committee on Police ("the PPCP") to convene an urgent meeting to explain to them the existence of the two IPID reports. It is alleged that this request "was designed to undermine [the Minister's] authority and oversight responsibility" and further that it put the Minister's own commissioned investigation "in jeopardy".

53.1 It is correct that I requested to appear before the PPCP. Copies of the requests and the responses that I have received from the Chairperson, are attached hereto as Annexures RM15.

53.2 It is extraordinary that the Minister would adopt the position that reporting on the activities of IPID to Parliament would undermine his authority and oversight responsibility. I would have expected that, in the circumstances, the Minister would welcome my willingness to account to Parliament and to clear up any misconceptions and concerns that exist in relation to IPID's conduct.

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53.3 The Minister's position in this regard is, however, in keeping with his obstructive, and frankly disingenuous, conduct in this matter.

53.3.1 The Minister has not taken up my invitation, as contained in the Information Note dated 28 November 2014 (annexure RM13) to brief him on IPID's investigation at any stage. I remain willing to provide the Minister with reports on IPID's activities at any time.

53.3.2 The Minister has never requested me to provide an explanation on what he may have perceived as anomalies between IPID's preliminary and final reports.

53.3.3 The Minister has furthermore not requested me to provide any information on any specific aspect relating to the IPID investigation which may have raised concerns with him.

53.4 I emphasise that I have a responsibility under s 7(12) of the IPID Act to report to both the Minister and to Parliament, and I remain available to do so on any aspect relating to my or IPID's activities. Section 7(12) of the IPID Act provides that *"The Executive Director must at any time when requested to do so by the Minister or Parliament, report on the activities of the Directorate to the Minister or Parliament"*.

53.5 The Minister has, by his failure to interact with me, negated my obligation to report to him on IPID's activities. In the

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circumstances it was entirely appropriate and reasonable for me to seek to account to Parliament.

53.6 Further, there is simply no reason to believe that my meeting with Parliament to account on the IPID Investigative Report would in any way jeopardise the Minister's authority or responsibilities, or the conduct of his own investigation into IPID activities.

54 The fifth allegation (paragraph 9 of the notice) is that I interfered with the Minister's commissioned investigation by failing to grant Mr Khuba (Provincial Head of IPID, Limpopo) permission to meet with the investigators from Werkemans Attorneys. While it is true that I refused to grant this permission, I did so because I do not accept that the Minister's commissioned investigation to be lawful.

54.1 The TOR directs the Investigator to ascertain "whether there is prima facie evidence of misconduct and criminal liability by Lieutenant General Drama; Major General Sibya; and any other officers mentioned in the original report". The Minister is essentially directing the Investigator to repeat the IPID investigation which gave rise to its final report. The Werksmans' investigation is therefore undermining the independence and integrity of IPID and, more so, in the light thereof that the NPA has not yet taken a decision on whether or not to prosecute any of the individuals implicated by IPID's final report. This process is ongoing and the Minister is interfering therewith by instructing

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Werksmans to conduct an investigation which falls squarely within the ambit of IPID's responsibilities.

54.2 The Minister's initiation of the Werksmans' investigation creates an undeniable impression that a report by IPID which does not, for whatever reason, contain findings that find favour with the Minister, or supports a decision that the Minister has already taken or intends taking, or which conflicts with a position that the Minister has adopted publicly, may give rise to a rehashing of IPID's investigation now only at the direction of the Minister.

54.3 The Werksmans' investigation is accordingly perceived by myself and IPID's officials as a sanction for no legitimate reason and, without doubt, impacts negatively on our ability to perform IPID's functions independently and without fear.

54.4 I point out that The TOR also includes an investigation into the NPA's processes in relation to consideration of IPID's final report. An investigation of ongoing NPA processes falls outside the Minister's powers and is interfering with an ongoing criminal investigation.

55 Furthermore, the Werksmans' investigation has directly interfered with IPID's operations, notably by the investigator directly engaging IPID's officials in the face of my unequivocal refusal of permission for them to do so. In this regard, I attach hereto a copy of IPID's attorneys letter, dated 12 March 2015, addressed to Werksmans, marked Annexure

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RM17, which records the investigator's blatant disregard for IPID's refusal of the investigator's request for permission to interview Mr Khuba, and IPID's request and confirmation that all future communication in relation to the Minister's investigation be channelled through its attorneys' offices.

56 I reiterate that I remain available to report to the Minister on IPID's activities. I am also willing to engage the Minister to agree on appropriate steps to clarify any questions that the Minister may have. However, as Executive Director of IPID, I cannot stand by idly while the Minister, without my consultation or permission, undermines my leadership of IPID and interferes with its operations and investigations.

57 I have sought legal advice in respect of the Worksmans investigation. This is in keeping with my responsibility to ensure and promote IPID's independence and impartiality from interference in its investigations and underpinned by the IPID Act and the Constitution.

58 The public's trust in the criminal justice system is being seriously undermined by the recent spate of suspensions of the heads of departments within the security cluster. Recently, the Minister of Police unlawfully suspended Dramat, the Head of the DPCL, and who is presently on extended leave. I am steadfast in my resolve to protect IPID's integrity and independence from political interference. It is critical to preserve the public's trust in the organs of state entrusted with their security. In the present context, it is important for IPID to be seen not to

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buckle under political pressure when, in executing its constitutional mandate, it makes findings and recommendations that are not aligned with the political views of the responsible Minister.

59 The Minister's purported justification in the Suspension Notice for appointing Werksmans to conduct the investigation, and overriding my authority as the Executive Director of IPID, is that I would *"interfere with the investigation given the fact that you were already conflicted because the second IPID report dated 24 March 2014 was also co-signed by you."* This is completely without merit. I am responsible for all the activities of IPID and am not conflicted in reporting on any of IPID's activities (whether I was personally involved therein or whether the activities were conducted under my direction).

60 The sixth allegation (paragraph 10 of the notice) is that, during the week of 15 February 2014, I removed a device from Sibya's office on 15 February 2014 and that *"the plausible reason for [this] conduct was to tamper with evidence that might be incriminating to Major General Sibya; [myself] and /or Lieutenant General Drama"*.

61 As is evidenced in the documentation detailed below, these allegations are entirely spurious and unfounded, and are a "red herring". I have not tampered with any evidentiary material.

61.1 I did not visit the provincial offices of the DPCI on 15 February 2014. I was also not the Executive Director of the IPID at that

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strictly in accordance with my statutory powers. I admit that I was aware that both Sibiyá and Mdluli were on suspension, however, this knowledge did not interfere with the execution of my duties as the head of IPID.

61.4 On 13 February 2015, I was called to the Minister's office in Cape Town. The purpose of the meeting was to discuss Data Box 6, and the circumstances in which it came into my possession. After the Minister reprimanded me over what he referred to as "the raid", in front of a third person who, at that stage was unknown to me and who, at my insistence, was subsequently introduced to me as General Ntsemeza. I furnished the Minister with the explanation as set out in the paragraphs above and the Minister accepted same. I also offered to hand over Data Box 6 to General Ntsemeza however, after discussion, it was agreed that it should stay in my possession and that General Ntsemeza and I would liaise with each other in respect thereof if the need arose.

61.5 No basis is provided for the allegation that I tampered with evidence that was potentially incriminating to Sibiyá and / or Dramat and / or me. If there is an implied allegation that my confiscation of data line 6 impacted on IPID's final report, this is naturally dismissed by the fact that the IPID's final report had, at that stage, already been in the possession of the NPA (from the time when it was handed over in April 2014).

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61.6 Furthermore, there is no logic in the Minister's allegations. It is obviously farfetched to suggest Sibya would request me to remove allegedly incriminating evidence. If Sibya wanted to remove the device before or after his suspension, whether personally or with the assistance of his PA, he had all the time in the world to do so. He obviously did not for the reasons set out above.

62 Finally, I point out that no details of any allegations against me in the media (referred to in paragraph 2 of the Suspension Notice) have been provided and would, in any event, not form a legitimate basis for my suspension.

63 The Minister's decision to initiate suspension proceedings against me is accordingly without any rational or lawful basis whatsoever. It is thus reviewable under the principle of legality and under s 6(2)(f)(ii) and 6(2)(h) of PAJA.

Declaratory relief in respect of certain legislative provisions

64 In Part B of the application, I also seek an order declaring the following provisions to be unconstitutional and unlawful to the extent that they purport to authorise the Minister to suspend or remove the Executive Director of IPID, in contravention of s 206(6) of the Constitution:

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64.1 section 6(6) of the Independent Police Investigative Directorate Act, No. 1 of 2011 ("the IPID Act");

64.2 section 17(1) and 17(2) of the Public Service Act, 1994; and

64.3 paragraph 2.7(2) of chapter 7 and paragraph 18 of chapter 8 of the Senior Management Service Handbook, 2009.

65 The unconstitutionality of the Minister's power to suspend me applies with even greater force to the Minister's purported power under these provisions to remove me from office. This is made clear in the abovementioned Constitutional Court judgments matters and will be addressed further in argument.

THE INTERIM RELIEF UNDER PART A

66 I am advised that in order to be granted an interim Interdict, the applicants must demonstrate that:

66.1 They have at least *prima facie* right to the relief sought in the main application (in this case, the review in Part B);

66.2 The balance of convenience favours the applicants;

66.3 They will suffer irreparable harm if the relief is not granted; and

66.4 They have no alternative remedy other than interim relief.

67 I proceed to deal with each of these requirements in turn.

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A prima facie right

68 I have set out above the grounds of review upon which Part B of the notice of motion is based. I ask that those paragraphs be read as if incorporated herein in support of the interim relief.

69 Based on what has been said in respect of the review above, I submit that I have established a strong entitlement (let alone a *prima facie* right) to the relief sought in Part B of the notice of motion. Indeed this matter involves the clearest of cases for an interim interdict, particularly given the breaches of the Constitution that would result were the interdict not to be granted.

Balance of convenience and irreparable harm

70 The balance of convenience strongly favours granting the interim interdict. Not only will I suffer prejudice if the interim relief is not granted as I will be removed from office for up to 60 days, but there is a real risk that the operations and functioning of IPID will be seriously and irreparably compromised.

71 Should the Minister succeed in his machinations, through my suspension and the suppression of the IPID Investigations Report, this could have very serious repercussions for Dramat and Sibiyi, and ultimately, the independent and effective functioning of the DPCI.

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Indeed, the independence of both IPID and the DPCI is threatened by the Minister's impugned conduct in this matter.

- 72 On the other hand, the Minister will suffer no prejudice whatsoever should the interim interdict be granted, and the review of the lawfulness of the Minister's decision to initiate a suspension process against me be allowed to take its course.

No alternative remedy

- 73 I respectfully submit that I have no suitable remedy available to me other than an interim interdict. While I have made written representations to the Minister in respect of the proposed suspension, this does not provide me with any security. Given the bad faith conduct of the Minister, I do not have any confidence that my representations will be fairly considered and successful.

- 74 Furthermore, it is not merely me being suspended that would have the deleterious effects set out above. The mere fact that I am required to justify my conduct under threat of suspension and removal by the Minister gives rise to the harm that I have set out in this affidavit. These harms affect not only me, but also the ability of IPID to function effectively as well as the public's faith in IPID as an independent institution. The Minister's threatened conduct constitutes an unconstitutional, political interference in IPID. Protecting the independent functioning of IPID requires a court interdict.

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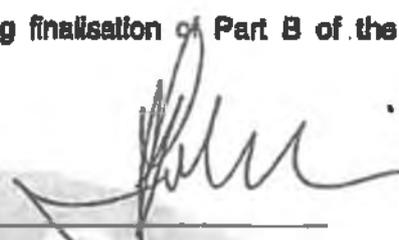
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CONCLUSION

75 In the light of what has been set out above, I pray for the relief set out in Part A of the Notice of Motion pending finalisation of Part B of the application.



ROBERT MCBRIDE

THUS DONE SIGNED AND SWORN TO BEFORE ME AT *Pretoria*

THIS THE *12th* DAY OF *March* 2015 AT

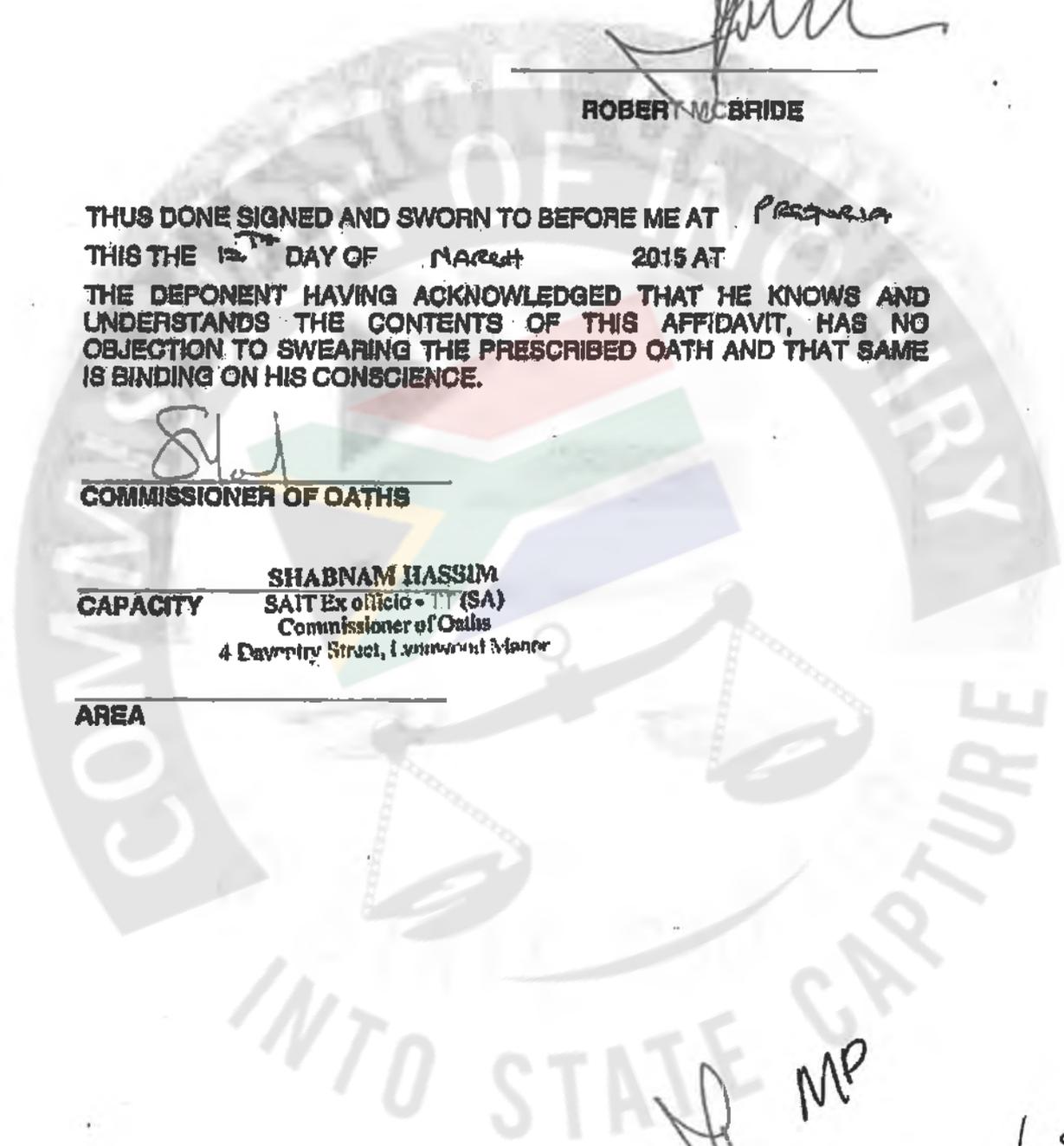
THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HAS NO OBJECTION TO SWEARING THE PRESCRIBED OATH AND THAT SAME IS BINDING ON HIS CONSCIENCE.



COMMISSIONER OF OATHS

SHABNAM HASSIM
CAPACITY SAIT Ex officio - IT (SA)
Commissioner of Oaths
4 Daventry Street, Lynwood Manor

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

CONFIRMATORY AFFIDAVIT

I, the undersigned,

SANDILE TOM

do hereby make oath and say -

- 1 I am an adult male attorney practicing as such as a director of Werksmans Incorporated situated at, The Central, 96 Rivonia Road, Sandton, Johannesburg, 2196.
- 2 The facts contained in this affidavit are within my own personal knowledge and are both true and correct unless where otherwise stated or where the contrary appears from the context.
- 3 I have read the affidavit deposed to by **MR SANDILE JULY** and confirm as true and correct the facts contained therein insofar as they relate to me and the investigation conducted by Werksmans Incorporated in from February 2015 to April 2015.

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4 I furthermore confirm that I was a member of the team of legal practitioners at Werksmans who conducted the investigation pursuant to the terms of reference prescribed by then Minister of Police, Mr Nkosinathi Thamsanqa Ntseko.

[Handwritten signature]

I certify that this affidavit was signed and sworn to before me at JOHANNESBURG on this the 8th day of May 2020 by the deponent who acknowledged that he/she knows/knew and understands/understood the contents of this affidavit, has/had no objection to taking this oath, considers/considered this oath to be binding on his/her 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

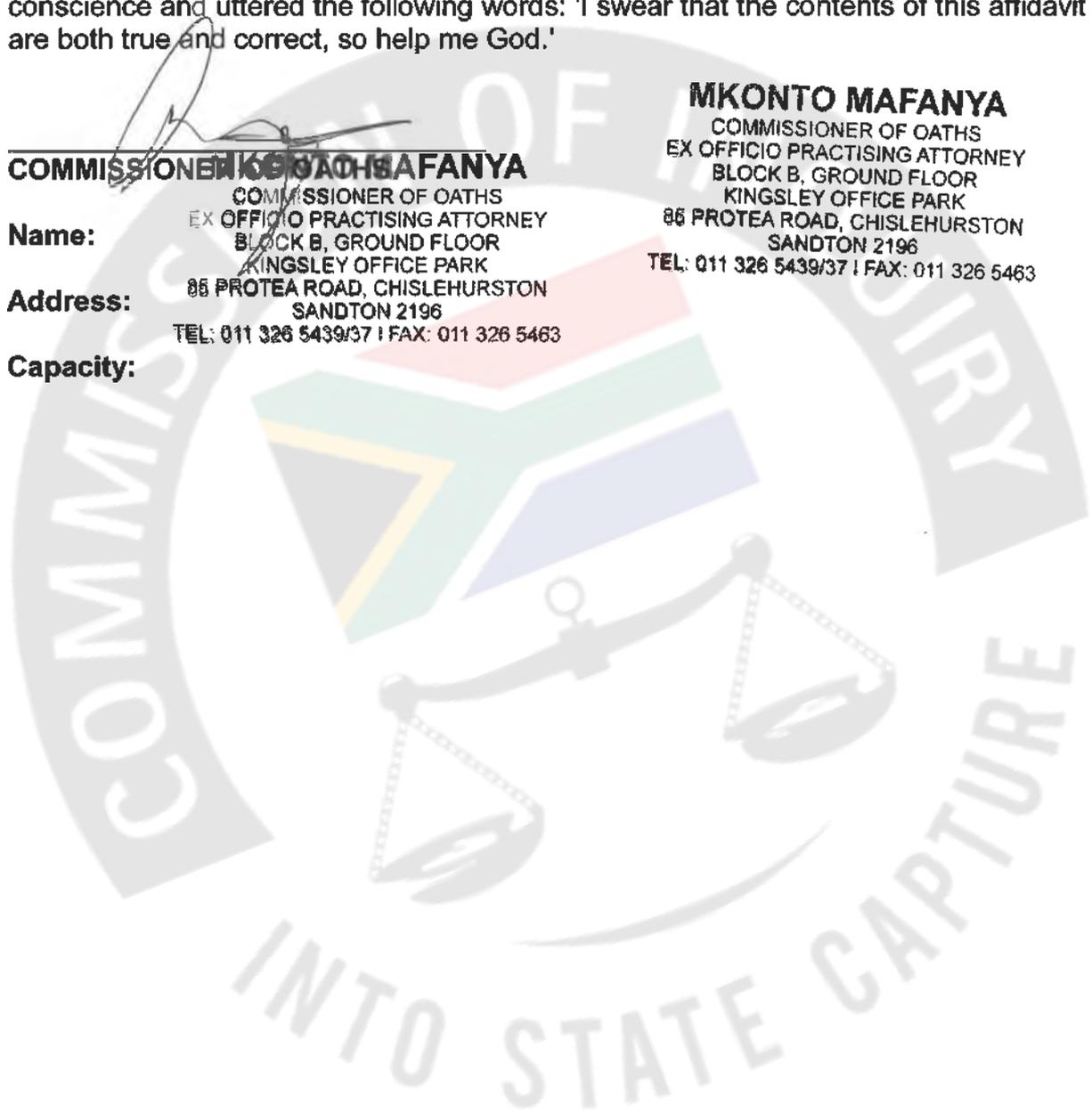
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Enq: I H Khuba
Date: 2013/10/22

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

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1. BACKGROUND

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

2. SUMMARY OF ALLEGATIONS

The following allegations were made:

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

3. CONSTITUTIONAL AND STATUTORY MANDATE

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

4. AVAILABLE EVIDENCE

4.1 STATEMENTS OBTAINED FROM INDEPENDENT WITNESSES

The following witnesses were interviewed and statements obtained.

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

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

On Monday 2010/11/08 at 12H00 Cowboy came to collect them. They were taken into a marked vehicle of Orlando SAPS driven by the officer in uniform. They followed Cowboy who was driving a white Nissan D/C. They were taken to a certain place called 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.

12 **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 Sibiya coming out of a black BMW and gave instruction that they should be taken to Orlando SAPS.

4 **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

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

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

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

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

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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.

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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.

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

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Sibongile Mporfu: 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.

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

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

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

2) **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.

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

4.2 STATEMENTS OF MEMBERS AT ORLANDO POLICE STATION

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

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

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

1130 **Thomas Pixane Setagane:** He is a member of SAPS stationed at Orlando. On 08/11/2010 Captain Maluleke came to the holding cells with four foreign national namely Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma. The four Foreign Nationals were registered on the OB and cell register. He will state that it was for the first time for him to experience a situation where a member of DPCI arrest and detain a person for being an illegal immigrant.

1131 **Padile Abrina Pappo:** 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

1132 **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.

1133 **Peter Ndwandwe:** He will state that he is an Assistant Director with the Department of Home affairs in Soweto. He started knowing about the incident involving four Zimbabwean Foreign Nationals in 2012 when he was contacted by Mr. M Matthews who is a Chief Director at their Head Office. He will further state that the four Zimbabwean nationals were not supposed to be deported because from 20/09/2010 to 31/12/2010 there was DZP which is Dispensation for Zimbabwean Project initiated by the Minister to allow all Zimbabweans without legal documents to stay in the country for 90 days in order to apply for legal documents. There is no Zimbabwean who was supposed to be deported on the basis of illegal documents during that period.

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

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

1134 **Job Jackson:** He will state that he is an Acting Deputy Direct responsible for the day to day running of Lindela Holding facility. In his statement he outlined the process

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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.

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

A30 **Johannes Lodewickus**^{Bowley}: 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.

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

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

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

4.4 STATEMENTS OF MEMBERS OF SAPS IN LIMPOPO

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

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

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

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

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

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

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

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

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

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

While they were driving he realized that there were other BMW cars which were following them and he knew that it was a convoy. Captain Maluleke told him that suspects are in the vehicle behind them. He said that 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.

13 **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.

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

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

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

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

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

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

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

150 **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.

f **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 Beit Bridge and Captain Maluleke came over to his car, released iron legs from the suspect and headed to the Community Service Centre. He then went back and slept over in Polokwane.

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

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A61 *Avhashoni Desmond Takalani*: He is employed by the South African Police Services in Gauteng stationed at Johannesburg Central Police station under the TRT unit. On 2011/01/12 at 11h00 in the morning he was on duty in a full uniform posted at Diepsloot for Crime Prevention purpose. While busy with his duties with other members of TRT unit from Johannesburg Central, they received a request from members of the Hawks (DPCI) TOMS who were at Diepsloot SAPS to provide backup in the arrest of wanted suspect. When they arrived at Diepsloot SAPS, he decided to remain outside while others were briefed inside the station. From the station the vehicles proceeded to the Squatter Camp. Along the way his co-workers informed him that there was a suspect who was being traced at the Squatter Camp.

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

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

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

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

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Sello John Phaswana: 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.

A68

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

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

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

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

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

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

168 **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.

175 **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 Godi 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.

176 **STATEMENTS OF DIEPSLOOT SAPS MEMBERS REGARDING GORDON DUBE**

A' **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.

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

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

1173 **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.

4 **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 Cptain Malukele was at Wierdabrug inquiring about Godi Dube. She gave him the contact numbers of Captain Maluleke.

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

5. DOCUMENTARY EVIDENCE ACQUIRED FROM VARIOUS POLICE STATIONS

5.1.1. EXTRACTS FROM OCCURRENCE BOOKS & SAPS 14 REGISTERS

The investigation at Orlando Police Station uncovered the following:

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

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

The investigation at Alexandra Police Station uncovered the following:

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

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

The investigation at Silverton Police Station uncovered the following:

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

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

The investigation at Pretoria Moot Police station uncovered the following:

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

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

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

The investigation at Wierdabrug Police Station uncovered the following:

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

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

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

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

5.2 DOCUMENTARY 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 Beit Bridge and also claimed overtime. On 28/01/2011 he went to Bait Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations. *N3 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 *LS*

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

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

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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.

Can we trace
other with
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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.

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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

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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.

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

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

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

5.5 EVIDENCE IN TERMS OF SECTION 205 OF THE CRIMINALPROCEDURE ACT.

6 **Cell phone 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.

Cell phone 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. } LS

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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 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 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 Sibiya, Warrant Officer Makoe and Constable Leburu.
- Cellphone data interpretation report and mapping. * NB

6. ANALYSIS OF EVIDENCE AND FINDINGS.

The following findings were made;

- The operation carried out by TOMS to arrest Zimbabwean foreign nationals in Diepsloot in connection with the murder of Zimbabwean police Colonel was led by Captain M L Maluleke also known as Cowboy. According to the letter retrieved from Captain Maluleke's laptop, there was a meeting in August 2010 held between Zimbabwean Authorities, General Dramat and General Sibiya wherein General Sibiya was appointed as a coordinator regarding cooperation between two countries. The obligation to assist Zimbabwe in tracing wanted suspects emanate from the agreement of the same meeting as cited in success reports addressed to General Dramat and other senior officials.
- There is enough evidence that shows that General Dramat did not only know about the operation that led to renditions of Zimbabwean Nationals but sanctioned it through the following ways;
 - The Zimbabwean police came into the country for the purpose of arresting the wanted Zimbabwean Nationals and Lt General Dramat directed that they be allowed to proceed since they were coming to see him. The statement of Lt Colonel Madilonga clearly spell out that the police from Zimbabwe were received by him and he contacted General Dramat who confirmed that they were coming to him. Colonel Madilonga's version is corroborated by Brigadier Makushu and Colonel Radzilani. The cellphone records of general Dramat and Beit bridge Telekom records (Col Madilonga's extension) show that General Dramat received a call from 015534 6300 at 20h56 on 04/11/2010. This corroborates the version of Madilonga, Lt Col Radzilani and Brigadier Makushu about the call made in connection with the Zimbabwean police. According to Lt Col Madilonga he was informed that the purpose of the Zimbabwean police to enter into the

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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 NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS. The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI offices about the Nationals who shot and killed one of their senior officers. He appointed Captain Maluleke to be a lead person during the operation.
 - Evaluation of the above findings: The success report signed by Leonie Verster was traced to Lt Col Maluleke's laptop as picked from the retrieved deleted data. The report was amended on 26/01/2011 and 31/01/2011 before it could be emailed to a female officer, Warrant Officer Thabiso Mafatla on 09/02/2011 at 14h32. There is no material difference between the document retrieved from the laptop and that found at the Hawks offices during investigation. This proves that Leonie Verster did not generate success report but only signed the report drafted by Captain Maluleke. The date of the meeting between Zimbabwean Police and General Dramat which took place on 05/11/2010 coincide with the date of the 4th of November 2010 which according to cellphone records, General Dramat was called at 20h56 by Lt Col Madilonga seeking permission to allow Zimbabwean Police to enter into the country. Since the Zimbabwean Police were at Beit Bridge between 20h00 and 21h00, it is logical that they arrived in Gauteng late at night, leaving them with the opportunity to have the meeting with General Dramat in the morning of the 5th of November 2010.
- 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

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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. PFM A?

- He congratulated officers for arresting Johnson Nyoni and advised them to keep it a secret. According to Constable Mkasibe and Mgwenya, shortly after the photos were taken, they saw General Dramat of the Hawks walking towards them from house number 1. General Dramat addressed them and thanked them for arresting the suspect. He warned them not tell anyone about the operation they had just done.
 - Evaluation of the above findings: Words of appreciation from General Dramat show both interest in the arrest of the Zimbabwean Nationals and his knowledge of the unlawfulness of the operation. If the operation was lawful he would not have warned them not to tell anyone about it.
- He received communication regarding successes and photos of the operation through his Personal Assistance Phumla: According to the information retrieved from the seized laptop, Captain Maluleke sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails where sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence. However it is not clear whether Lt General Dramat received the photos.
- He was kept informed of the developments in the operations that led to the arrest of wanted Zimbabwean Nationals: The cellphone records of General Sibiya shows 30 SMS sent to General Dramat at various milestones of the operation. He also received an SMS from Captain Maluleke shortly after the arrest of Zimbabwean Nationals. He never responded to any of the SMS which may suggest that they were only informing him of the progress.
- Report to parliament in response to the allegation: A copy of the letter sent by Zimbabwean authority to Col Ntenti clearly mention the names of people whom General Dramat in his report to parliament stated that they were deported for being illegal immigrants. The letter clearly indicates that the suspects were wanted for murdering Superintendent Chatikobo of Bulawayo on 18th September 2010. It goes further to state that there was joined operation between South African Police and Zimbabwean police to trace and arrest the suspects.

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Revised not
conclusive
- There is evidence and witnesses corroborate each other that General Sibiya was both at the scene and planning venue. The meeting held between IPID and General Dramat on 2013/03/07 confirmed that General Sibiya was appointed to be the Head of TOMS which he created to trace wanted suspects. The telephone records of both Captain Maluleke and Major General Sibiya show interaction between them at various milestone of the operation. Following suggest it is highly probable that Major General Sibiya was involved;

"SS31"

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Hawks boss Dramat quits after reaching settlement

Amabhungane 22 Apr 2015



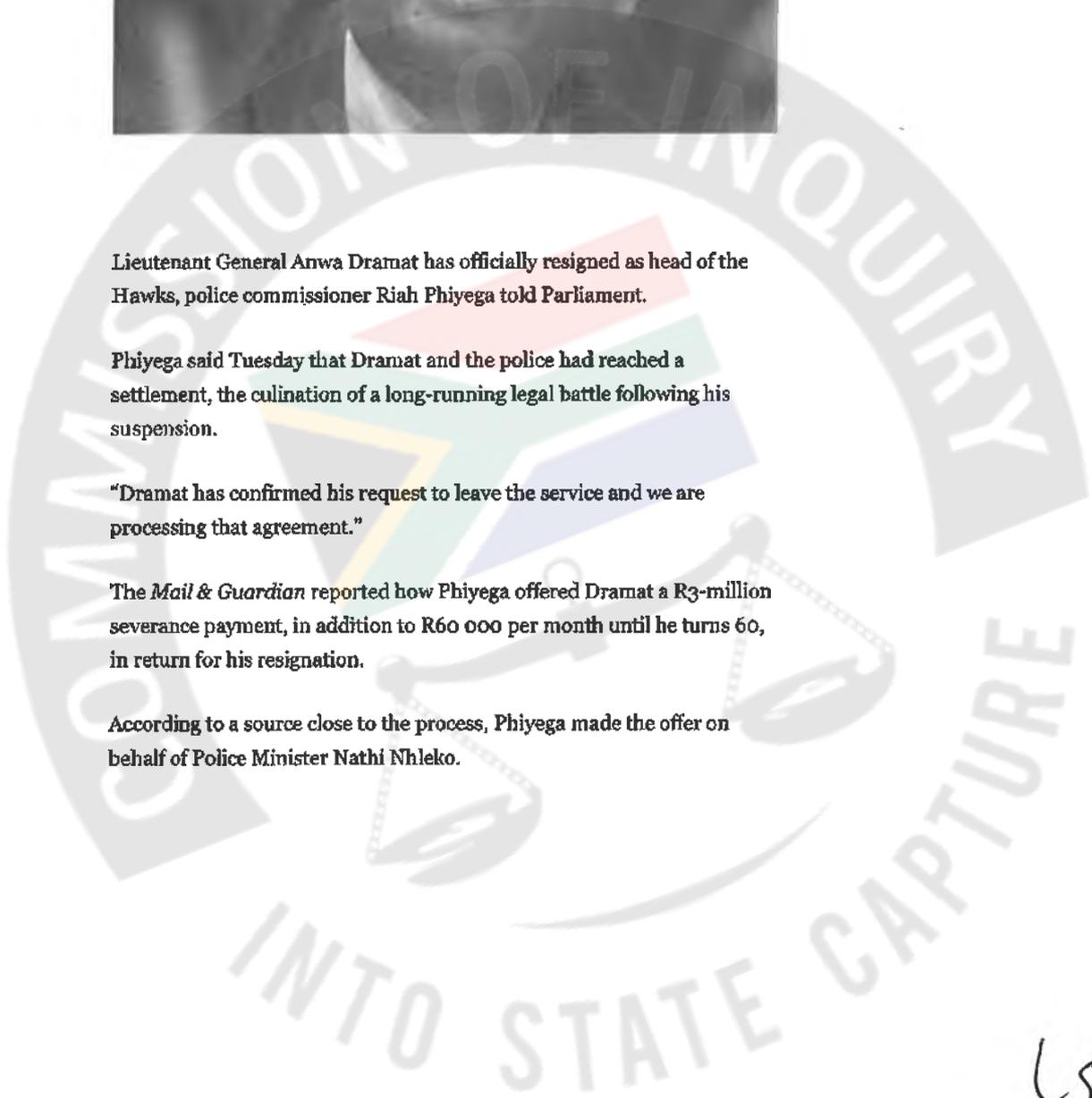
Lieutenant General Anwa Dramat has officially resigned as head of the Hawks, police commissioner Riah Phiyega told Parliament.

Phiyega said Tuesday that Dramat and the police had reached a settlement, the culmination of a long-running legal battle following his suspension.

"Dramat has confirmed his request to leave the service and we are processing that agreement."

The *Mail & Guardian* reported how Phiyega offered Dramat a R3-million severance payment, in addition to R60 000 per month until he turns 60, in return for his resignation.

According to a source close to the process, Phiyega made the offer on behalf of Police Minister Nathi Nhleko.



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Suspension

Police Minister Nathi Nhleko suspended Dramat in December last year for his alleged involvement with the rendition of Zimbabweans in 2010.

A day after his suspension, Dramat wrote in a letter to the minister claiming he was being targeted because he was investigating “dockets implicating influential people”.

He insinuated he feared for his life, and said he would be “willing” to accept early retirement – as provided for in Article 35 of the Police Act – on condition the minister lifted his suspension.

Well-placed police sources earlier told *Netwerk24* Dramat was being targeted because he refused to let go of the Nkandla investigation.

The North Gauteng High Court in Pretoria ruled in January Dramat’s suspension was unconstitutional and that he should be reinstated in his post.

Dramat had, however, never returned to office, and his legal representatives have been locked in negotiations with the minister’s legal team till now.

‘Absolute and complete contempt’

DA MP Dianne Kohler-Barnard reacted angrily when Phiyega announced Dramat’s resignation to the committee.

“You are ignoring the court order. It was called unlawful and set aside. You have treated the court with absolute and complete contempt,” she said.

Phiyega responded that Dramat is no longer in his post “because of what he requested”.

Nhleko’s spokesperson Musa Zondi said Dramat did no longer wanted to stay in the police.

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"The court never ruled that Dramat should be forced to work at SAPS. In his first letter to the minister in December, Dramat indicated his desire to leave. This is just the culmination of that request."

Limbo

Dramat has been in limbo since December 2014 when Nhleko purported to "suspend" him over allegations that he was involved in the illegal deportation of Zimbabwean criminal suspects in 2010.

It is not clear how the attempt to cut a deal with Dramat aligns with Nhleko's claims he has serious criminal allegations to answer.

Dramat has denied being involved in or authorising the illegal renditions.

In a letter to the minister, Dramat blamed the move against him on his attempts to investigate high-profile people.

He later told his lawyers he believed the trigger was his bid to have the Hawks take over the investigation of President Jacob Zuma's Nkandla security upgrade. - News24.com

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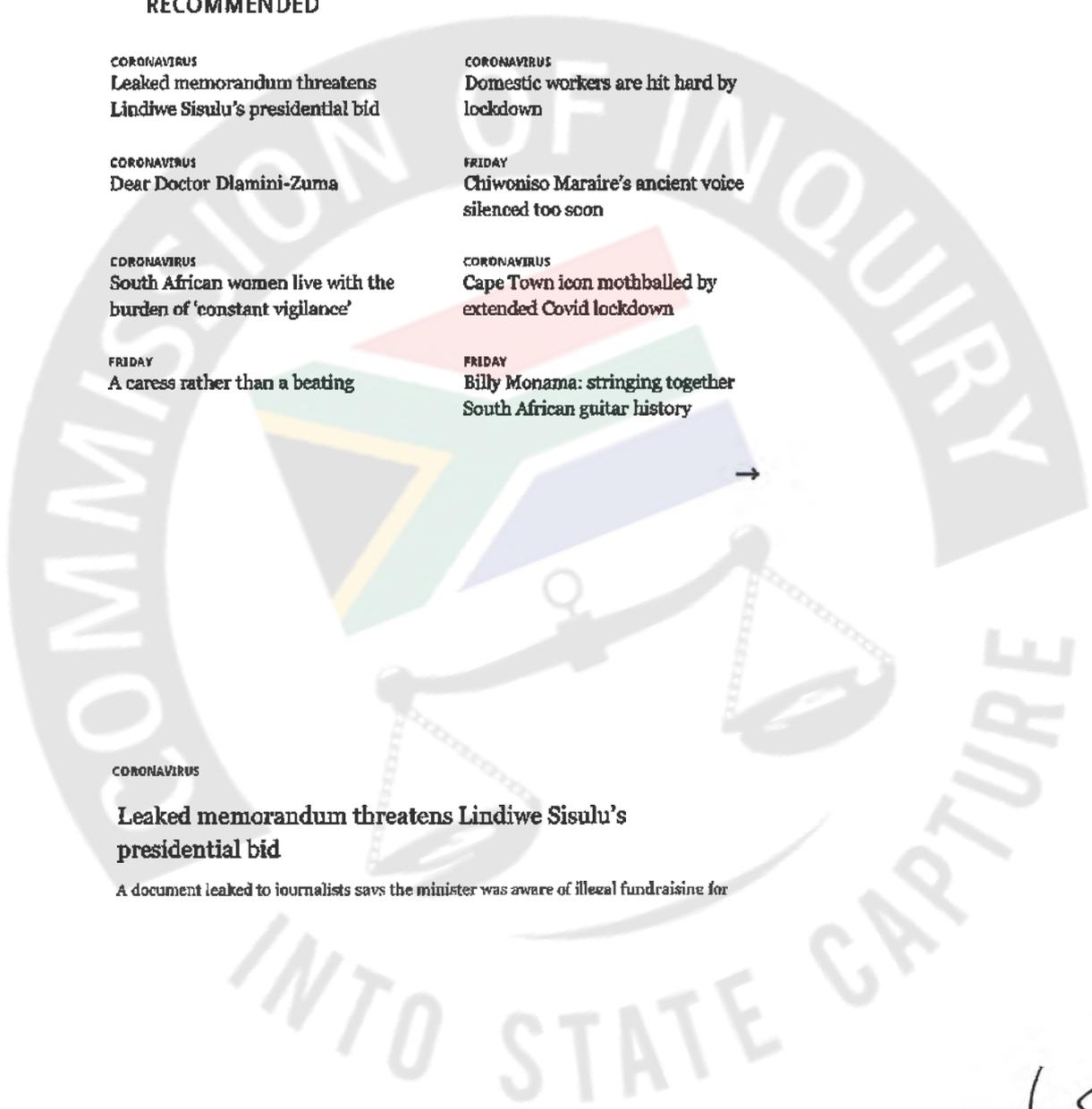
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Eusebius McKaiser

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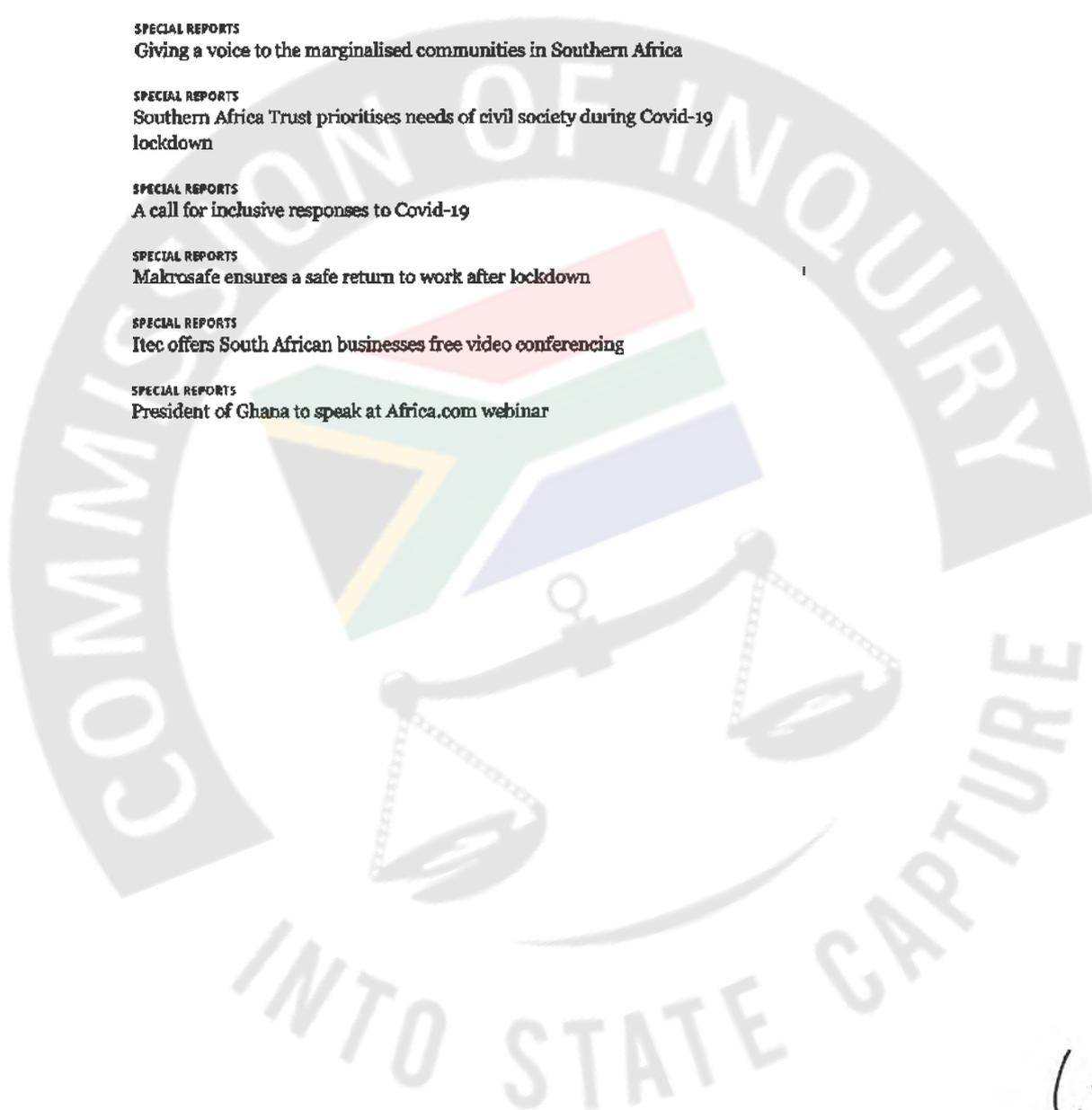
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ARBITRATION AWARD

Panellist/s: NELSON MATSOBANE LEDWABA
Case No.: GPBC 2606/2015
Date of Award: 21 April 2016

In the ARBITRATION between:

INNOCENT HUMBULANI KHUBA

(Union / Applicant)

and

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE - LIMPOPO

(Respondent)

Union/Applicant's representative: MR. NM LEKOLOANE

Union/Applicant's address: c/o PO BOX 1747

POLOKWANE

Telephone: 015 295 0503

Telefax: 015 295 0510

Respondent's representative: ADV. T MOKHATLA

Respondent's address: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

PRIVATE BAG X941, PRETORIA 0001

Telephone: 012 399 0026

Telefax: 012 399 0144/ 086 634 7495/ 086 572 4305

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DETAILS OF HEARING AND REPRESENTATION

1. The arbitration was held at the Respondent's premises in Polokwane, Limpopo Province, on the 04 March 2016. Mr. NM Lekoloane, an admitted from Moloko Phooko Attorneys, represented the applicant while Advocate T Mokhatla, instructed by the State Attorney, appeared for and/ on behalf of the respondent.

ISSUES IN DISPUTE

2. The applicant filed an application in which he claims to have been unfairly dismissed by the respondent. The applicant alleged that his dismissal was unfair on both the substantive and procedural grounds.
3. I am enjoined by the Labour Relations Act 66 of 1995 (the Act) to determine whether or not the dismissal of the Applicant was unfair, and to further determine the appropriate relief, should I find that the dismissal was unfair.

SURVEY OF EVIDENCE AND ARGUMENT

4. The parties agreed to submit their written heads of argument, and they both complied. Both the respondent and the applicant party further handed in their bundles of documents which were accepted and accordingly marked as Exhibit A and B respectively. The parties held a pre-arbitration conference and agreed on the following common cause factors:

Common cause factors:

- 4.1. The applicant was charged for misconduct as per the notice of disciplinary hearing/ charge sheet.
- 4.2. The applicant pleaded guilty to all the charges.

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- 4.3. Both the applicant and the respondent entered into an agreement, on 23 September 2015, that the applicant be issued with a final written warning valid for a period of six (06) months.
- 4.4. The applicant subsequently deposed to an affidavit in support of one Matthews Sesoko.
- 4.5. The applicant was invited by the respondent to make representations, in terms of the letter dated 29 September 2015, as to why his final written warning should not be revoked and be replaced with a sanction of dismissal.
- 4.6. The applicant made written representations as per the letter dated 30 September 2015.
- 4.7. The applicant was subsequently dismissed from work on 30 September 2015.

5. The Respondent's case

It was submitted for the respondent as follows:

- 5.1. On or about 7 July 2015 charges were preferred against the applicant by the respondent as follows:

1. You Mr. Khuba (the first employee) are currently the Provincial Head of IPID in Limpopo. During 2012, you were appointed as the Lead Investigator in the matter relating to illegal rendition of Zimbabwean nationals by certain members of the Directorate for Priority Crimes Investigation (DPCI) which occurred during November 2010 and January 2011. The investigation was concluded on or about January 2014 and you submitted a final report investigation report to the National Prosecuting Authority (NPA) for a decision. In submitting the said report to the National Prosecuting Authority, you were accompanied amongst others by Matthews Sesoko, Head of Investigations at IPID, who provided legal assistance to you and your team during the investigation. In submitting your January 2014 report to the NPA you met with Adv. Anthony Mosing of the NPA and handed a final report to him for the NPA to take a decision to prosecute

2. Notwithstanding that you had submitted the final report to the NPA, which the NPA subsequent referred to the Director of Public Prosecutions, South Gauteng (Adv Chauke) you, accompanied by

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Angus approached the DPP South Gauteng's office, and collected the docket and the report from the DPP, South Gauteng

3. You, Sesoko and McBride altered the report which had been handed over to NPA, and deleted information incriminating Lieutenant General Anwa Dramat (Dramat), the former National Head of DPCI, and/or Sibiya, the Provincial Head of DPCI Gauteng, from the report in order to reach a conclusion that Dramat and Sibiya had been exonerated by IPID when you knew or ought to have known that the final IPID report of January 2014 recommended that Dramat and Sibiya be criminally charged.

4. By altering the report of January 2014, you and Sesoko have made yourself guilty of dishonesty, and defeating the ends of justice.

- 5.2. Subsequent to being charged, on or about the 23 September 2015 the applicant represented by his attorney, freely and voluntarily pleaded guilty to charges preferred against him in terms of the charge sheet.
- 5.3. The applicant and the respondent entered into an agreement dated the 23 September 2015, wherein it was agreed, inter alia, that the applicant be issued with a final written warning valid for six months. On or about the 25 September 2015 the applicant deposed to an affidavit on behalf of his co-accused, Mr. Matthews Sesoko.
- 5.4. The applicant was employed as the Respondent's Provincial Head in the Limpopo Province and that he occupied a position of trust and as a result it was expected that his conduct should be beyond reproach.
- 5.5. The charges preferred against the applicant were of a serious nature; given the fact that the applicant was the lead investigator in the matter, which involved the investigation of misconduct by senior members of the Director for Priority Crime Investigation, commonly known as the "Hawks".

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- 5.6. The applicant was charged together with Mr. Sesoko based on the same facts and incident. The significance of the applicant and Mr. Sesoko being charged together was that they were co-accused and they participated in the same misconduct, thereby further implying that any evidence against the applicant would have been utilized again against the other.
- 5.7. A guilty plea by the applicant constituted an unequivocal admission of the misconduct faced during the disciplinary hearing. This further meant that the applicant unreservedly admitted to all the allegations that were leveled against him in respect of the charge sheet.
- 5.8. The respondent issued the applicant with a sanction of a final written warning valid for a period of six months as form of leniency.
- 5.9. The terms of the agreement entered into between the applicant and the respondent are clear and there's nowhere in which it was agreed that the applicant was free to testify for Mr. Sesoko should it be necessary. This according to the respondent, is another indication of dishonesty on the part of the applicant
- 5.10. The applicant perpetuated the charge of defeating the ends of justice by deposing to an affidavit on behalf of Mr. Sesoko the contents of which contradict what he had already pleaded guilty to. The applicant repeated the very same act of misconduct that he was initially charged for and the respondent was entitled to dispense with the pre-dismissal procedures based on the conclusive proof of the misconduct as well as the serious nature of the charges.
- 5.11. The continued employment relationship between the applicant and the respondent will be intolerable. And same negates the relief of reinstatement sought by the applicant during these proceedings.

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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.

6. The Applicant's case

It was submitted for the applicant as follows:

- 6.1. The applicant occupied the position of the Provincial Head-Limpopo Province. The applicant was on Salary Level 14 with an Annual Salary of R1 042 500.00 prior to his dismissal.
- 6.2. The applicant was charged, amongst others, for altering the report which had been handed over to NPA, and deleted information incriminating Lieutenant General Anwa Dramat the former National Head of DPCI, and/or Sibiya, the Provincial Head of DPCI Gauteng, from the report in order to reach a conclusion that Dramat and Sibya had been exonerated by IPID when he (the applicant) knew or ought to have known that the final IPID report of January 2014 recommended that Dramat and Sibiya be criminally charged.
- 6.3. The applicant altered certain witness statements as instructed by the Director of Public Prosecution (DPP) South Gauteng. The respondent viewed same as the transgression of defeating the ends of justice and acts of dishonesty attracting a disciplinary hearing.
- 6.4. The applicant deposed to an affidavit in which he exonerated the suspended Director, Mr. Robert McBride (McBride) and his colleague Mr. Mathews Sesoko (Sesoko) from any wrongdoing in the case of the so called illegal rendition of the Zimbabweans
- 6.5. During the disciplinary hearing held on the 23 September 2015, the applicant pleaded guilty to the allegations and was issued with sanction of a final written warning valid for a period of six (06) months.

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- 6.6. The applicant was not prevented from testifying in any disciplinary hearing involving one of his co-accused. It's quite unfair for the respondent to terminate the services of the applicant for having deposed to an affidavit for Mr. Sesoko. He never meant to implicate and or exonerate the co-accused, Mr. Sesoko in his affidavit.
- 6.7. The chairperson of the disciplinary hearing had the delegated powers to impose a final penalty to the applicant, and that for anyone to substitute same would amount to a procedural irregularity. The respondent has violated Clause 6 and 7 of Resolution 1 of 2003, which provides that "the employer in cases of serious misconduct which would warrant a dismissal may institute a disciplinary enquiry. The employer must appoint an employee as a representative, who as far as possible should be the manager for the employee, to initiate the enquiry. The employer must also appoint the chair of the hearing".
- 6.8. The Senior Management Handbook which applies to the applicant, by virtue of his position, provides same requirements as the Resolution 1 of 2003 at its Clause 2 .6. (1) & 4 (a).
- 6.9. The Collective Agreement and the SMS handbook do no regard the findings of the chairperson as a mere recommendations. The respondent's Mr. Kgamanyana did not have authority to revoke and or substitute the findings of the disciplinary hearing chairperson and his conduct should be found as procedural irregularity and invalid.
- 6.10. The applicant was denied an opportunity to state his case, and his dismissal should be found to have been both procedurally and substantively unfair. The applicant prays for retrospective reinstatement.

ANALYSIS OF EVIDENCE AND ARGUMENT

7. The applicant faced allegations of misconduct and a disciplinary hearing was convened. The applicant pleaded guilty to the charges which included dishonesty and defeating the ends of justice.

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8. The applicant was charged for allegedly having committed the following:
1. You Mr. Khuba (the first employee) are currently the Provincial Head of IPID in Limpopo. During 2012, you were appointed as the Lead Investigator in the matter relating to illegal rendition of Zimbabwean nationals by certain members of the Directorate for Priority Crimes Investigation (DPCI) which occurred during November 2010 and January 2011. The investigation was concluded on or about January 2014 and you submitted a final report investigation report to the National Prosecuting Authority (NPA) for a decision. In submitting the said report to the National Prosecuting Authority, you were accompanied amongst others by Matthews Sesoko, Head of Investigations at IPID, who provided legal assistance to you and your team during the investigation. In submitting your January 2014 report to the NPA you met with Adv. Anthony Mosing of the NPA and handed a final report to him for the NPA to take a decision to prosecute
 2. Notwithstanding that you had submitted the final report to the NPA, which the NPA subsequent referred to the Director of Public Prosecutions, South Gauteng (Adv Chauke) you, accompanied by Angus approached the DPP South Gauteng's office, and collected the docket and the report from the DPP, South Gauteng
 3. You, Sesoko and McBride altered the report which had been handed over to NPA, and deleted information incriminating Lieutenant General Anwa Dramat (Dramat), the former National Head of DPCI, and/or Sibiya, the Provincial Head of DPCI Gauteng, from the report in order to reach a conclusion that Dramat and Sibiya had been exonerated by IPID when you knew or ought to have known that the final IPID report of January 2014 recommended that Dramat and Sibiya be criminally charged.
 4. By altering the report of January 2014, you and Sesoko have made yourself guilty of dishonesty, and defeating the ends of justice.
9. An agreement was entered into between the applicant and the respondent. The terms of the said agreement were recorded as follows:
- (4) Mr. Khuba being legally represented, freely and voluntarily pleads guilty to the charges proffered against him as set out in Annexure A.
 - (5) The employer will impose a sanction of final written warning valid for 6 months against Mr. Khuba.
 - (6) Mr. Khuba suspension will be uplifted and he will report for duty on Monday, 28 September 2015.

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10. By pleading guilty to the said allegation one can safely conclude that indeed the applicant committed the said transaction. And the applicant in deposing to an affidavit contradicted what he had already consented to. At paragraph 19 of his affidavit: The applicant stated that before the enquiry by a journalist, Sesoko and MacBride were not aware of the existence of the January report whereas he had already pleaded guilty to the fact that he was accompanied by, amongst others, Sesoko, when submitting the said January report.
11. Another discrepancy appears on paragraph 8 of the applicant's affidavit, wherein he alleged that Sesoko was not present or aware that he had submitted the report to Adv. Mosing, whereas he had already pleaded guilty to the allegations that he was accompanied by Sesoko when submitting the said report to Adv Mosing.
12. On the penultimate contradiction, the applicant stated that at the time of submitting the January report, Adv. Mosing was aware for the outstanding investigations, yet he pleaded guilty to the allegations that the investigations were concluded in January and that him and Sesoko submitted a final report to the NPA for a final decision to prosecute.
13. The applicant further at paragraph 15 of his affidavit, stated that neither McBride nor Sesoko instructed him to either make any specific changes in the report or to exonerate any in the report. Contradictorily the applicant pleaded guilty that himself, Sesoko and McBride altered the report that was handed over to the NPA and deleted information incriminating Dramat and Sibiya.
14. In *Sidumo & another v Rustenburg Platinum Mines & others* (2007) 28 ILJ 2405 (CC) it was held, that:
"In approaching the dismissal dispute impartially a Commissioner will take into account the totality of circumstances. He /she will necessarily take into an 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 an 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

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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".

15. The principle established in this case emphasizes 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.

16. Accordingly, I find that in this case the rule involved was aimed at protecting the integrity of the respondent and that the applicant did not have such a long service with the respondent – just about two years in the service of the respondent. Furthermore, the applicant occupied the position of trust in that he was the Provincial Head of IPID in Limpopo. This is a position which calls for a higher degree of honesty let alone responsibility to manage other employees. Thus the applicant was setting a bad example to his subordinates. He breached the trust the employer vested in him as an incumbent of that office. As such it goes without saying that the respondent will no longer trust the applicant as this is a type of breach which cannot be mended.

17. A valuable definition of dishonesty appears in ***Nedcor Bank v Franck & Others [2002] 7 BLLR 600 (LAC)*** wherein it was described as: *"Dishonesty entails a lack of integrity or straightforwardness and, in particular, a willingness to steal, cheat, or act fraudulently..."* I agree with the respondent that the applicant perpetuated acts of dishonesty by deposing to an affidavit which contradicts his guilty plea in support of Sesoko.

18. In *Canadian case of Lynch & Co v United States Fidelity & Guaranty Co [1971] 1 OR 28 at 37, 38 (Ont. SC)* the following was said (per Fraser J)
"Dishonesty is normally used to describe an act where there has been some intent to deceive or cheat. To use it to describe acts which are merely reckless, disobedient or foolish is not in accordance with popular usage or the dictionary meaning"

19. As the Provincial Head the applicant ought to have known that he owed the respondent a duty of an ultimate good faith (*uberrima fides*) in all his dealings with the respondent and its stakeholders. Under the circumstances, I find that no any other degree of remorse shown by the applicant or personal circumstances can manage to outweigh these factors. In the premises, I find that the sanction of dismissal herein was appropriate.

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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.
21. The Code of Good Practice: Dismissal sets out the requirements for a fair pre-dismissal procedure in the following terms (item 4 (1)):
- Normally, the employer should conduct an investigation to determine whether there are grounds for dismissal. This does not need a formal enquiry. The employer should notify the employee of all the allegations using a form and language that the employee can reasonably understand. The employee should be allowed the opportunity to state a case in response to the allegations. The employee should be entitled to a reasonable time to prepare a response and to the assistance of a trade union representative or fellow employee. After the enquiry, the employer should communicate the decision taken, and preferably furnish the employee with written notifications of the decision.
22. In *Moropane v Gilbey's Distillers & Vinters (Pty)Ltd & another* (1998) 19 ILJ 635 (LC) it was held that the requirement of procedural fairness under the current Labour Relations Act demands less stringent and formalized processes than in the past. Again the said principle was emphasized by the Courts in *Avril Elizabeth Home for the Mentally Handicapped v CCMA and Others* [2006] 2 BLLR 118 (LAC), wherein it was held that the employers are merely required to conduct investigation, accord the employee an opportunity to respond to allegations after a reasonable period and thereafter to take a decision and give the employee notice thereof.
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 utilized effectively or not, same does not make his dismissal to be procedurally unfair.

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24. The respondent 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.
25. It is trite that dismissal sanction should be reserved for very serious acts of misconduct. The applicant's conduct is inherently a very serious misconduct and undoubtedly constitutes a breach of trust. 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.
26. The destruction of trust in an employment relationship renders the continuation of employment intolerable. In the circumstances I cannot interfere with the sanction imposed by the respondent, as I do not consider it inappropriate

AWARD

27. The case of Innocent Humbulani Khuba is herewith dismissed;
28. Accordingly, I find that the dismissal of the applicant by the respondent was not unfair, and consequently he won't be entitled to any remedy in law.
29. There is no order as to costs.

Thus done and signed at Polokwane on this the 21 Day of April 2016.



NELSON MATSOBANE LEDWABA
GPSSBC PANELLIST

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"SS31407"

**IN THE DISCIPLINARY HEARING
(HELD AT PRETORIA)**

In the matter between:

IPID

Employer

and

MATTHEWS SESOKO

Employee

WRITTEN REASONS FOR THE RULING

INTRODUCTION

1. These are written reasons in respect of a ruling which I handed down *ex tempore* on 16 August 2016, whereupon I found Mr Matthews Sesoko ("Sesoko") guilty of misconduct and thereafter issued a sanction of dismissal with immediate effect. Despite the fact that I gave an *ex tempore* ruling with oral reasons for my findings both in respect of misconduct and the sanction, I have however deemed it prudent to give written reasons if only to supplement my *ex tempore* findings and also for the benefit of any forum to which Sesoko may want to challenge my rulings.

2. The background to the misconduct charge against Sesoko is a matter of common cause and has been set out in my first ruling *in limine* in respect of the

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application for a stay of proceedings and therefore I do not consider it necessary to repeat same here.

ANALYSIS OF EVIDENCE

3. Sesoko was charged with misconduct and the charge relating to him appears on paragraphs 3 of the charge sheet which is contained on Bundle "A" and more specifically at page A4 which reads as follows:

"You, Khuba and McBride altered the report which had been handed over to NPA, and deleted the information incriminating Lieutenant General Anwa Dramat the former National Head of DPCI, and/or Sibiya the Provincial Head of DPCI Gauteng, from the report in order to reach a conclusion that, Dramat and Sibiya have been exonerated by IPID when you knew or ought to have known that the final IPID report of January 2014 recommended that Dramat and Sibiya be criminally charged. By altering the report of January 2014, you and Khuba have made yourselves guilty of dishonesty and defeating the ends of justice".

4. To this end, the employer adduced evidence through Advocate Mosing ("Mosing") who testified, amongst other things, that the report dated 22 January 2014 was in actual fact and for all intents and purposes, the final report. It was put to Mosing that in line with Sesoko's version, the January report was not the final one as same had not been signed off by the Executive Director in line with the regulations which required that such a report be signed by the Executive Director.

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5. It was therefore further put to Mosing that the March report which was signed by McBride, Sesoko and Khuba was the one which was final and not the January one. Mosing refuted this version and stated unequivocally that the January report was the one which was final regardless of whether it had been signed by the Executive Director as those were internal IPID processes. The gravamen of Sesoko's charge is whether he, along with McBride and Khuba, acted in concert in altering the January report insofar as the conclusion whether to prosecute Dramat and Sibiya was concerned with the result that Sibiya and Dramat were therefore exonerated.
6. In essence the two reports, that being the January and the March reports, are the same save for the conclusions that they reached insofar as the prosecution of Sibiya and Dramat were concerned. Whilst the January report recommends that Sibiya and Dramat be charged and be prosecuted for their role in the Zimbabwe illegal renditions, the March report exonerates Sibiya and Dramat from any wrongdoing or participation in the Zimbabwe illegal rendition.
7. In essence Sesoko alongside McBride and Khuba were charged for altering the January report which had recommended that Sibiya and Dramat be prosecuted and resulting in the March report which then exonerated the pair from persecution. That is what is at the core of the charge against Sesoko. In other words, Sesoko does not deny the fact that he took part in authoring the March report however he denies that such amounted to an alteration as in his view, the January report was not final as same had not been signed by the Executive Director and he is therefore not guilty of any misconduct.

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FINDINGS AND REASONS THEREOF

8. Having heard the evidence by Mosing and having gone through the January report myself, it is difficult to comprehend how it could be said not to be a final report when in fact for all intents and purposes the January 2014 report was a final report and so any act that was committed thereafter to change the contents thereof ought to amount to an alteration and this is what happened when Sesoko, McBride and Khuba embarked on that fatal expedition to produce a different report, that being the March report, which sought to vary the contents of the January report insofar as the prosecution of Sibiya and Dramat were concerned.
9. This is especially so because the January report itself is by no means a draft report and it certainly does not say so as if there was still to be a further report over and above what had been concluded as of the 22 January 2014. Indeed the report is signed by Mr. Innocent Khuba and it is for this reason, amongst others that makes it difficult to comprehend the submission that the January report was not final or was not legitimate simply because it was not signed by the Executive Director.
10. Whether for a report to be authentic same had to be signed by the Executive Director is a matter of internal processes for the IPID and may very well be provided for in the regulations however that does not detract from the fact that the January report was final and that anything that was done thereafter amounted to altering that report. Here one is not dealing with the legitimacy or

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otherwise of the January report as it were, but dealing with Sesoko's conduct in altering some of the material contents of the January report and thereby exonerating Sibiya and Dramat from any wrongdoing in relation to the Zimbabwean illegal rendition.

11. It was common cause that, in co-authoring the March report, Sesoko did take part in the alteration of some of the material contents of the January report. This he did not deny at any stage and it was further common cause that the difference between the January and March reports was the exoneration of Sibiya and Dramat from any wrongdoing in relation to the Zimbabwean illegal rendition. What was in dispute was whether the March report amounted to an alteration as Sesoko contended that the January report was not final as it had not been signed by the Executive Director and therefore it could not be said to have been altered.
12. I have already expressed the difficulty I have in understanding the contention on Sesoko's part that the January report was not final simply because it was not signed by the Executive Director when, for all intents and purposes and quite apart from the fact that it was not signed by the Executive Director, the report was final and to argue otherwise is to elevate form above substance. In other words, Sesoko wanted the enquiry to believe that form is more important than substance. That is, even though in substance it is clear that the January report was final and recommended amongst other things that Sibiya and Dramat be charged for their role in the rendition saga, but simply because the report in his view did not comply with the regulations in that it was not signed

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by the Executive Director therefore it should not be regarded as final. If this is an invitation to sacrifice substance at the altar of form, such invitation must be rejected.

13. For these reasons, I find that the January report was final and that Sesoko's conduct in co-authoring the March report amounted to alteration of the January report which constituted misconduct on his part and it is for that reason that I found Sesoko guilty of misconduct. Something must be said about the final day of the hearing wherein I issued my ruling *ex tempore*. There is no doubt that fairness would have dictated that Sesoko takes a stand and put up his own version of events in his defence, in line with the well-established principle of our law that is *audi alterem partem* principle ("the *audi* principle").
14. However, it would seem that Sesoko elected to waive his right to be heard when he decided not to attend the proceedings on 16 August 2016 and instead forwarding, through his legal representatives, what purported to be sick notes with the hope that the chairperson would be hoodwinked by these purported sick notes and allow a postponement and thereby further delaying and frustrating the proceedings.
15. I say this because, when I looked at what purported to be sick notes which were presented by Sesoko's counsel, it was clear that these were only presented solely for the purposes of frustrating and delaying the hearing as it was very strange that a general practitioner, would have the requisite specialist knowledge to diagnose Sesoko with depression something which would require

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a psychiatrist or at the very least a psychologist but definitely not a general practitioner to diagnose. All the general practitioner could do would have been to refer Sesoko to a specialist who could then diagnose Sesoko with depression or whatever might have been wrong with him and nothing more. For these reasons I found the sick notes not to be authentic.

16. Because I was not persuaded with the sick notes, I then ruled that the hearing must proceed and I took it that Sesoko had then elected to waive his right to put his case and that is why I then ruled that the proceedings proceed in his absence. In the end, there was only one version before me as a chairperson and that is the employer's version which could not be second guessed in the absence of a version to the contrary and which could be more probable than that of the employer.
17. Even though one could, and of course was able to glean from the versions which were put to Mosing as to what sort of version Sesoko would put when he got the opportunity to state his side of the story, it still would have been preferable, if not mandatory, for Sesoko to take a stand and put his own version of events in line with the *audi* principle. However it is one thing for an employee to be afforded a right which was done in this case hence the disciplinary hearing but is quite another thing altogether for the employee to shun that right, turn his back on it and elect to waive it by adopting a strategy that is aimed at delaying and frustrating the very same hearing which is aimed at providing him with a platform to put his case before his fate is decided.

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18. The employer could only do so much and nothing more. The strategy that was adopted by Sesoko in frustrating and delaying the proceedings flies in the face of expeditious resolution of disputes and it can never be fair to the employer and indeed to the taxpayer that someone who is on a precautionary suspension and whose case has been dragging for over a year whilst he is sitting at home doing nothing and yet getting paid every month by the taxpayers is allowed to continue doing so for God knows how long but as long as he gets his salary every month then he is content with the proceedings being delayed because it suits his strategy.
19. From day one when I had just been appointed to preside over the hearing, it was clear that Sesoko had no intention of having the hearing proceed and that was demonstrated by his legal team raising a flimsy point *in limine* which aimed to stay the proceedings until McBride's Constitutional Court case was determined and quite how those two were linked is still beyond me, but if anything, this serves to demonstrate just how unwilling Sesoko was to take part in these proceedings. Having dismissed that point *in limine* and further furnished my reasons thereof Sesoko then sought to take my ruling on review and also applied for an interdict against the proceedings pending the determination of the review.
20. Once again that to me is not indicative of someone who wants his dispute to be resolved expeditiously but is in fact indicative of someone who is desirous in frustrating and delaying the proceedings something which should never be countenanced. It is a small wonder then that Sesoko lost that Labour Court

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case wherein he sought to interdict the proceedings. Because it was clear to me on 16 August 2016 that Sesoko was still employing his delaying tactics as he had been doing all along and also because of the nature of what purported to be sick notes which his legal representatives presented to me that the hearing had to proceed as it was clear to me that Sesoko had elected to waive his right to put forward his own version of events.

21. Based on a single version which was before me, and that is the employer's version of events which was left unchallenged and notwithstanding Sesoko's versions which were put to the witness during cross-examination which had no merit in my view, I found the Sesoko guilty of misconduct. I thereafter proceeded to invite parties to address me on mitigating and aggravating factors so as to arrive on what would be an appropriate sanction and whilst the employer did address me on aggravating factors, Sesoko's legal counsel declined to address me on mitigating factors as in his view it would not serve any purpose as his client was not there.
22. Once again, I had only aggravating factors before me and there were no mitigating factors as to why a sanction of dismissal should not be preferred especially in view of the nature and seriousness of the offense and for that reason I then issued a sanction of dismissal. This is especially so because the offense with which Sesoko had been charged was quite serious and involved an element of dishonesty on his part which then went to the heart of the employment relationship and had the effect of destroying the trust relationship

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between Sesoko and the employer and for that reason the only appropriate sanction that ought to have been preferred was dismissal.

23. In any event, there were never mitigating factors which were presented before me as to why dismissal should not be preferred as such invitation was rejected whilst on the other hand, the employer did address me on aggravating factors and stated, amongst other things, that Sesoko's conduct had the element of dishonesty and that therefore it had destroyed the trust relationship between him and the employer. These are therefore the reasons as to why I found Sesoko guilty of misconduct and further issued a sanction of dismissal.

M Zondo
Chairperson
6th October 2016



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REFER TO
EXHIBIT Y 5

MATTHEWS SESOKO

A large, semi-transparent watermark of the Commission of Inquiry into State Capture logo is centered in the background of the page. It features the same circular design with the South African flag and scales of justice, surrounded by the text "COMMISSION OF INQUIRY" and "INTO STATE CAPTURE".

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

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

1

**ANSWERING STATEMENT TO THE SUPPLEMENTARY STATEMENT DEPOSED
TO BY MR MATHEWS SESOKO**

I the undersigned,

SANDILE JULY

do hereby state under oath that:

- 1 I am an adult male attorney practicing as such, and a director at Werksmans Attorneys Incorporated ("**Werksmans Inc**").
- 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. Although I may not have personal knowledge of what I say in certain instances, such statements are corroborated by objective evidence from the documents which are not and could not be disputed, thus making it unnecessary to call anybody to corroborate them.

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BACKGROUND FACTS**2**

- 3 During 2014 two reports came out of an IPID investigation relating to the Rendition of Zimbabwean nationals. Both were signed by Mr Khuba and submitted to the NPA for a prosecutorial decision. The first report is dated 22 January 2014, signed and submitted by Mr Khuba to the NPA on or about 24 January 2014 for a prosecutorial decision. The second report is dated 18 March 2014 signed by Messrs Khuba, Sesoko, and McBride. This report was submitted to the NPA on or about April 2014. The first report, amongst others, recommended criminal prosecution against Generals Anwa Dramat ("*Dramat*") and Shadrack Sibiya ("*Sibiya*"). The second report did not recommend criminal prosecution against Generals Dramat and Sibiya.
- 4 The Minister of Police at the time, Mr Nathi Nhleko ("*the Minister*") was faced with glaring discrepancies between the two reports and suspected serious tampering thereof. Consequently, on 23 February 2015, the Minister appointed Werksmans to conduct an investigation into the reports submitted by IPID in relation to the Rendition.
- 5 Following the recommendations made by Werksmans in its report, Messrs Khuba and Sesoko were charged for the same misconduct by their employer as employee one and two respectively. I attach hereto as annexure "**SJ1**" a copy of the charge sheet. In terms of this charge sheet Messrs Sesoko and Khuba were 'co-accused' charged as follows:

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"Charge 1**3**

1. You, Mr Khuba ("first employee") are currently the Provincial Head of IPID in Limpopo. During 2012, you were appointment as the Lead Investigator in the matter relating to the illegal rendition of Zimbabwean nationals by certain members of the Directorate for Priority Crimes Investigation ("DPCI") which occurred during November 2010 and January 2011. The investigation was concluded on or about 2014 and you submitted a final investigation report to the National Prosecuting Authority ("NPA") for a decision. In submitting the said report to the National Prosecuting Authority, you were accompanied among others by Mathews Sesoko, Head of Investigations at IPID, who provided legal assistance to you and your team during the investigation. In submitting your January 2014 report to the NPA, you met with Adv. Anthony Mosing of the NPA and handed a final report to him for the NPA to take a decision to prosecute.

2. Notwithstanding that you had submitted the final report to the NPA, which the NPA subsequent referred to the Director of Public Prosecutions, South Gauteng (Adv Chauke) you, accompanied by Angus approached the DPP South Gauteng's office, and collected the docket and the report from the DPP, South Gauteng.

3. You, Sesoko and McBride altered the report which had been handed over to NPA, and deleted information incriminating Lieutenant General Anwa Dramat (Dramat), the former National Head of DPCI, and/or

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Sibiya, the Provincial Head of DPCI Gauteng, from the report in order to reach a conclusion that Dramat and Sibiya had been exonerated by IPID when you knew or ought to have known that the final IPID report of January 2014 recommended that Dramat and Sibiya be criminally charged.

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4. By altering the report of January 2014, you and Sesoko have made yourself guilty of dishonesty, and defeating the ends of justice."

[Emphasis added]

- 6 The disciplinary hearing was held on 16 August 2015. The content of the charge sheet was taken from the findings expressed in the Werksmans report and as such, the disciplinary hearing provided Mr Sesoko with a golden opportunity to rebut the content of the Werksmans report (transcripts included) and provide his side of the story.
- 7 Mr Sesoko did not attend his disciplinary hearing and same continued in his absence. Advocate Mxolisi Zondo, who presided over Mr Sesoko's disciplinary hearing found him guilty of the charges and recommended that he be dismissed summarily. I attach a copy of the disciplinary outcome as annexure "SJ2".
- 8 The then Acting Executive Director of the IPID Mr Israel Kgamanyane accepted the recommendation made in the outcome of the disciplinary hearing and dismissed Mr Sesoko from the IPID.

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9 Soon after Mr McBride's suspension was lifted by the Constitutional Court which allowed him to return to office, Mr McBride reinstated Mr Sesoko to the IPID despite the outcome of his disciplinary hearing. This is baffling considering that Mr Sesoko had been found guilty of serious misconduct involving gross dishonesty.

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10 Mr Sesoko's reinstatement was peculiar and irregular given that it had not been at the instance of either an arbitration award or a court order. Mr McBride simply reinstated Mr Sesoko without any process having been followed.

11 In irregularly reinstating Mr Sesoko, Mr McBride undermined the decision of a duly constituted disciplinary hearing. As such all the resources which had been expended in conducting Mr Sesoko's disciplinary hearing had gone to waste, as Mr McBride irrationally nullified the disciplinary outcome.

12 I provide this information pertaining to Mr Sesoko's irregular reinstatement as he has not taken the commission into his confidence and explained the circumstances under which he returned to the IPID.

DISTINGUISHING FEATURES OF AFFIDAVITS SUBMITTED BY MESSRS KHUBA, MCBRIDE AND SESOKO

13 From all the affidavits presented to the Commission by the three gentlemen, there is a common thread or concerted effort to distance Mr McBride from the knowledge of first report dated 22 January 2014. Similarly there is commonality

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in their attempt to distance themselves from the knowledge of the fact that when the docket was submitted to the NPA, it was submitted with a report containing recommendations.

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- 14 They further wish to bury or deliberately obscure the fact that when the docket was collected from the NPA same was collected with the first report as section "B". They wish to distance Mr McBride from the collection of the docket and create an improbable impression that McBride was not aware of the fact that the docket contained the first report.
- 15 The other commonality among the three gentlemen is that they have not taken the Commission into their confidence regarding their academic qualifications. This is a critical point because such an undertaking would afford the Commission an opportunity to make a determination as to who, between the three gentlemen and Werksmans, is qualified to make opinions on questions of law. Whether such opinions are correct or incorrect is a separate question.
- 16 According to them, only Maluleke who was very junior official at the DPCI should take responsibility for the Rendition. They seem to trivialise the Rendition, which was a state sponsored serious violation of human rights. To them the Rendition investigation was calculated to attack General Dramat, Sibiya and McBride. According to McBride, everything pertaining to the Rendition was politically motivated. This with respect is not only nonsensical reasoning, but demonstrates a failure on the part of the three gentlemen to

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appreciate that the Constitution of South Africa and international instruments were violated. 7

17 In concluding that only Maluleke should be criminally charged for the Rendition, they clearly did not appreciate the doctrine of 'command or superior responsibility'. In terms of this doctrine, Generals Sibiya and Dramat could be held criminally liable for their culpable failure to fulfil their duties and prevent the conduct of their subordinates during the Rendition, despite their knowledge thereof. This doctrine is codified in the Rome Statute of the International Criminal Court ("ICC Statute") which South Africa is a party to. It has also found application in matters related to human rights abuse.

18 I have read the supplementary affidavit by Mr Mathews Sesoko and I respond to the averments contained therein herein below.

Ad paragraph 1

19 I deny that the facts contained in Mr Sesoko's supplementary affidavit are both true and correct and put him to the proof thereof.

Ad paragraph 2

20 I wish to state at the outset that the impression that Mr Sesoko seeks to create that he was not told that he was being subjected to a misconduct and criminal inquiry by Werksmans is false. The Werksmans investigation was not a criminal investigation nor was it a disciplinary hearing. It was a fact finding exercise regarding why the two reports had conflicting recommendations. Prior to the

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actual interview with Mr Sesoko, there had been numerous correspondence between Werksmans and Mr Jac Marais from law firm Adams and Adams, who represented Messrs Sesoko, Khuba and McBride. I do not know why Mr Marais ended up not attending any of the interviews between Werksmans and Messrs Sesoko, Khuba and McBride.

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- 21 As I have stated in my answering affidavit to Mr McBride's supplementary affidavit, Mr Sesoko was fully aware of the nature of the Werksmans investigations and required no caution from Werksmans.

Ad paragraph 3

- 22 The contents of this paragraph are denied.
- 23 The Werksmans report was commissioned by the Minister and not the IPID. This is clear from the terms of reference of which Mr Sesoko has knowledge. Werksmans had no mandate or instructions to issue the report to Mr Sesoko. Furthermore, the fact that the report was allegedly leaked to the media has nothing to do with Werksmans.
- 24 The report made recommendations to the Minister to *inter alia* take disciplinary action against Messrs Sesoko, Khuba and McBride. All three individuals were afforded opportunities to be heard in internal disciplinary hearings established by the Minister and the IPID. I hasten to mention that the disciplinary proceedings were presided over by independent chairpersons from the Johannesburg Bar of Advocates. Mr Sesoko's disciplinary hearing, in particular,

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was presided over by Advocate Mxolisi Zondo who found him guilty of serious misconduct and recommended his summary dismissal. The purpose of that disciplinary hearing was to afford Mr Sesoko with an opportunity to respond to the allegations put to him as a result of recommendations made in the Werksmans report. Mr Sesoko equally had an opportunity to deal with the criminal charges levelled against him. Werksmans never deprived Mr Sesoko of any of these rights.

Ad paragraph 4

25 It is not true that 'on an objective look' Khuba regarded the first report as an 'interim report'. This so called 'objective look' is contradicted by Mr Khuba, Col. Moukangwe and Adv. Mosing who all told Werksmans that the report was a final report. This version by Mr Sesoko is inconsistent with his own conduct during January 2014 to March 2014. I expand on these averments herein below:

Was the First Report an Interim Report?

25.1 The IPID 2013 Standard Operating Procedure defines an interim report as follows:

'Interim Case Investigative Report'- means a case investigative report where the investigation has been completed but where a recommendation cannot be made to the DDP due to outstanding technical reports; however recommendations may be made to SAPS;'

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25.2 It is common cause that the first report signed by Mr Khuba contained recommendations directed to the NDPP. This report was submitted to the NDPP together with the IPID docket by Mr Khuba. The recommendations made in the first report were not for SAPS but were for the NDPP to make a decision on whether or not to prosecute. As such, it cannot be the case that the first report was an interim report.

25.3 I have dealt with the issue of the alleged outstanding evidence in my affidavits in repose to Messrs McBride and Khuba's affidavits. The first report was submitted together with the IPID docket as defined in the IPID Standard Operating Procedure of 2013/2014 ("the SOP"). The SOP defines an IPID docket as follows:

"a docket that contains all evidential documents correspondence and investigative journal, it consist of A-E clips. This docket is used to refer the IPID investigation to the DPP, SPP and to Court;"

25.4 Mr Sesoko knows that the first report was submitted to the NPA together with the docket as defined in the SOP.

25.5 Secondly, Mr Sesoko's remarkable version that the first report was an interim report is contradicted by his own actions.

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25.5.1 Mr Khuba confirmed in his interview with Werksmans on 13 April 2015 that during the month of February 2014 or before Mr McBride joined the IPID, he (Khuba) and Mr Sesoko visited the offices of the NPA with the intention of getting arrest warrants against the those mentioned in the recommendations of the 22 January report. A copy of the transcript is attached marked "SJ3".¹

25.5.2 Mr Khuba was corroborated by Col. Moukangwe during an interview held with Werksmans on 30 March 2015. I attach a copy of the transcript as annexure "SJ4". At page 5 of SJ4 Col. Moukangwe states the following:

"I won't be able to say it was submitted, but we went to the National Director of Public Prosecutions, because we were given two advocates to work with us on this issue. I was there with MR KHUBA and MR SESOKO. MR SESOKO is a legal person, he was a former prosecutor in BENONI. We went there, and when we were there the report was already drafted. That is what I can say with certainty, because when we were there the prosecutors who were dealing with us on this issue, knew about it, and had a copy of the report."

¹ Transcript of 13 April 2015 page 3 (SJ3).

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25.5.3 After I asked Col. Moukangwe whether the report submitted to the NPA was temporary, incomplete or final, he had the following to say:

"It was a final, because we wanted warrants there, really, that's why we took our legal person, MR SESOKO. We were worried about why it seemed they were dragging their feet in giving us warrants of arrest for these people, because the people never wanted to cooperate."²

25.6 Mr Khuba further confirmed that *'once an investigator has made recommendation you have done your investigation.'*³ This contradicts Mr Sesoko's assertion that the first report was an interim report. Mr Khuba further reiterated his view to the effect that the first report was a final report, in the settlement concluded with the IPID to conclude his disciplinary inquiry.

25.7 At paragraph 19 of the supplementary affidavit under reply, Mr Sesoko attests that he was already sent the first report in January 2014 to facilitate a hand over to the Secretary of the Police. As such, Mr Sesoko's

² Line 5 of Transcript: 30 March 2015 (SJ4).

³ Line 20 page 13 of the Transcript 13 April 2015 (SJ3).

claim that the first report was an interim draft is contradicted by his own conduct.

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- 26 Turning to MS2, I deny that Adv. Mosing and Moeletsi regarded the first report as a draft. At paragraph 2 of MS2 Adv. Mosing states:

"The investigations has now been complete and a report for 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 cellular phone data and evidence obtained from a computer belonging to the DPCI, is also enclosed."

- 27 Nowhere in MS2 does Adv. Mosing state that he regards the first report as a draft. To the contrary, Adv. Mosing indicates that investigations have been completed and a report has been submitted for a decision on the merits.

Ad paragraph 6

- 28 The contents of this paragraph are noted. To add, the report emailed to Mr Sesoko did not have Mr Khuba's statement as an investigator. Mr Khuba was requested by Adv. Mosing to include his statement into the report. After updating the report with his statement, Mr Khuba submitted the first report with his original recommendation that General Dramat and Sibiya be charged.

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Ad paragraph 7**14**

29 The contents of these paragraphs are noted.

Ad paragraph 8

30 The contents of this paragraph are denied. There was evidence to support a *prima facie* case of criminal liability against General Dramat and Sibiya. Messrs Sesoko, Khuba and McBride deleted information from the first report in order to arrive at the conclusion they did. I have dealt with why I say that there was a *prima facie* case against Generals Dramat and Sibiya in my response to Messrs McBride and Khuba's supplementary affidavits. My views about the criminal liability or otherwise of General Sibiya and Dramat are also explained in the Werksmans report.

Ad paragraph 9

31 Mr Sesoko's conduct in deleting information implicating or linking Generals Dramat and Sibiya to the rendition of Zimbabwean citizens, who were tortured and murdered in Zimbabwe, is serious misconduct involving dishonesty in performance of duties as an employee of IPID. Mr Sesoko's 'opinions' are not based on any assessment of evidence but on deception and gross dishonesty. I have dealt with the said dishonesty and deceit in section B of the Werksmans report and beg to incorporate same herein.

32 I reiterate that the conduct of Messrs Sesoko, Khuba and McBride was aimed at obstructing the administration of justice because of the manner in which they conducted themselves when the second report was prepared.

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Ad paragraph 10

33 I deny that the NPA followed the recommendation made by Messrs Khuba, Sesoko and McBride. Mr Sesoko knows that the NPA had decided to prosecute Generals Dramat and Sibiya before Werksmans issued its report. I do not know why he takes credit for the NPA's decision to only pursue criminal charges against Colonel Maluleke.

Ad paragraph 12

34 The contents of this paragraph are denied. I maintain the content of paragraph 2.2.3 of the Werksmans report. General Dramat knew that the response he gave to parliament was untrue. The circumstances under which it is contended that General Dramat was at all relevant times aware of the true facts, are fully explained in the first report and contained in success reports prepared by Colonel Maluleke and signed by Colonel Loenie Verster, photographs between members of DPCI (including General Dramat) and Zimbabwean police, smses to General Dramat etc. All of this information was in existence prior to Mr Khuba's investigation.

Ad paragraph 13

35 The contents of this paragraph are denied. I beg leave to incorporate the content of page 76 to 90 of my answering affidavit to Mr McBride's and Khuba's supplementary affidavit.

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Ad paragraph 14**16**

36 The contents of this paragraph is denied.

37 I maintain what is contained in paragraph 3.1.5 of the Werksmans report.

38 As stated in my response to Mr McBride's supplementary affidavit, Ms Mbeki denies that she ever instructed Mr Khuba not to work with Mr Sesoko.

Ad paragraph 15

39 I note Mr Sesoko's statement of facts regarding the memorandum prepared by Adv. Mosing, however I deny that there was outstanding expert analysis of General Sibiya's cellphone records by the time the first report was submitted. Mr Khuba was in possession of a handwritten expert report regarding General Sibiya's cellphone records. I have explained my reasons for holding such a view at paragraph 129 to 144 of my answering affidavit to Mr McBride's supplementary affidavit. I repeat these paragraphs herein.

Ad paragraph 16

40 I maintain what is stated in paragraph 3.2.1.2 of the Werksmans report, in any event Mr Sesoko is not contesting the facts contained in paragraph 3.2.1.2 of the Werksmans report.

41 I have no knowledge of any meetings held between the IPID and Mr Nxasana. I deny that there was no need to involve Adv. Mosing and Moeletsi in compiling the so called second and final report.

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Ad paragraph 17

42 I deny the content of this paragraph and maintain what is contained in paragraph 3.2.1.3 of the Werksmans report. Mr Sesoko not only knew about the first report, he saw it too. I expand on this herein below.

42.1 Mr Khuba confirmed during an interview with Werksmans on 13 April 2015 that Mr Sesoko was fully aware of the existence of the report at page 2 line 10 to 20 of the transcript of the interview.

"MR JULY: So he was aware of the report.

MR KHUBA: Yes.

MR JULY: But he may not have seen the report. You also testified that because he was your senior, sort of, although the Acting Executive Director gave you specific instructions not to involve him, you did inform him about the report.

MR KHUBA: Yes, yes.

MR JULY: So he knew about the existence of the report.

MR KHUBA: Yes."

42.2 Later on during the same interview at page 9 line 6 to 12 of the transcript, Mr Khuba stated the following:

"MR KHUBA: That is a very difficult question. But I need to say as the investigating officer I was over-trusting with the report.

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Because when SESOKO asked for the report, I never withheld the report, I emailed it to him. When we were working on the report I used his computer."

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42.3 Mr Khuba further confirmed that during February 2014 he, Mr Sesoko and Col. Moukangwe attended at the NPA's offices and demanded that arrest warrants be issued against the suspects implicated in the first report, because, so he said, the NPA was taking its time in making a decision to prosecute .

"MR JULY: We are going to record this. I was saying to you that when we interviewed MR MOUKANGWE, he said you, him and SESOKO went to the NPA.

MR KHUBA: Yes.

MR JULY: And the reason you went to the NPA is you wanted a warrant of arrest.

MR KHUBA: Yes.

MR JULY: He said it was taking time and you guys wanted to find out why.

MR KHUBA: Yes." ["SJ3" page 1 line 16 to 24]

42.4 Col. Moukangwe also confirmed that Mr Sesoko was aware of the first report. In our interview with him, Col. Moukangwe stated:

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"I won't be able to say it was submitted, but we went to the National Director of Public Prosecutions, because we were given two advocates to work with us on this issue. I was there with MR KHUBA and MR SESOKO. MR SESOKO is a legal person, he was a former prosecutor in BENONI. We went there, and when we were there the report was already drafted. That is what I can say with certainty, because when we were there the prosecutors who were dealing with us on this issue, knew about it, and had a copy of the report." ["SJ4", page 5]

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- 42.5 After I asked Col. Moukangwe whether the report submitted to the NPA was preliminary, incomplete or final, he said the following about the involvement of Mr Sesoko:

"It was a final [report], because we wanted warrants there, really, that's why we took our legal person, MR SESOKO. We were worried about why it seemed they were dragging their feet in giving us warrants of arrest for these people, because the people never wanted to cooperate." ["SJ4" page 15]

- 42.6 I refer to these extracts from the transcripts to show that Mr Sesoko has not been honest with the Commission or Werksmans when he claimed to have had no knowledge of the existence of the first report. This clearly was not true in light of Mr Khuba's version that he was aware of its existence. Both Mr Khuba and Col. Moukangwe confirmed that he was

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with them when they requested the NPA to act upon the recommendations contained in the first report. **20**

42.7 In his settlement agreement to conclude the disciplinary hearing convened by IPID, Mr Khuba made it abundantly clear that Mr Sesoko was aware of the first report and he was amongst others accompanied by Mr Sesoko when he submitted same to the NPA. I attach hereto a copy of Mr Khuba's settlement agreement marked as "SJ5".

42.8 Mr Sesoko also confirmed his actual knowledge of the existence of the first report in paragraph 19 of his supplementary affidavit under reply by stating the following:

"Khuba had already sent me a report in January to facilitate handing over to the Secretary of Police; I do not recall giving McBride any report prior to the final report submitted to him for consideration and signature. I also do not recall Khuba asking me to pass a report on to McBride." [Emphasis added]

43 All these facts discussed above lead to the inescapable and reasonable conclusion that Mr Sesoko was not only aware of the existence of the first report, but has seen it and sought to act on it on at least two occasions.

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Ad paragraph 18**21**

44 There is nothing unclear about the content of paragraph 3.2.1.9 of the Werksmans report. I do not understand what Mr Sesoko's objection to this paragraph is because at paragraph 6 of his supplementary affidavit, he acknowledges that an email containing the first report was sent to him by Mr Khuba. At page 9 lines 7 to 16 of the transcript of the interview held with Mr Khuba on 13 April 2015, he stated that he never withheld the report from Mr Sesoko. Further that he (Mr Khuba) emailed first report to Mr Sesoko when the latter asked for it.

45 As such, I submit that it is apparent from the foregoing that the conclusion in question is based on evidence provided to Werksmans during the interview.

Ad paragraph 19

46 Mr Sesoko admits that he not only knew of the existence of the first report but had seen it and same was sent to him for him to facilitate its hand over to the Secretary of Police.

47 Furthermore, Mr Sesoko does not deny that the email containing the first report was sent to him to pass it along to Mr McBride. All what he says is that he does not recall being sent the report by email in order to pass it to Mr McBride or actually giving the report to Mr McBride. To expand on what is contained in the Werksmans report, Mr Khuba informed Werksmans in an interview held on 23 April 2015 that Mr Sesoko asked for the report in order to give it to

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Mr McBride. At page 3 line 5 to 18 of the transcript attached hereto marked **22**

"SJ6" Mr Khuba states:

"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?

MR KHUBA: It was MR SESOKO.

MR JULY: MR SESOKO?

MR KHUBA: Yes.

MR JULY: You emailed the report to MR SESOKO?

MR KHUBA: Yes.

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

MR KHUBA: No, I do not know.

MR JULY: But you met with McBRIDE the day after you emailed the report?

MR KHUBA: That's correct."

48 At page 7 line 18 to page 8 line 9 of MS1, Mr Sesoko admitted that Mr Khuba provided him with a copy of the first report to pass it on to Mr McBride.

"MS BADAL: Okay, Mr Khuba says he provided you with a copy of the report to provide to Mr McBride in order to brief him on high profile matters.

S 5

MR SESOKO: Yes, I am saying the briefing on the rendition happened before between Mr Khuba and Mr McBride. **23**

MR SESOKO: To provide to Mr McBride, was provided to Mr McBride, so there was...

MS BADAL: Or you provided him a copy?

MR SESOKO: Printed it out and provided it to him, ja."

49 Contrary to what Mr Sesoko claims to not recall, the transcript of his own interview reveals that he in fact provided Mr McBride with a hard copy of the first report which he had printed.

Ad paragraph 20

50 The Werksmans report does not suggest that Mr Sesoko was present at the meeting between Messrs Khuba and McBride on 5 March 2014.

Ad paragraph 22 and 23

51 I maintain the contents of paragraph 3.2.1.24 of the Werksmans report and deny what Mr Sesoko is averring in paragraph 22 of his supplementary affidavit.

52 Mr Khuba deposed to the said supporting affidavit to Mr McBride's affidavit two months after the Werksmans report was submitted to the Minister. Mr Khuba did not proffer the reasons stated in his supporting affidavit to Mr McBride's application as reasons for deleting information from the first report. That detail was not before Werksmans. In any event, given that I have responded to Mr Khuba's supplementary affidavit, I am in a position to state that the reasons

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- 55.1 Annexure "AM2" is a draft because it was marked 'draft' by Adv Mosing. **25**
This report although submitted as final by Mr Khuba on 22 January 2014 has 26 pages whereas the first report which was submitted approximately 2 days later has 35 pages.
- 55.2 Annexure "AM2" does not have Mr Khuba's statement as an investigator whereas the first report has Mr Khuba's statement.
- 55.3 On 22 January 2014, Adv. Mosing advised Mr Khuba that in order to complete the investigation, it was required of him to incorporate his statement as the investigator appointed in terms of the Act, regarding how he conducted his investigation, into the report. As such, Adv. Mosing wrote the word 'draft' on the report not containing Mr Khuba's statement. Mr Khuba duly prepared a statement and incorporated it into the report. Having incorporated his statement, Mr Khuba signed the report and submitted it to the NPA on or about 24 January 2014. He did not update the report to reflect the actual date on which his report was submitted to the NPA. During the interview with Werksmans on 17 April 2015 at page 58 and line 16 to line 21 of page 59, Mosing stated the following:

"MOSING: And I know his statement is supposed to be in that thing, in the one we gave. Now I remember. That's why on this copy that I have, I wrote "draft", because it lacked his statement. Once he did that - and like I said, in not making a copy I didn't anticipate something like this happening. Because we thought in good faith KHUBA would stand by that investigation and wouldn't be made to change it. In other words the

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original report that he signed - although he had signed this one and I wrote "draft" on it - we said: This one is incomplete and you need to summarise your statement. I think maybe if you look at the docket, when was his statement commissioned? It was commissioned more or less at the same time, because it was the last thing he also did. Because he said although he had a draft of what he had done, we said: Do an investigating officer's statement, so to speak, explaining, because in this case he really needed to explain how this case unfolded, because it would help anyone reading the docket to understand what was going on. They could be easily confused, because there is a version here which we have to disprove. Now I remember. I think that's why we didn't even have this. You see, he didn't even change the date, he kept the date. It took him a day or two basically to finalise that. I was a bit worried as to that one.

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56 I attach a copy of the transcript of the interview with Adv. Mosing as annexure "SJ7". In the same interview Adv. Mosing confirmed that the first report was according to him, Adv. Moeletsi, Mr Khuba and Col. Moukangwe a final report:

"MOSING: It was just to make sure: Finish your investigation so that there is nothing extra to go and get. So by the time he then wrote the final report, which we then had agreed in terms of who would be charged, and so on - as I said, where we had agreed, and we mentioned names as well, as was mentioned in this report dated 22 January 2014. Based on this report, which we understood to be the final report, with the investigation being final as far as we were concerned, the matter was now ready to be submitted to a prosecutor to make a decision on whether to prosecute anyone or not. BILLY MOELETSI and myself drafted a memorandum to the Deputy National Director of Public

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Prosecutions, ADVOCATE JIVA, attaching – let me just get that report, first of all. [SJ8 page 24 line 18 to page 25 line 10] **27**

57 As such, there is no truth in Mr Sesoko's averment that that Adv. Mosing and Moeletsi regarded the first report as a 'draft', there is a clear distinction between what was recognised as 'draft' and the final report.

58 Advocate Mosing further maintained his version at a Mr Sesoko's disciplinary hearing before Advocate Mxolisi Zondo.

59 Finally the fact that Adv. Mosing stated that General Sibiya's cellphone records can be looked at again once an expert has been procured, does not mean that Mr Khuba was not in possession of such expert analysis. As a matter of fact, Mr Khuba was in possession of a handwritten expert report analysing General Sibiya's cellphone records. I have dealt with this issue extensively in my answering affidavits to Messrs McBride and Khuba.

Ad paragraph 25

60 I deny that there was any justification for the changing of the recommendations expressed in the first report. I deny that the evidence did not support the recommendation made in the first report. Instead of producing the evidence which supports the recommendations expressed in the second report, the authors of the said report deleted the very information upon which the recommendation made in the first report was based upon. I have dealt with this

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issue in both my answering affidavits to Mr McBride and Khuba's **28**
supplementary affidavits.

61 I invite Mr Sesoko to take the Commission into his confidence to produce and reveal the evidence and/or investigation which he conducted to arrive at the conclusion reached in the second report.

Ad paragraph 26

62 The contents of this paragraph denied. The opinions expressed by Werksmans are based on facts.

Ad paragraph 27

63 I repeat what I have said in my answering affidavit to Mr Khuba's supplementary affidavit regarding Mr Khuba's credibility particularly the caution with which Mr Khuba's affidavit in support of Mr McBride's application should be treated. I repeat my averments regarding Mr Khuba's credibility herein.

Ad paragraph 28

64 I deny that Mr Khuba's version for preparing the second report ought to be accepted or believed.

Ad paragraph 29

65 As previously stated, this is an admission on the part of Mr Sesoko that the first report had been sent to him and he knew of its existence contrary to what he told Werksmans during his interview with Werksmans.

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Ad paragraph 30

66 I maintain what is stated at paragraph 5.1.3.2.2.4 of the Werksmans report. Mr Khuba stated in his settlement agreement with the IPID, that when he submitted the first report to the NPA he was accompanied amongst other by Mr Sesoko. Mr Sesoko himself, admitted in paragraph 19 of his supplementary affidavit that Mr Khuba sent him the first report in January in order to facilitate its hand over to the Secretary of Police.

Ad paragraph 31

67 The content of this paragraph is denied.

68 I maintain and confirm the correctness of the conclusion reached in paragraph 5.1.3.2.2.5 of the Werksmans report and deny that Mr Sesoko's version has been ignored by Werksmans.

Ad paragraph 32

69 As previously stated, I maintain that Mr Sesoko was and is still being untruthful regarding his knowledge about the existence of the first report.

Ad paragraph 34

70 I reiterate what is stated in paragraph 5.3.1 of the Werksmans report, I further refer to my answering affidavit to Mr McBride's supplementary affidavit.

Ad paragraph 35

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71 I stand by what is stated in paragraphs 5.4.13 to 5.4.15 of the Werksmans report. Nowhere in the Werksmans report is it claimed that Adv. Mzinyathi and Baloyi's recommendation was based on any of the two reports. Nowhere is it alleged in the Werksmans report that Adv. Baloyi and Mzinyathi recommendation was influenced by any of the two reports. **30**

Ad paragraph 36

72 The content of this paragraph is denied. The second report is deeply flawed and a product of gross dishonesty on the part of Messrs McBride, Sesoko and Khuba. There was a prima facie case for criminal charges to be levelled against General Dramat, Sibiya and other officers, including Colonel Maluleke.



 DEPONENT

The deponent has acknowledged that he knows and understands the contents of this affidavit, he has no objection to taking the prescribed oath and that he regards the prescribed oath as binding upon his conscience, the deponent having sworn to this affidavit on this the 15th day of ~~MAY~~ ^{JUNE} 2020.



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**IN THE DISCIPLINARY HEARING
(HELD AT PRETORIA)**

In the disciplinary enquiry between:

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Employer

and

INNOCENT KHUBA

1ST Employee

MATTHEWS SESOKO

2ND Employee

CHARGE SHEET

CHARGE 1

1. You, Mr Khuba ("first employee") are currently the Provincial Head of IPID in Limpopo. During 2012, you were appointment as the Lead Investigator in the matter relating to the illegal rendition of Zimbabwean nationals by certain members of the Directorate for Priority Crimes Investigation ("DPCI") which occurred during November 2010 and January 2011. The investigation was concluded on or about January 2014 and you submitted a final investigation report to the National Prosecuting Authority ("NPA") for a decision. In submitting the said report to the National Prosecuting Authority, you were accompanied among others by Matthews Sesoko, Head of Investigations at IPID, who provided legal assistance to you and your team during the investigation. In submitting your January 2014 report to the NPA, you met with

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Advocate Anthony Mosing of the NPA and handed a final report to him for the NPA to take a decision to prosecute.

2. Notwithstanding that you had submitted the final report to the NPA, which the NPA subsequently referred to the Director of Public Prosecutions, South Gauteng ("Advocate Chauke") you, accompanied by Angus approached the DPP South Gauteng's office, and collected the docket and the report from the DPP, South Gauteng.
3. You, Sesoko, and McBride altered the report which had been handed over to NPA, and deleted information incriminating Lieutenant General Anwa Dramat ("Dramat"), the former National Head of DPCI, and/or Sibiya, the Provincial Head of DPCI Gauteng, from the report in order to reach a conclusion that Dramat and Sibiya had been exonerated by IPID when you knew or ought to have known that the final IPID report of January 2014 recommended that Dramat and Sibiya be criminally charged.
4. By altering the report of January 2014, you and Sesoko have made yourselves guilty of dishonesty, and defeating the ends of justice.

DATED AT JOHANNESBURG ON THIS THE 06TH DAY OF JULY 2015

Hogan Lovells Attorneys
Initiators and pro-forma Prosecutors

S.S.
J.B.



"552"

**IN THE DISCIPLINARY HEARING
(HELD AT PRETORIA)**

In the matter between:

IPID

Employer

and

MATTHEWS SESOKO

Employee

WRITTEN REASONS FOR THE RULING

INTRODUCTION

1. These are written reasons in respect of a ruling which I handed down *ex tempore* on 16 August 2016, whereupon I found Mr Matthews Sesoko ("Sesoko") guilty of misconduct and thereafter issued a sanction of dismissal with immediate effect. Despite the fact that I gave an *ex tempore* ruling with oral reasons for my findings both in respect of misconduct and the sanction, I have however deemed it prudent to give written reasons if only to supplement my *ex tempore* findings and also for the benefit of any forum to which Sesoko may want to challenge my rulings.

2. The background to the misconduct charge against Sesoko is a matter of common cause and has been set out in my first ruling *in limine* in respect of the

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application for a stay of proceedings and therefore I do not consider it necessary to repeat same here.

ANALYSIS OF EVIDENCE

3. Sesoko was charged with misconduct and the charge relating to him appears on paragraphs 3 of the charge sheet which is contained on Bundle "A" and more specifically at page A4 which reads as follows:

"You, Khuba and McBride altered the report which had been handed over to NPA, and deleted the information incriminating Lieutenant General Anwa Dramat the former National Head of DPCI, and/or Sibiya the Provincial Head of DPCI Gauteng, from the report in order to reach a conclusion that, Dramat and Sibiya have been exonerated by IPID when you knew or ought to have known that the final IPID report of January 2014 recommended that Dramat and Sibiya be criminally charged. By altering the report of January 2014, you and Khuba have made yourselves guilty of dishonesty and defeating the ends of justice".

4. To this end, the employer adduced evidence through Advocate Mosing ("Mosing") who testified, amongst other things, that the report dated 22 January 2014 was in actual fact and for all intents and purposes, the final report. It was put to Mosing that in line with Sesoko's version, the January report was not the final one as same had not been signed off by the Executive Director in line with the regulations which required that such a report be signed by the Executive Director.

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5. It was therefore further put to Mosing that the March report which was signed by McBride, Sesoko and Khuba was the one which was final and not the January one. Mosing refuted this version and stated unequivocally that the January report was the one which was final regardless of whether it had been signed by the Executive Director as those were internal IPID processes. The gravamen of Sesoko's charge is whether he, along with McBride and Khuba, acted in concert in altering the January report insofar as the conclusion whether to prosecute Dramat and Sibiya was concerned with the result that Sibiya and Dramat were therefore exonerated.
6. In essence the two reports, that being the January and the March reports, are the same save for the conclusions that they reached insofar as the prosecution of Sibiya and Dramat were concerned. Whilst the January report recommends that Sibiya and Dramat be charged and be prosecuted for their role in the Zimbabwe illegal renditions, the March report exonerates Sibiya and Dramat from any wrongdoing or participation in the Zimbabwe illegal rendition.
7. In essence Sesoko alongside McBride and Khuba were charged for altering the January report which had recommended that Sibiya and Dramat be prosecuted and resulting in the March report which then exonerated the pair from persecution. That is what is at the core of the charge against Sesoko. In other words, Sesoko does not deny the fact that he took part in authoring the March report however he denies that such amounted to an alteration as in his view, the January report was not final as same had not been signed by the Executive Director and he is therefore not guilty of any misconduct.

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FINDINGS AND REASONS THEREOF

8. Having heard the evidence by Mosing and having gone through the January report myself, it is difficult to comprehend how it could be said not to be a final report when in fact for all intents and purposes the January 2014 report was a final report and so any act that was committed thereafter to change the contents thereof ought to amount to an alteration and this is what happened when Sesoko, McBride and Khuba embarked on that fatal expedition to produce a different report, that being the March report, which sought to vary the contents of the January report insofar as the prosecution of Sibiya and Dramat were concerned.
9. This is especially so because the January report itself is by no means a draft report and it certainly does not say so as if there was still to be a further report over and above what had been concluded as of the 22 January 2014. Indeed the report is signed by Mr. Innocent Khuba and it is for this reason, amongst others that makes it difficult to comprehend the submission that the January report was not final or was not legitimate simply because it was not signed by the Executive Director.
10. Whether for a report to be authentic same had to be signed by the Executive Director is a matter of internal processes for the IPID and may very well be provided for in the regulations however that does not detract from the fact that the January report was final and that anything that was done thereafter amounted to altering that report. Here one is not dealing with the legitimacy or

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otherwise of the January report as it were, but dealing with Sesoko's conduct in altering some of the material contents of the January report and thereby exonerating Sibiya and Dramat from any wrongdoing in relation to the Zimbabwean illegal rendition.

11. It was common cause that, in co-authoring the March report, Sesoko did take part in the alteration of some of the material contents of the January report. This he did not deny at any stage and it was further common cause that the difference between the January and March reports was the exoneration of Sibiya and Dramat from any wrongdoing in relation to the Zimbabwean illegal rendition. What was in dispute was whether the March report amounted to an alteration, as Sesoko contended that the January report was not final as it had not been signed by the Executive Director and therefore it could not be said to have been altered.
12. I have already expressed the difficulty I have in understanding the contention on Sesoko's part that the January report was not final simply because it was not signed by the Executive Director when, for all intents and purposes and quite apart from the fact that it was not signed by the Executive Director, the report was final and to argue otherwise is to elevate form above substance. In other words, Sesoko wanted the enquiry to believe that form is more important than substance. That is, even though in substance it is clear that the January report was final and recommended amongst other things that Sibiya and Dramat be charged for their role in the rendition saga, but simply because the report in his view did not comply with the regulations in that it was not signed

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by the Executive Director therefore it should not be regarded as final. If this is an invitation to sacrifice substance at the altar of form, such invitation must be rejected.

13. For these reasons, I find that the January report was final and that Sesoko's conduct in co-authoring the March report amounted to alteration of the January report which constituted misconduct on his part and it is for that reason that I found Sesoko guilty of misconduct. Something must be said about the final day of the hearing wherein I issued my ruling *ex tempore*. There is no doubt that fairness would have dictated that Sesoko takes a stand and put up his own version of events in his defence, in line with the well-established principle of our law that is *audi alterem partem* principle ("the *audi* principle").
14. However, it would seem that Sesoko elected to waive his right to be heard when he decided not to attend the proceedings on 16 August 2016 and instead forwarding, through his legal representatives, what purported to be sick notes with the hope that the chairperson would be hoodwinked by these purported sick notes and allow a postponement and thereby further delaying and frustrating the proceedings.
15. I say this because, when I looked at what purported to be sick notes which were presented by Sesoko's counsel, it was clear that these were only presented solely for the purposes of frustrating and delaying the hearing as it was very strange that a general practitioner, would have the requisite specialist knowledge to diagnose Sesoko with depression something which would require

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a psychiatrist or at the very least a psychologist but definitely not a general practitioner to diagnose. All the general practitioner could do would have been to refer Sesoko to a specialist who could then diagnose Sesoko with depression or whatever might have been wrong with him and nothing more. For these reasons I found the sick notes not to be authentic.

16. Because I was not persuaded with the sick notes, I then ruled that the hearing must proceed and I took it that Sesoko had then elected to waive his right to put his case and that is why I then ruled that the proceedings proceed in his absence. In the end, there was only one version before me as a chairperson and that is the employer's version which could not be second guessed in the absence of a version to the contrary and which could be more probable than that of the employer.
17. Even though one could, and of course was able to glean from the versions which were put to Mosing as to what sort of version Sesoko would put when he got the opportunity to state his side of the story, it still would have been preferable, if not mandatory, for Sesoko to take a stand and put his own version of events in line with the *audi* principle. However it is one thing for an employee to be afforded a right which was done in this case hence the disciplinary hearing but is quite another thing altogether for the employee to shun that right, turn his back on it and elect to waive it by adopting a strategy that is aimed at delaying and frustrating the very same hearing which is aimed at providing him with a platform to put his case before his fate is decided.

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18. The employer could only do so much and nothing more. The strategy that was adopted by Sesoko in frustrating and delaying the proceedings flies in the face of expeditious resolution of disputes and it can never be fair to the employer and indeed to the taxpayer that someone who is on a precautionary suspension and whose case has been dragging for over a year whilst he is sitting at home doing nothing and yet getting paid every month by the taxpayers is allowed to continue doing so for God knows how long but as long as he gets his salary every month then he is content with the proceedings being delayed because it suits his strategy.
19. From day one when I had just been appointed to preside over the hearing, it was clear that Sesoko had no intention of having the hearing proceed and that was demonstrated by his legal team raising a flimsy point *in limine* which aimed to stay the proceedings until McBride's Constitutional Court case was determined and quite how those two were linked is still beyond me, but if anything, this serves to demonstrate just how unwilling Sesoko was to take part in these proceedings. Having dismissed that point *in limine* and further furnished my reasons thereof Sesoko then sought to take my ruling on review and also applied for an interdict against the proceedings pending the determination of the review.
20. Once again that to me is not indicative of someone who wants his dispute to be resolved expeditiously but is in fact indicative of someone who is desirous in frustrating and delaying the proceedings something which should never be countenanced. It is a small wonder then that Sesoko lost that Labour Court

case wherein he sought to interdict the proceedings. Because it was clear to me on 16 August 2016 that Sesoko was still employing his delaying tactics as he had been doing all along and also because of the nature of what purported to be sick notes which his legal representatives presented to me that the hearing had to proceed as it was clear to me that Sesoko had elected to waive his right to put forward his own version of events.

21. Based on a single version which was before me, and that is the employer's version of events which was left unchallenged and notwithstanding Sesoko's versions which were put to the witness during cross-examination which had no merit in my view, I found the Sesoko guilty of misconduct. I thereafter proceeded to invite parties to address me on mitigating and aggravating factors so as to arrive on what would be an appropriate sanction and whilst the employer did address me on aggravating factors, Sesoko's legal counsel declined to address me on mitigating factors as in his view it would not serve any purpose as his client was not there.
22. Once again, I had only aggravating factors before me and there were no mitigating factors as to why a sanction of dismissal should not be preferred especially in view of the nature and seriousness of the offense and for that reason I then issued a sanction of dismissal. This is especially so because the offense with which Sesoko had been charged was quite serious and involved an element of dishonesty on his part which then went to the heart of the employment relationship and had the effect of destroying the trust relationship

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between Sesoko and the employer and for that reason the only appropriate sanction that ought to have been preferred was dismissal.

23. In any event, there were never mitigating factors which were presented before me as to why dismissal should not be preferred as such invitation was rejected whilst on the other hand, the employer did address me on aggravating factors and stated, amongst other things, that Sesoko's conduct had the element of dishonesty and that therefore it had destroyed the trust relationship between him and the employer. These are therefore the reasons as to why I found Sesoko guilty of misconduct and further issued a sanction of dismissal.

M Zondo

Chairperson

6th October 2016



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S July/IPID
13.04.15

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
MR KWAZI BUTHELEZI - Candidate Attorney

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13 April 2015

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MR JULY: We are going to record this. I was saying to you that when we interviewed MR MOUKANGWE, he said you, him and SESOKO went to the NPA.

MR KHUBA: Yes.

MR JULY: And the reason you went to the NPA is you wanted a warrant of arrest.

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MR KHUBA: Yes.

MR JULY: He said it was taking time and you guys wanted to find out why.

MR KHUBA: Yes.

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MR JULY: Then was MR SESOKO aware of the report that was given to the NPA?

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S July/IPED
13.04.15

INNOCENT KHUBA

MR KHUBA: Okay.

MR JULY: No, I'm asking you.

MR KHUBA: According to me I don't think he was aware, because I never gave him a copy.

MR JULY: Let's say you never gave him a copy, but he was aware - because he said somewhere in December you sought his advice as to how to submit the report to the NPA. 5

MR KHUBA: Yes.

MR JULY: So he was aware of the report. 10

MR KHUBA: Yes.

MR JULY: But he may not have seen the report. You also testified that because he was your senior, sort of, although the Acting Executive Director gave you specific instructions not to involve him, you did inform him about the report. 15

MR KHUBA: Yes, yes.

MR JULY: So he knew about the existence of the report.

MR KHUBA: Yes. 20

MR JULY: So when McBRIDE asked you - maybe before I go to McBRIDE, do you remember the date when you went to see the NPA?

MR KHUBA: When I went to see ...

MR JULY: When you went with MR MOUKANGWE and MR SESOKO? 25

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S July/IPID
13.04.15

INNOCENT KHUBA

MR KHUBA: No, I can't remember the date, but it was before McBRIDE joined us.

MR JULY: Yes, definitely. You know why it was before McBRIDE, because it was shortly after you submitted the January report. 5

MR KHUBA: Yes, yes.

MR JULY: McBRIDE joined on 3 March.

MR KHUBA: This year, yes.

MR JULY: And you submitted your report on 22 January.

MR KHUBA: Yes. 10

MR JULY: So if you visited the NPA it would have been around February then?

MR KHUBA: Yes, it would have been around there.

MR JULY: And at that time you all went there with one intention, to get the warrant of arrest. 15

MR KHUBA: Yes.

MR JULY: We're not going to talk about the new information. We have talked about the new information and we have our views about this new information, but at one stage you guys 20 applied for the same information, before McBRIDE came into the picture.

MR KHUBA: Okay.

MR JULY: Section 205 - the cellphone information and dates. 25

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5 July/IPID
13.04.15

INNOCENT KHUBA

- MR KHUBA: Mmm.
- MR JULY: According to MOUKANGWE there was nothing that was required - even what you say is new. You knew about that information, firstly, that SIBIYA - at the time¹ you had information that the cellphones that you tracked were not at the scene of the crime. 5
- MR KHUBA: Yes.
- MR JULY: That information you always knew about, even when the report was finalised and was given. That information you knew about? 10
- MR KHUBA: Yes.
- MR JULY: Even the advocates at the NPA raised that issue: Listen, this information you may have a problem with, and that you could go and do one or two things regarding that information. 15
- MR KHUBA: Alright.
- MR JULY: So according to him there was nothing new that came out. 20
- MR KHUBA: Let me expand. There was a telephone record we got in terms of Section 205. That telephone record was like raw data. It had not yet been integrated to an extent where it could guide us to say where (?). I need to be 25

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S July/IPID
13.04.15

INNOCENT KHUBA

very clear, because I was one of the people who was very insistent on saying: This person must be put as a suspect - what is his name?

MR JULY:

SIBIYA.

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MR KHUBA:

SIBIYA. And also DRAMAT must be put as a suspect. There was a time when the advocate dealing with the case was quite hesitant about the issue, to say: Why is SIBIYA being put in the report? But he insisted by saying that we needed to get an expert to assist us. I indicated to him that I had already engaged the expert, but that was not coming forth. I indicated to him that I would suggest to my boss, MBEKI, to say: Can we issue a new order to a new person to deal with the information? The point that makes a difference is that when I discussed it with SESOKO - when we discussed these things - he was also of the view that we can't put this person (?). The issue that you raised last time, that was my point of view to say SIBIYA was heading a unit. The unit came out of that, and in that operation he communicated with his seniors about this operation, because I wanted to go to him with

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a warning statement, to say: Sibiya, if you were not communicating about the mission, what were you talking about? And he never came clear. I have his response. When we went and discussed it - that is when we discussed it with MR SESOKO, after the deliberation with McBRIDE. I want to put this very clearly, to say, if MR McBRIDE then had an agenda for the changing of the report, he might have used SESOKO, because SESOKO had evaluated. We argued. MR SESOKO said: No, no, you can't put words like that. We deliberated about it. We deliberated because that was my position. One question - and I don't know whether you asked it previously - if McBRIDE did not join with the (?), would it have been changed. My view, without even being convinced by SESOKO, I wouldn't have changed it. Because my understanding is that when we deal with such people they are very senior, and to get a little thing where you can point fingers at them is not - because it means you won't get anything.

MR JULY:

So at the time when you met with SESOKO, who was going through the report - he says, and

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let me be upfront with you: Khuba never told me that he even sat with the report. We know that is not true. We said to him that that can't be right, and that will go to the honesty - that KHUBA was not honest with you, because KHUBA came to you and asked for your advice on how to submit the report. He submits the report, and you guys go there and want a warrant off the report that you never signed. The question that I want to ask is this. When McBRIDE asked you for a report, you gave him the report that you had already submitted to the NPA? 5 10

MR KHUBA:

Let me tell you that the report which I had given to him, which I emailed - I don't know whether he read it or did not read it - is the report that I sent the NPA. I had already updated it, but I don't think I updated the recommendation, it was just to add those statements that had just arrived. Because there were things that I received after the report had already been sent. 15 20

MR JULY:

But those things did not influence your recommendation - they did not influence the changing of the recommendation? 25

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MR KHUBA: Let me be honest with you, when I dealt with the report, when I got these new statements, I never went back and looked at the recommendations, I just updated the statements. Because if you check my report, it's categorised. I would do statements of this or of this, but the actual interpretation and the changing of everything happened when McBRIDE had already arrived. 5

MR JULY: Here's the thing. You remember we showed you a number of pages where the information was deleted? 10

MR KHUBA: Yes.

MR JULY: And when we showed SESOKO he said he doesn't know anything, you were the one who was working with that information, and he doesn't know anything about the changes. You said on record you did not delete that information. 15

MR KHUBA: Yes. 20

MR JULY: And you know there is a reason why you would not have deleted the information. For instance, what was said by the people - for you to change it, you would have a reason, and you would put that reason in your report. So 25

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that information was removed. But if it was not you and it was not SESOKO, we have not yet been able to talk to MR McBRIDE, although we wrote him an email to come and talk to us, who then would have deleted that information? 5

MR KHUBA:

That is a very difficult question. But I need to say as the investigating officer I was over-trusting with the report. Because when SESOKO asked for the report, I never withheld the report, I emailed it to him. When we were working on the report I used his computer. Whether he showed McBRIDE - but I remember McBRIDE, if there is one person who read that report extensively it was McBRIDE. He read it extensively. Then the progress which I was doing on the report itself, I was only adding stuff. He was sitting next to me. I was adding things, I was doing things, but whether that part was cut out by him or by me, I will not say, but I don't remember removing it. 10 15 20

MR JULY:

Deleting?

MR KHUBA:

No, no, no, I do not remember thinking to say: I'm deleting this part. Because I had nothing 25

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to benefit by it. In fact it's something that would have made me feel bad, to have the investigation and make me have sleepless nights, and yet not all things are going into that. But the way we worked on that report, I emailed it to MR SESOKO. I do not know how MR SESOKO dispatched it to him. 5

MR JULY: Tell me then, the day of the signing, when you signed, were you in the same room when you signed the report? Did you sign the report when you were somewhere else, or were you in the same office? 10

MR KHUBA: I need to be honest, and I just want to lay a background for you, so that you can understand. When we were dealing with this report, it went back and forth. There were a number of issues we queried, and I was tired. I was tired. Finally there was this report, and it was still on MR SESOKO's computer, because I was not linked to the printer. I was not linked. He was the only one who was linked. So it might have taken not even - it never took three days in succession, it might be around a week or two. Sometimes I would drive, come there, deal with this report and 25

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go back. At the time when we signed, I signed something that was printed off MR SESOKO's computer. Whether it was not the right one, I don't know, because I never went back into this, reading and analysing, but I just believed that it was the same report. 5

MR JULY:

I think from my side I don't have any further questions. I think those were the questions that we wanted to find out, to confirm that indeed you asked SESOKO about the process of submitting the report to the NPA, and the two of you visiting the NPA before McBRIDE, and it was based on the report that you submitted. 10

Another thing that we just need to confirm, and maybe I will ask the question from my side. We spoke to MR ANGUS, who said with a report, when you submit a number of updates, it is not called a report. You are adding to the existing report. But once you make the recommendations, any report which has recommendations is a final report. And if later on you may find one or two bits of additional information, you will add that there, but that report remains the final 15 20 25

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MR KHUBA:

report once it has the recommendations.

I want to tell you that a report that has a recommendation can be regarded as a final report on the basis that there is nothing else you need to do. You need to understand the procedure which I outlined previously, to say when you compile a report with recommendations it has to be assessed by the senior person, who signs it. I was in the predicament where firstly the Acting Head - SESOKO was a senior, but he was still at the same rank as I was. He was acting in that position, but I was also acting, so there was not much difference. We were all Acting Chief Directors anyway. The challenge was that when I completed that report I contacted head office, to say: This report needs to be signed, and there is no-one to sign. SESOKO was already told that he must not really cooperate well with me in that investigation. MBEKI was still an Acting Head, but waiting for SASSA(?). So you have a person who has taken employment with a department. When I spoke with the PAs in her office, they told me: This lady is on study leave(?) and she's only dealing with important

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matters. MOSING was pressuring me, to say: This matter has been going on for a long time, you need to sign. I said: I will definitely sign, I'm going to sign. So I signed it.

MR JULY: You were signing the report ... 5

MR KHUBA: ... even though there were things that were outstanding. But I signed a report with recommendations.

MR JULY: In other words, what ANGUS says, is that what you believed to be the factual situation at the time when you signed the report, even if it changes later on, that report remains the final report. If things have to change you will then have to deal with it, and how do you deal with those issues that have cropped up? 10 15

MR KHUBA: What you are talking about I don't think is an issue of only departmental procedure. It's an issue of commonsense, that once you have made a recommendation you have done your investigation. If new evidence surfaces to rebut that, then you are able to advance: Now I have this and that and that. But you need to understand that when I was requested to submit the report, which I had already updated 20 25

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- because I was very ...

MR JULY: When you were submitting, you were adding?

MR KHUBA: I was adding stuff. But I even sent some of
the stuff to MOSING. I said: I have the
response of (?), and I sent it to him. That's 5
when he said to me: No, no, Khuba, I am not
dealing with this, I have already sent it to
GAUTENG. All along I was thinking he was the
one who was dealing with this investigation,
and he would probably prosecute it. 10
Then the issue of us doing the other report,
even if I had updated that report, I could
have probably (indistinct), but whether the
recommendation would have changed I do not
know. My understanding, from my view, when I 15
sat with SESOKO I started to see it in another
light, and I was very firm with my view. But
SESOKO with his prosecutorial background said:
Mr Khuba, you can't take it this way. You
need to know that when McBRIDE arrived and 20
read the report, we did a new report, he had
an option to say: Guys, let's leave the
prosecutors (indistinct). He had an option.
And he also exercised the other option to say:
You will go and work on this report to reflect 25

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the content. That's why when this document was sent I was never part of it.

MR JULY:

You see, the problem is it is one thing to change the recommendation, but it's another thing to delete information to justify the changing of the recommendation. And if there is no basis or justification for the deletion of information then the conclusion and the report itself raises questions. Do you get what I'm saying?

MR KHUBA:

I understand that. The other thing that you also need to understand is that I think the manner in which we handled the report was quite problematic. When you showed me the part that was deleted, I was worried that they deleted the part that deals with DRAMAT - I think the two. The other one does not deal with DRAMAT. I saw the other one, and it does not deal with him. I was worried. The other reason is that when I came here last time I never prepared. Even now I haven't prepared. I know this investigation, because I did it. I told you that clearly these reports are still there, because that is my understanding. You know what I did, after I dealt with the

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report - in fact I emailed the report to
SESOKO and we worked on it. I went home.
Another day I came again. That's why it took
very long. If you check from the 3rd, when
McBRIDE started, to the date when it was 5
submitted, it took very long. I had this
challenge, and I think this is where I need to
be honest with you, because when we had our
discussions in the room, he also raised the
issue of Crime Intelligence. There was an 10
issue where he was not happy with Crime
Intelligence. I never had the number of my
boss - I think I told you last time that it
might have taken three months or seven months.
I was always figuring that probably he was mad 15
about me cooperating with Crime Intelligence,
and that is why he raised the issue of
independence and all these types of things.
It was an issue I was really concerned about.
Whatever happened through the process, I might 20
have been busy, but I was not even supposed to
be cautious because I was dealing with people
where we are working with things objectively.
But when you started to show me that some of
the things were missing, for me that was ... 25

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MR JULY: And you never suspected anything, he never told you about the information that was deleted?

MR KHUBA: No.

MR JULY: You signed the report on the basis that it is the same report and you were adding to that? 5

MR KHUBA: Yes. I signed knowing that it was the same report, because I had dealt with that report for the past eighteen months to the date I signed the report. Because of that, I was so used to it. You know you are dealing with a new person. I had dealt with so many other Executive Directors, and here I was dealing with Executive Directors with a traceable political background. That was my biggest challenge. It's not to say that it really influenced it, it did not, but the point of the matter is I was less (?) in the way I dealt with the issue. MR SESOKO and I read through the report, we did that, and he said sign. There was a date when I went there - if it was not the date that we signed only, it might be a date when we did little things and then the report was signed. But my conscience 25

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is clear, I never ...

MR JULY: ... deleted?

MR KHUBA: No, I never. That's why even when you called me today, I said I will tell you what I know.

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MR JULY: Okay, that's fine.

MR TOM: There is just one thing, Mr July. Mr Khuba, this question relates to - remember the statements that you obtained from various witnesses in relation to the incidents of 5 10 November 2010 and 22 and 23 November 2010 in relation to GENERAL SIBIYA's involvement in the arrests of MR PRITCHARD CHUMA? There is a statement there from PETROS CHAUKE in which PETROS says he saw GENERAL SIBIYA. I just 15 didn't bring the big file which has his statement under oath, where he says he saw GENERAL SIBIYA, who, according to him, is the head of the TOMS, and he saw GENERAL SIBIYA in the second operation. Now, this cellphone 20 evidence that places GENERAL SIBIYA in SUNNYSIDE in PRETORIA, for instance, I want to understand the weight that was attached to this statement from PETROS CHAUKE. I'm aware you have statements or affidavits, rather, 25


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from one DESMOND CAMPBELL, who says: I didn't see, but I heard they were saying he was in the car. And I think there is another person who says the same thing: I didn't see him, but I heard Warrant Officer Makoe calling his name. I understand that information to say perhaps you need to go a bit further to establish whether or not you can rely on that information, to say: I didn't see him, I heard his name being called. I want to understand how you guys treated this statement from PETROS CHAUKE, who says that he saw him. 5 10

MR KHUBA:

For me, that statement was quite a solid statement, and I think it was the basis for me to say at the initial stage I would want GENERAL SIBIYA to be charged criminally. The other challenge was that the issue of the cellphone records - and that is what I started to discuss with some of the police officers - I started to realise that when these guys know that they are involved in illegal activities, they will come and give you a phone, and say: You are my brother, I'm going out at this time, this time and this time, make a call. 15 20 25

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When calls come, answer them. For example, if you receive a call of your brother, maybe it's (indistinct), you try to create a discussion that will last maybe a minute with that person, to say: No, this person is not here, do you have a message, what is your name, may I take your details? You prolong that, whereas the person will be busy with illegal activities somewhere, but the phone will show the activities within the radius of that particular tower, which is not near the scene of the crime. So that always happens. When I was discussing it with MR SESOKO, the argument was: But do you have proof? Do you get what I'm saying? 5 10 15

MR TOM: I get exactly what you are saying.

MR KHUBA: For me, as an investigator, I was pursuing it, and thinking these guys are supposed to have known these things. But the argument was: You do not have proof. 20

MR TOM: You do not have proof, apart from this statement from PETROS CHAUKE.

MR KHUBA: Yes. Also, when you are arguing with a person who has a prosecutorial background it makes things very difficult. 25

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MR TOM: Absolutely. I would also have that difficulty if I were to debate a subject with a person who has prosecutorial experience who poses these questions, on the understanding that I myself am not a criminal lawyer. So he asked for something in addition to this mere statement? 5

MR KHUBA: Yes.

MR TOM: Because I have seen, Mr Khuba, in the analysis of the Section 205 process in what I will term the second report, for instance when it comes to the analysis of the cellphone evidence it just says: 10

"The reason for this was to test the version of witnesses who are alleged to have seen General Sibiya at the crime scene." 15

Now it doesn't specify which crime scene, because from my understanding - and correct me if I'm wrong - there are two instances, the one of 5 November 2010, and the one of the 22nd and 23rd. It's just a question that has been hovering in my mind, to say: Does this cellphone evidence which happened to place GENERAL SIBIYA in SUNNYSIDE relate to all 25

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activities, for instance being the 5th and the 23rd?

MR KHUBA:

I think there you have a point, because in fact SIBIYA has been dealing with a lot of criminal activities in terms of investigation, so he knows this. They were very aware - even the police who were involved knew what they were doing was wrong, so they might have pre-planned in terms of how they approached this thing. 5 10

MR JULY:

The last thing from my side, because it is not for us to determine the merits or demerits of your findings, it's to find out about the existence of the two reports, as to which is the report, I can tell you now that our preliminary view is that there is only one report, which is the first report. 15

MR KHUBA:

Yes.

MR JULY:

The other report is just something we don't know why - because you see, you can't have a second report which is so identical to the first report, and the only thing that is different is that certain information has been left out. Because SESOKO wanted to give the impression that this report was something that 20 25

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now needed to be started afresh, the wording
had to be new. He went through the pages, and
if you look at how the first page starts the
wording is the same. In the second page the
wording is the same - everything. So for him 5
to say he had no knowledge about the report is
really - I don't know, MR SESOKO must decide
if he intends to mislead this investigation.
If that is his intension then he has a
problem, because in our recommendation we will 10
indeed indicate his attempt to mislead us.
The issue about how he goes to a meeting with
the NPA on the basis of the report that was
submitted, and then he claims that he didn't
know anything about the report ... 15

MR KHUBA:

On that, I still remember the meeting. MR
MOUKANGWE was also there. Also, what I'm
really worried about insofar as this matter is
concerned, is I'm really - okay, there are
things that I'm going to mention off record. 20

MR JULY:

Okay. We can switch off now.

THE INTERVIEW ADJOURNS

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COLONEL MOUKANGWE

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INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

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COLONEL MOUKANGWE

PRESENT: COLONEL MOUKANGWE - IPID 10
 MR SANDILE JULY - Director, Werksmans
 MS KERRY BADAL - Associate, Werksmans
 MR SANDILE TOM - Associate, Werksmans

30 March 2015 15

MR JULY: Today is 30 March 2015. In this room we have SANDILE TOM, an Associate from WERKSMANS, and KERRY BADAL, also an Associate from Werksmans. We are interviewing COLONEL MOUKANGWE about the report relating to the illegal rendition of the ZIMBABWEAN citizens. 20

Colonel Moukangwe, there are two reports in front of you.

COLONEL MOUKANGWE: Yes.

MR JULY: There is a report dated 22 January 2014, and 25 there is a report dated 18 March 2014. Do you

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COLONEL MOUKANGWE

see those two reports?

COLONEL MOUKANGWE: Yes, I see them.

MR JULY: Maybe, before we go to the details of these reports, can you explain what your role was in the drafting of the report and which one did you draft, or which report were you involved in? 5

COLONEL MOUKANGWE: The report of 18 March I was not part of. I don't know anything about it. The one of 22 January I know, and the reason I know about this is I am the initial investigator of this case docket. When it was transferred to IPID, I worked with the IO, MR KHUBA, in the investigation of this matter. When we drafted the report we would sit together and discuss what was outstanding and what we should be doing on the way forward. We drafted this, and the only outstanding thing at that time, if my memory serves me correctly, is that GENERAL DRAMAT's and GENERAL SIBIYA's witness statements were not obtained. 10 15 20

MR JULY: Why were they not obtained?

COLONEL MOUKANGWE: When we went to GENERAL DRAMAT's office, he said he wants to involve his attorney and he will only give a statement after discussing 25

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COLONEL MOUKANGWE

this with his attorney. Then GENERAL SIBIYA requested that he should be sent questions. MALULEKE refused, and he said he will speak in court, he won't give anything. That was the outstanding stuff as far as I was concerned. 5
I don't know whether there was any further investigation then in my absence, which led to the drafting of the other report in the new year, in 2014 - the one for 18 March. I don't know what it was that led to the drafting of 10
the new one, I'd be lying, but I know of this other one. And this is not the first one we drafted. Initially I drafted the report itself, not on IPID letterheads, but on SAPS letterheads. This one was not the only one we 15
drafted, because before this one there was one we drafted of 20 December. If I remember well, we drafted one on 20 December, and according to me this was the final one.

MR JULY: This was the final report? 20

COLONEL MOUKANGWE: That I know about. It was the final one.

MR JULY: You say you were involved in the actual drafting?

COLONEL MOUKANGWE: Yes.

MR JULY: Meaning that you ... 25

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COLONEL MOUKANGWE

COLONEL MOUKANGWE: I had input in what was drafted.

MR JULY: But at the end of this report it is signed by
MR KHUBA.

COLONEL MOUKANGWE: Yes, MR KHUBA is the official investigating
officer of the case docket, because it was now 5
no longer an SAPS matter, it was IPID's issue.
But because of the volume of the work we had
already done, they felt it was necessary for me
to assist in that issue. That is why I was
involved. 10

MR JULY: You went through the report.

COLONEL MOUKANGWE: Yes.

MR JULY: You went through this report, and were you
consulted by MR KHUBA when this report, which
is dated 18 March 2014, was submitted or signed 15
by MR KHUBA?

COLONEL MOUKANGWE: I spoke to MR KHUBA when we last drafted the
one for January. He only phoned me last week,
on Friday, saying that when I'm in
PHOLOKWANE, going to church, I must just give 20
him a call and see him. I'm sure it's nearly
a year that I didn't speak to him, so
I was not consulted, and I don't know anything
about it.

MR JULY: So if there is anything which was 25

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removed from this report, to come up with this report of 18 March, and there is information that has been removed, and which was contained in the original report, you don't know about that?

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COLONEL MOUKANGWE: I will never know about that.

MR JULY: I want us to go through this report. For instance, on page 21 of the report dated 22 January 2014 - maybe before we go to this report, are you certain that when this report was signed by MR KHUBA, it was submitted to the NPA as the final report?

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COLONEL MOUKANGWE: I won't be able to say it was submitted, but we went to the National Director of Public Prosecutions, because we were given two advocates to work with us on this issue. I was there with MR KHUBA and MR SESOKO. MR SESOKO is a legal person, he was a former prosecutor in BENONI. We went there, and when we were there the report was already drafted. That is what I can say with certainty, because when we were there the prosecutors who were dealing with us on this issue, knew about it, and had a copy of the report.

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MR JULY: So when the report was submitted to them, was

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it submitted as a temporary report, was it incomplete, or was it a final report?

COLONEL MOUKANGWE: It was a final, because we wanted warrants there, really, that's why we took our legal person, MR SESOKO. We were worried about why it seemed they were dragging their feet in giving us warrants of arrest for these people, because the people never wanted to cooperate. 5

MR JULY: When we spoke to MR KHUBA last week, on Thursday, being 26 March, he indicated to us that what necessitated the drafting of the new report was the evidence that came after this report was finalised - and with this I am referring to the report of 22 January 2014. But what we have not yet established is when this new information came into existence. 10 15

Let me tell you what he says was the new evidence. He says there was contradiction during the statements of the witnesses, in particular of those who were assaulted. They claim that GENERAL SIBIYA was at the scene when they were arrested and when they were assaulted. According to MR KHUBA new evidence 20 25

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COLONEL MOUKANGWE

was then established that in terms of the
cellphone records, when they were compared with
what the tower - the tower being what cellphone
company is being used, whether it's MTN or
VODACOM, but the tower indicated that GENERAL 5
SIBIYA's phones, which according to MR KHUBA
were the two phones he was using: the first
phone was the phone which he said was an
official phone, and the second phone he said
was the phone he found clandestinely, which 10
GENERAL SIBIYA was using. GENERAL SIBIYA did
not know that he was using that cellphone.
Based on the evidence that locates GENERAL
SIBIYA in SUNNYSIDE, he then decided to change
the report, because SIBIYA was not at the 15
scene.

COLONEL MOUKANGWE: In that one maybe he forgot something, because
we knew before that GENERAL SIBIYA's cellphone
shows he was in PRETORIA, but the people who
were operating with him said he is not using 20
one cellphone. So it might happen that the
official cellphones were at home, and maybe he
used the other one, which is just recorded here
on the statement. That is according to what
they said. But we knew about the information 25

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before, because we questioned them: How can you say SIBIYA was involved, the cellphone shows that ...

MR JULY: And how did you know about this information that SIBIYA's cellphones were in SUNNYSIDE? 5

COLONEL MOUKANGWE: Because of the detailed billing that we did. We did a detailed billing on the two cellphone numbers that we were given, to show where the cellphones were at that time. They showed that he was in PRETORIA at the time they mentioned in their statements. 10

MR JULY: So you're saying that the information that the cellphones were located in SUNNYSIDE can't be new information? 15

COLONEL MOUKANGWE: No, unless they are new cellphones. If they are the two original ones, it's not new evidence, because they knew about it. They knew when we went to meet them, the advocates at the NDPP, we knew about that. We had copies of the detailed billing when we were there. We had a big file of the cellphone billings when we were there. 20

MR JULY: He also says in the new report you will notice that there are warning statements from the 25

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COLONEL MOUKANGWE

implicated parties, which is GENERAL DRAMAT, GENERAL SIBIYA, and in the report that you signed there are no warning statements from these two.

COLONEL MOUKANGWE: In the report in which I was involved I never saw them, but in the report in which I was involved there were no warning statements of GENERAL SIBIYA, GENERAL DRAMAT or COLONEL MALULEKE. As I said before, they didn't want to give a statement. GENERAL SIBIYA wanted questions to be sent to him, GENERAL DRAMAT said he was still going to speak to his lawyer, and COLONEL MALULEKE refused. And they didn't speak directly with me, he's the one who spoke to me, but I was with him when he spoke to them. So the issue of how they now decided to bring statements - maybe it was just after I was a far distance from the investigation.

MR JULY: Do you remember if you asked for those statements from them before you finalised the report ...

COLONEL MOUKANGWE: Yes, we did.

MR JULY: ... which is dated 22 January?

COLONEL MOUKANGWE: We did. I even went to the office of GENERAL

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COLONEL MOUKANGWE

DRAMAT with MR KHUBA, to find out what was happening with this issue. That was the time when he instituted an investigation by one of his brigadiers there, according to the allegation that was in the SUNDAY TIMES, so that there must be an internal investigation to check why these people were deported, and all that stuff. 5

MR JULY: Were you at any stage given the warning statements by MR KHUBA - that there are warnings statements that we could not obtain, and now, as a result of those warning statements I am changing the report that we submitted to the NPA? 10

COLONEL MOUKANGWE: No, I was not part and parcel of the changing, and I was not consulted or involved in the new drafting of the last one, the purported final report. 15

MR JULY: If we start right at the beginning, the two reports look the same, except of course for the dates when they were finalised. But they look the same on page 1. Then from page 1 to page 21 they look the same. 20

MS BADAL: Mr July (indistinct) they are not the same.

MR JULY: Yes, I forgot about that. If you look 25

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COLONEL MOUKANGWE

at page 9 of the old report, that statements starts on page 8 in paragraph 4.4. Do you see that?

COLONEL MOUKANGWE: Yes.

MR JULY: That is LIEUTENANT COLONEL MADILONGA. 5

COLONEL MOUKANGWE: Yes.

MR JULY: What he says on page 9, everything looks the same up to the paragraph where it says:

"He will state ..."

It is the third paragraph on page 9, in the original one. Have you located that? And it says: 10

"He will state that he told Superintendent Ncube that he has to verify with his seniors about the arrangement. 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 Provincial Head, Protection and Security Services. 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 15 20 25

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COLONEL MOUKANGWE

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 cellphone and he responded by saying that he is aware of the Zimbabwean police and he must let them come." 5

That is what MADILONGA said. If you go to the report ... 10

COLONEL MOUKANGWE: Which one?

MR JULY: The second report, which is dated 18 March, that statement starts on page 8, where it says: 15

"He will state ..."

The paragraph that we've just read.

COLONEL MOUKANGWE: "He will further state that ..."

MR JULY: Yes, look at that on page 9. It's supposed to be the second paragraph. 20

MS BADAL: After GENERAL DRAMAT, here we have the sentence that ends in "suspects". Then it starts here: "For the period".

COLONEL MOUKANGWE: "For the period of two weeks he never heard anything from Superintendent 25

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COLONEL MOUKANGWE

Ncube..."

MR JULY: Yes, can you see that that information is not there?

COLONEL MOUKANGWE: Yes, it's not there.

MR JULY: It is not there? 5

COLONEL MOUKANGWE: It is not.

MR JULY: Were you present when LIEUTENANT COLONEL MADILONGA made this statement?

COLONEL MOUKANGWE: No, I was not present.

MR JULY: You were not present? 10

COLONEL MOUKANGWE: No, I was not present, but I read his statement.

MR JULY: And its content?

COLONEL MOUKANGWE: Yes.

MR JULY: Then in the second report there is no explanation for why it has been removed, but it is not there. 15

COLONEL MOUKANGWE: No, it's not there.

MR JULY: Instead what you see there, and what comes after that, instead of that paragraph, is where it says: 20

"For the period of two weeks ..."

Can you see that?

COLONEL MOUKANGWE: I can see that:

"... he never heard anything from 25

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COLONEL MOUKANGWE

Superintendent Ncube ..."

MR JULY: Yes. Then let's go further and see what else has been removed. If you look towards the end, there is a paragraph which starts with:

"While he was on the front passenger seat..." 5

Can you see that in the original?

COLONEL MOUKANGWE: Yes.

MR JULY: "While he was on the front passenger seat heading to the border gate, he told him that the Zimbabwean police who 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 an extradition agreement with Zimbabwe. He said that since the Zimbabwean Police entered the country they had been busy trying to trace the suspects." 10 15 20

Do you see that paragraph?

COLONEL MOUKANGWE: Yes, I can see that.

MR JULY: But if you look at page 9, that paragraph ... 25

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COLONEL MOUKANGWE

COLONEL MOUKANGWE: "While they were driving he realised that
there were other BMW ..."

MR JULY: It's not there.

MS BADAL: So this ends on "the back seat" here, and it
starts at "While they were driving ..." 5

MR JULY: It's supposed to be:
"While they were driving he realised that
there were other BMW ..."
The paragraph that begins with:
"While he was on the front passenger seat" 10
That has been removed.

COLONEL MOUKANGWE: Yes, it's not there.

MR JULY: Instead it starts with:
"While they were driving he realised that
there were other BMW cars ..." 15

COLONEL MOUKANGWE: Yes, I can see that.

MR JULY: Were you told about the changing of the
statement?

COLONEL MOUKANGWE: No, I was never told.

MR JULY: As the person who was assisting, and who 20
contributed to the drafting of that report?

COLONEL MOUKANGWE: I was never involved.

MR JULY: Maybe the other difference between this report
and the original report would be if you look at
page 21. You have already told us that you 25

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were never told about the changes, but we just
want to show you where the changes were made.
If you look at page 21, and you look at page 20
of the other report, paragraph 5.2, in the one
which is dated January 2014 paragraph 5.2 5
reads:

"Success report dated 04/02/2011:

The report was addressed to General
Dramat, General Hlatshwayo and General
Toka, with a heading that reads: 10

'CONSOLIDATED SUCCESS REPORT: MOST
WANTED FUGITIVE: WANTED FOR MURDER
AND ROBBERY: DPCI TOMS REF
3/12/2010 AND ZIMBABWE (BULAWAYO)
CR348/09/2010): WITNESS DUMISANI 15
NKOSI@NDEYA: ZIMBABWEAN NATIONALS
AND OTHERS.'

The report bears reference 14/02/01 and
was signed by Colonel Leonie Verster.
Paragraph 'A1' of the report states that 20
on 05/11/2010 General Dramat held a
meeting with Zimbabwean Police at DPCI
about the Nationals that shot and killed
one of their senior officers. Paragraph
3 states that Captain Maluleke was tasked 25

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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. 5

Success report dated 11/11/2013 (A82/1-
82/2):

The report bears reference number 26/02/1
and again addressed to Deputy National
Commissioner DPCI. The person to whom 10
enquiries must be directed is Captain
Maluleke whereas the signatory is Col PJ
Selundu. Paragraph '1' of the report
states that the Zimbabwean Police visited
the office of the Divisional National 15
Commissioner regarding Zimbabwean
Nationals who were hiding in South
Africa. The report further stated the
arrest of Dumisani Witness Vundla @Ndeya
and Shepard Chuma." 20

But if you look at the report of 18 March, in
particular the first part where it says:

"The report bears reference ..."

Do you see that?

COLONEL MOUKANGWE: Yes.

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MR JULY: That part is not there.

COLONEL MOUKANGWE: No, it's not.

MR JULY: It's not there. All you have is that "The report also covers ..." - you have the last sentence in that. 5

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

MR JULY: Yes, but the part which says: 10
"The report bears reference ... Paragraph 'A1' states that on 5/11/2010 General Dramat held a meeting with Zimbabwean Police ..."

That has been removed. 15

COLONEL MOUKANGWE: Yes, it's out.

MR JULY: Yes.

COLONEL MOUKANGWE: It's out of that one.

MR JULY: If you go to paragraph 5.3, on the same page of the January report, right at the end, where it 20
says "EMAILS BY CAPTAIN MALULEKE", it reads:
"EMAILS BY CAPTAIN MALULEKE:
He sent emails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. 25

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The emails were sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence. He also sent emails to Zimbabwean Police trying to find out how they travelled back home and that he is still tracing the remaining suspects." 5

But if you read what is written on page 21 of the 18 March report, it reads:

"EMAILS BY CAPTAIN MALULEKE: 10

He sent emails circulating more than 20 photos of both the suspects arrested and the members involved in the operation."

There is no reference to:

"Emails were sent to the PA of General Dramat." 15

Do you see that?

COLONEL MOUKANGWE: Yes, it's not there.

MR JULY: Then if you go to page 23 of the report, 5.5, there you have the cellphone record of MAJOR GENERAL SIBIYA, and this is what it says about these cellphone records, and that's the number of MAJOR GENERAL SIBIYA. 20

"Upon perusal of the cellphone records, it was discovered that Major General 25

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Sibiya communicated with officers who were involved in the operation, eg Captain Maluleke, and sent more than 20 SMSs to Major General Dramat. However, Major General Dramat never responded to the SMSs. The same automated SMSs were sent to Lieutenant General Lebeya at ... These SMSs were sent at various milestones of the operation, as deduced from witnesses' statements and documentary proof." 5 10

COLONEL MOUKANGWE: Then on that point you can see that when I say we already had the detailed billing of the cellphones when we wrote the report - there it comes. It's not something that only came when this one was written. 15

MR JULY: Yes.

COLONEL MOUKANGWE: By the time he wrote this, we already had the detailed billing, that's why we included that evidence in terms of Section 205 of the Criminal Procedure Act. It was there. That's why I said if it's another thing - maybe it's new cellphones or new issues, I don't know. But the cellphones that we had at that time, they are here. 20 25

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COLONEL MOUKANGWE

MR JULY: Hence in this report you are also not stating whether MAJOR GENERAL SIBIYA was present, but you are saying he was communicating?

COLONEL MOUKANGWE: Yes.

MR JULY: You are not saying you still have to discover whether MAJOR GENERAL SIBIYA was at the scene or not? 5

COLONEL MOUKANGWE: No, no. No, we never said that. So you can see the 205 was already there. The results were already received, because we couldn't include this in this report if we were still waiting for it to come as other evidence. That's why I said if there is a new thing, I will never know, because I was not present with that one. 10 15

MR JULY: Educate me about this 205 application. If you look at the report of 18 March, you suddenly see the blocks now. It's no longer written in this format - you see how it's written here?

COLONEL MOUKANGWE: Yes, I see that. 20

MR JULY: But now it's in blocks. Then it says:

"REASON FOR 205 APPLICATION."

What is this 205 application?

COLONEL MOUKANGWE: To get information on the cellphone, we have to apply Section 205 of the Criminal Procedure 25

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COLONEL MOUKANGWE

Act, so that the court must authorise us to do that.

MR JULY: But you already had?

COLONEL MOUKANGWE: Yes, we had already.

MR JULY: You already had, because for you to be able to 5
come to this conclusion, you already had the
205.

COLONEL MOUKANGWE: Yes, we had the 205. We already had it.

MR JULY: When it is put like this, as the reason for the 10
205 application, it's put as if it's a new
thing that ought to have been done, and which
was not done in the previous ...

COLONEL MOUKANGWE: No, we did it previously, otherwise we wouldn't
have paragraph 5.5 in the report which is said 15
to be the first report.

MR JULY: Let's look at that 205. It says:

"To test the version of the witnesses who
are alleged to have seen Major General
Sibiya at the crime scene."

Now, this is testing something different. What 20
we are saying here is that he was in constant
communication, so he knew - he had knowledge of
what was happening. But what they are saying
here, in this report, was to verify whether the
evidence the witnesses gave that SIBIYA was at 25

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COLONEL MOUKANGWE

the scene of the crime, was true or not.

Then it says:

"FINDINGS:

Major General Sibiya was never at the
crime scene or planning area as alleged 5
by members of Crime Intelligence."

COLONEL MOUKANGWE: It's difficult to say that, because now we
don't know, but those people are people who were
physically there. We don't know. For them,
the credibility of this must be tested in 10
court, if it must be tested. It can't be
tested by us, it must be tested in court in
cross-examination if they really believe
he was with him. For example, I don't even
know SIBIYA, I have never met him in my life, 15
so how can I say he was there if I don't know
him?

MR JULY: Didn't you know - the point that we are trying
to establish is, did you know at this point
that you heard that evidence about SIBIYA, but 20
according to the record SIBIYA was not at the
scene. Didn't you know when you were drafting
this report?

COLONEL MOUKANGWE: We knew. We knew about this, and even the
prosecutors were doubtful about the evidence, 25

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COLONEL MOUKANGWE

but how can we now say SIBIYA was involved while it shows he was at his home? Don't you think it's right that we leave SIBIYA, we don't charge him, but we charge DRAMAT and leave SIBIYA? That is the advice we got from the prosecutors, so we had the information. 5

MR JULY:

Therefore, is this information new information, according to you?

COLONEL MOUKANGWE:

No, it's not new information. This is not new, we had it here, and that's why we wrote about it in the report that is dated 18 January. 10

MR JULY:

Let's go to the reasons again on DRAMAT.

"To verify whether he had interaction with the Zimbabwean Authority regarding the arrest of Zimbabwean Nationals. To clarify as alleged by the witnesses whether he received Zimbabwean police in relation to the murder case of a senior officer in Zimbabwe." 15

Then it says: 20

"The entire cellphone record of Lieutenant General Dramat does show any interaction with the Zimbabwean counterparts. However the fact that Zimbabwean police might have entered the 25

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COLONEL MOUKANGWE

country is confirmed by photographs, but there is no evidence that they were with General Dramat. The photos show them with members of the TRT, Captain Maluleke and members of Crime Intelligence." 5

COLONEL MOUKANGWE: But there is nowhere where we said DRAMAT took photos with the ZIMBABWEAN Police.

MR JULY: Exactly.

COLONEL MOUKANGWE: We never said he took photos with them. We said they were there, and according to the witness statement that we got, one of the members of Crime Intelligence was there when they were congratulated by the General, accompanied by his spokesperson, McINTOSH. When they say he took photos with them, if he did we don't know where they are, but the photos that we saw were the suspects and the ZIM Police who were there with the team that arrested them. But we didn't say GENERAL DRAMAT was also in the photos. 10 15 20

MR JULY: But you also discovered - and it's not stated in this new report - that there were several SMSs that were sent by both MALULEKE and SIBIYA to DRAMAT, but he never responded to those SMSs. 25

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COLONEL MOUKANGWE

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COLONEL MOUKANGWE: Yes, he never responded. That's why I said we did ...

MR JULY: So you already had this report?

COLONEL MOUKANGWE: Yes, we already had it.

MR JULY: So there is nothing new to you? 5

COLONEL MOUKANGWE: No, it's not new to me.

MR JULY: You will notice that the cellphone records of MADILONGA in the new report, which you will find on page 24, where it says:

"To test his version in which he alleged that he received a call from Captain Maluleke on 8/11/2010 regarding the deportation of Zimbabwean Nationals." 10

But here on page 24 of the January report it states in the affirmative: 15

"He assisted Captain Maluleke to cross the border with the suspects. He contracted Lieutenant General Dramat when he welcomed the Zimbabwean Police the first time." 20

So that is not here.

COLONEL MOUKANGWE: Yes. I see it is confirmed here that:

"The interaction confirms the relation of Madilonga ..."

MR JULY: No, no, here it is confirming MALULEKE. 25

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COLONEL MOUKANGWE

COLONEL MOUKANGWE: Only on MALULEKE?

MR JULY: Only on MALULEKE. If you look at that paragraph, it only makes reference to MALULEKE.

COLONEL MOUKANGWE: To MALULEKE, yes. 5

"He contracted General Dramat ..."

That is not there.

MR JULY: Mmm.

COLONEL MOUKANGWE: Yes, that one, where he contacted GENERAL DRAMAT, is not there. 10

MR JULY: And the same with the telephone calls of MALULEKE. If you go to page 23, it's the same thing with MALULEKE. If you read what you discovered from the cellphone of MALULEKE, it's that: 15

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

But if you look in this one about MALULEKE: 20

"To test the version of the witnesses who alleged that Captain Maluleke led the 25

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COLONEL MOUKANGWE

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operation."

It's a different issue.

COLONEL MOUKANGWE: Mmm.

MR JULY: How do you use the phone to determine whether
he led the operation? 5

COLONEL MOUKANGWE: You can't.

MR JULY: The leading requires a person to be there?

COLONEL MOUKANGWE: To be there physically. You can't use a
cellphone, because if I forgot it in my car, it
would show that I'm leading people, whereas I'm 10
sitting here. Because the towers will still
show the movement on the cellphone. The
movement of the instrument as it is, shows that
he was moving there. It doesn't mean it's
linked to the body of a person. 15

MR JULY: Exactly.

COLONEL MOUKANGWE: The instrument is only there. If the cellphone
shows that I'm in DURBAN, meanwhile I'm here,
which one is the correct one, the one in DURBAN
or this one? Because you can attest that I was 20
here with you. But the other one is an
assumption which needs substantiation or
statements by an individual.

MR JULY: We just wanted to demonstrate the report
which you drafted with MR KHUBA, and the 25

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COLONEL MOUKANGWE

information contained in that report - part of it was removed, and you say you were not consulted?

COLONEL MOUKANGWE: No, I wasn't.

MR JULY: And you say after the report was prepared, you met with the NPA, in particular ADVOCATE MOSENG ... 5

COLONEL MOUKANGWE: MOSENG, yes, and MOELETSI.

MR JULY: ... and MOELETSI.

COLONEL MOUKANGWE: Yes. 10

MR JULY: And the reason for the meeting was to get the warrants?

COLONEL MOUKANGWE: Yes.

MR JULY: Those were the warrants of arrest?

COLONEL MOUKANGWE: Yes. 15

MR JULY: And according to you this report was the final report?

COLONEL MOUKANGWE: Yes.

MR JULY: The one of 22 January 2014?

COLONEL MOUKANGWE: Yes. 20

MR JULY: It was not subject to further investigation?

COLONEL MOUKANGWE: No, there was nothing we could do, because VERSTER was refusing, was dodging us, and the Generals were not giving us their whole statement, so there was nothing else we could 25

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COLONEL MOUKANGWE

do.

MR JULY: What is the practice if people don't want to give you information? Does it mean that the report that you finalise, which excludes that information, is rendered incomplete or is an interim report? 5

COLONEL MOUKANGWE: It's complete, because it's what we have. We complete a report on what we have. We cannot anticipate what the person is going to say in future. Whether he's going to come or not, we can never know. 10

MR JULY: But what was critical for us was to find out the information in the so-called new information. You are saying you already had that information. The issue of the physical location of SIBIYA was already known to you at the time? 15

COLONEL MOUKANGWE: That was known. Unless they've got other statements that I don't know about, but that was known. Because we had 205 records at that time. They were not outstanding, we had them by the time we drafted this. That's why we had issues on cellphone reports, that's why we had issues where SMSs were not answered by GENERAL DRAMAT. We couldn't get that information 25

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COLONEL MOUKANGWE

without using Section 205.

MR JULY: There is something MR KHUBA referred to, which was when they received the cellphones they had to take them to experts.

COLONEL MOUKANGWE: For analysis. 5

MR JULY: For analysis, yes.

COLONEL MOUKANGWE: After the discussion with the prosecutors, they made a suggestion whether we should do the mappings. Cellphone mapping is where an analysis will show us that this was done at this, and make some points in a chart form. That's what we were requested to do. 10

MR JULY: But that was for the purposes of leading evidence?

COLONEL MOUKANGWE: For the purpose of leading evidence, it was not for the purpose of the report. It was for the purpose of leading evidence, and it would be easier for the prosecutors to pinpoint and show on a chart. 15

MR JULY: Okay. That's the end of this interview. If we need you, we will call you again. 20

COLONEL MOUKANGWE: Okay, thanks.

MR JULY: Thank you.

THE INTERVIEW ADJOURNS

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"B"

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DISCIPLINARY ENQUIRY

In the matter between

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Employer

and

INNOCENT KHUBA

First employee

MATTHEW SESOKO

Second employee

AGREEMENT BETWEEN THE EMPLOYER AND INNOCENT KHUBA

INTRODUCTION

1. The First Employee, Innocent Khuba ("Khuba"), was charged with dishonesty and defeating the ends of justice as more fully set out in the charge sheet attached hereto marked "A".
2. Pursuant to the institution of disciplinary action against Mr Khuba, the parties have reached agreement on 23 September 2015.
3. The Parties wish to record in writing the terms of the agreement, which terms they record below.

TERMS OF AGREEMENT

4. Mr Khuba being legally represented, freely and voluntarily pleads guilty to the charges proffered against him as set out in annexure A.
5. The Employer will impose a sanction of a final written warning valid for 6 months against Mr Khuba.
6. Mr Khuba suspension will be uplifted and he will report for duty on Monday, 28 September 2015.

M. E. V.
10/2/15
SJS



9 July/IPID
23.04.15

INNOCENT KHUBA

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

5

INNOCENT KHUBA

PRESENT: MR INNOCENT KHUBA - IPID
MR SANDILE JULY - Director, Werksmans 10
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 15
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 20
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 25
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. 5

MR JULY: But why did MR SESOKO sign? 10

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. 15

MR JULY: So he participated in the report, and would McBRIDE have signed that report had he not participated in the report? 20

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. 25

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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. 5

MR JULY: 3 March. Then who gave you a call to say that
MR McBRIDE wanted the report?

MR KHUBA: It was MR SESOKO.

MR JULY: MR SESOKO?

MR KHUBA: Yes. 10

MR JULY: You emailed the report to MR SESOKO?

MR KHUBA: Yes.

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

MR KHUBA: No, I do not know. 15

MR JULY: But you met with McBRIDE the day after you
emailed the report?

MR KHUBA: That's correct.

MR JULY: Which was the 5th?

MR KHUBA: Yes. 20

MR JULY: When you met with him on the 5th, what did you
discuss?

MR KHUBA: We discussed the report. He wanted to know -
he wanted me to outline the process of
investigation from the beginning to the end, 25

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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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of it.

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

MR KHUBA: Yes.

MR JULY: You had another meeting on the 6th? 5

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. 10

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. 15

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. 20

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, 25

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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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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?

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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.

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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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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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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. 5

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. 10

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 15 20 25

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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. 5

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 - 10
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 (?). 15
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...

MR JULY:

Did he tell you about his discussion with the 20
previous matter?

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 25

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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. 5
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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 20
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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. 5

MR JULY: Did he say what the purpose was? 10

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? 15

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 20 25

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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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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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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.

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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.

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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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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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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.

MR JULY:

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

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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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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 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 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 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.

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

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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 SESOKO's computer? 5

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 purposes ... 10

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 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 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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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 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 was nothing I could detect. 5 10

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 report? 15

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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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 docket? 5

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 5
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. 10

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 15
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 20
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.

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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ANTHONY MOSING

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

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ANTHONY MOSING

PRESENT: MR ANTHONY MOSING - NPA
MR SANDILE JULY - Director, Werksmans
MS KERRY BADAL - Associate, Werksmans
MR SANDILE TOM - Associate, Werksmans
MR KWAZI BUTHELEZI - Candidate Attorney

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14 April 2015

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MR MOSING: ... has to be refreshed if, for instance, they refer to them coming to see us at a certain stage.

MR JULY: Somewhere in February?

MR MOSING: Yes, yes. But I can tell you what I recall clearly offhand about the matter and then we can fill in gaps from memory.

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MR JULY: I can let you know that we are on record now. Today is 14 March 2015.

MR MOSING: Okay, thanks, Mr July. I think maybe from my side, before we really get into the details, of course I have been told that I am now

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ANTHONY MOSING

cleared to speak with you.

MR JULY:

Oh, yes, yes, I got an email.

MR MOSING:

Of course coming here now and thinking in terms of what is going to be required, I just needed to understand what exactly I am authorised to be able to speak about. But really, I haven't seen the request - the email that went to the NPA. All I got was: Yes, you can; you're allowed to go and talk. DR MAITE just said yesterday that I'm allowed to consult with WERKSMANS about the letter, but I'm not too sure exactly what you will require from me eventually. I thought that if I could see the request that you drafted to the NPA, which led to them agreeing for me to come here, just in case there is anything that might - I don't want to be in trouble, or anything like that, because of course I'm discussing matters which are *sub judice* now within the NPA. In other words, this matter is *sub judice* within the NPA still. And whatever I'm saying, you must understand ...

MR JULY:

Our role is very limited, but I appreciate your concerns. We don't know what is really

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ANTHONY MOSING

sub judice at the NPA. Our mandate is to discover and unravel a number of things, but the main issue is that there is a report that was submitted. Then there is a second report. We need to establish the status of the two reports, that's all - only that. It's about the report, but I think it's better that you see the letter from the Minister which was written to us, and also the letter from the Minister of Police to the Minister of Justice, asking the NDPP to release anybody who may be of assistance in our investigation. 5 10

MR MOSING: The release part, I am available, because I will participate, it's understood. But I'm not too sure what further issue ... 15

MR JULY: I'm not sure what is happening at the NPA regarding this report or these reports, but our issue is about the two reports - one given on 22 January and one which is dated 18 March. 20

MR MOSING: Okay. I think that I will be able to explain, but I think probably I will start from the beginning, in order to get to the report. That must be in context in terms of our

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understanding of the reports, the old report,
if that is the case. Is that ...

MR JULY: That's fine, I'm with you.

MR MOSING: I just want to see, because I have a report
which I need to find in my files. I actually 5
thought I didn't have it, but it's actually
two copies. I drafted them in pencil at the
time, because they were not, let's say, the
official version.

MR JULY: I think maybe also for your benefit it is 10
important that you read this mandate, so that
you understand.

MR MOSING: I don't know whether you are aware, but from
my involvement in the matter I think - and I 15
must also make sure of the dates - but I would
say we got involved in the matter at a
relatively early stage when the investigations
basically started. I must mention that my
position at the NPA at the time was that I was
heading a unit which is called the Special 20
Projects Division, which is basically an
office of the NDPP. As such I reported to
ADVOCATE JIVA, who was the Acting NDPP at the
time. So I attended a meeting where we were
then instructed to assist with this 25

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investigation. I think MR MOUKANGWE was involved at that stage. I'm not sure what his rank is in the SOUTH AFRICAN POLICE SERVICE. There had already been some statements obtained from - I'm not sure whether it's three or four - ZIMBABWEAN Nationals, who, let's say, had survived this ordeal, and who at the time were in witness protection. There were also statements I think from four Crime Intelligence members, who, it appears, were part of the so-called TOMS unit of GAUTENG. They were seconded to be part of that unit, and they also made statements pertaining to the first alleged kidnapping of four ZIMBABWEAN Nationals.

I'm trying to think what other evidence there was, but I think at that stage that was basically the evidence at the time. Although the evidence indicated or mentioned certain names of senior police officials from Ops in particular, the evidence wasn't really very conclusive. We obviously advised the investigation that there would have to be a lot more investigation done to get to a stage where one could make concrete decisions from

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a prosecution point of view. At some stage, also, I think IPID got involved early on as well, because to our minds they were the relevant body as well. They informed us that they were also tasked at the time by the Minister to investigate the matter. I think we were also shown an investigation that was done by the Civilian Secretariat for Police regarding these allegations and the report that they gave after having received the reports. I think there were about three or four reports from the HAWKS and the Police which dealt with the allegations. Part of the reports were actually answers to Parliamentary questions. From that report of the Civilian Secretariat I think one could see that they pointed out a number of inconsistencies and unsatisfactory aspects which they advised the Minister to have investigated.

I must say, it was difficult to make a general observation. I think, given the nature of the case, and the suspects involved, it was generally difficult to get people to cooperate. There were a lot of police members involved in TOMS, and it was only these Crime

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Intelligence guys who had made statements. But I think in the light of the allegation then that there was a fight between Crime Intelligence units and the HAWKS, and maybe there was some sort of personal vendetta or some sort of thing, we had to view the evidence with caution. That's why we insisted that the police must investigate the matter and try to get other people who were involved in these things. I think it was generally difficult. I must say MR KHUBA from IPID was involved in investigating right from the start, with MOUKANGWE, but then he would report or discuss developments in the investigation with myself and BILLY MOELETSI. I think we met on several occasions, but I cannot say exactly how many times. I think we also saw the report that the HAWKS' Integrity Unit had conducted into the allegations of the involvement of their members, which basically exonerated them. I think the breakthrough in the investigation really started when MR KHUBA obtained a statement from a certain MADILONGA. I'm not sure what his rank is now, but he was the head of the Border ...

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MR JULY:

He's dead.

MR MOSING:

Yes, apparently he's dead. I was shocked. I actually advised him: You know what, this is a key witness, you must put him in witness protection. But I thought with him deceased it weakened the case. That was generally my view at the time. I think I'll get to it when I come to the point when we stopped with this investigation. He excitedly even phoned me in the night or over the weekend to say he's got this statement. I think he even emailed the statement to me. When I read it, it was really like a light that was switched on in the investigation. It was detailed - a very good statement, and one which one could view credibly, although I think it contradicted an earlier statement he had made to the HAWKS' investigations. But at least he explained why he had made that earlier statement.

From that statement I think the investigation really came to a point where everything was reasonably clear, as to what really transpired. I don't know - I don't want to deal with every step of the investigations, up

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to the point where it became - although one
can, but I wouldn't want to leave out gaps.
I don't have the docket, and of course I don't
remember every statement, but I think we ended
up understanding - because initially the 5
allegations were that there were four
ZIMBABWEAN Nationals. I think that's how the
police reported it. There were four
ZIMBABWEAN Nationals who were deported under
a HOME AFFAIRS process. I think at the start 10
he got statements from HOME AFFAIRS people
which actually showed that these documents
were not authentic. They were even submitted
to a document dispute expert, who gave a
report as well that ... 15

MR JULY: The documents that were used to deport
them?

MR MOSING: To deport them, yes. There were, shall I say,
a lot of gaps with regard to that deportation.
Firstly, there was a moratorium against 20
deportation. He even got from HOME AFFAIRS a
complete list of all the people who had been
deported during that period of the moratorium,
and none of these people were on that list.
According to HOME AFFAIRS' evidence, the 25

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persons were only deported during that period
if they had committed a crime or were involved
in criminal activities. Other than that there
was a complete moratorium. Also, copies of
those deportation documents were not available 5
at HOME AFFAIRS, so the only copies were the
ones that the HAWKS had. I think the issue
also with the apparent falsification of those
documents was that the same stamp appeared to
have been used. The documents were really 10
identical, to the extent that they didn't
appear to be very authentic. Also, the fact
why the HAWKS had to deport these people
instead of them being taken to LINDELA, and so
on. Because on that same night they were 15
detained in SOWETO, there were other illegal
immigrants, and those were taken to LINDELA.
These four were taken a separate route. What
transpired from the earlier statements of the
ZIMBABWEAN Nationals was that two of these 20
guys actually never crossed the border, they
were dumped somewhere next to the freeway -
that's according to their statements. It
transpires that only two were actually taken
over the border. That was also contrary to 25

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the reports and contrary to what was contained in the reports from the HAWKS in answer to the Parliamentary questions. So there already it was clear that things were not as they appeared to have been. 5

When MADILONGA gave his statement, as I said, things started falling into place. The investigating officer then managed to uncover, let us say, the other kidnappings and deportations. Let me just have a look, 10 because I actually wrote a memo to my bosses, explaining the matter in detail. I said:

"Significant progress was made by the investigating team since July 2013. In summary the following evidence was then 15 obtained."

That's when I think additional statements - of course we had the SAP13's, the police stations where these people were kept. There was a SELEKE or SELEPE IO, who did not give us a 20 statement, but we insisted that they must try and get a statement from him. Then one captain from TOMS gave a statement. He was the first one to confirm that there were policemen from ZIMBABWE present during that 25

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first operation. Because initially, as I
said, the allegation was only made by the CIG
guys. For some reason I treated that with
caution. I wasn't too sure whether it was a
made-up story. But then NIEUWOUDT, I think is 5
his surname, confirmed that yes, that was with
the first operation. I think it was 5
November. On 23 November is when they
realised that SHEPARD TSHUMA in a follow-up
operation was kept at ALEXANDRA Police 10
Station. From the records there he was taken
out by a certain SELEPE or SELEKE - SELEPE, I
think it was. Eventually SELEPE also made a
statement to say he was requested to transport
this guy. I think he is also from TOMS. He 15
confirmed that he transported TSHUMA - it's
not SHEPARD TSHUMA, I think it's another
TSHUMA. PRITCHARD CHUMA, because there are
two CHUMAS. It's PRITCHARD CHUMA, and he
transported him to the border with MALULEKE, 20
so MALULEKE was following in another vehicle.
At the border he handed him over to MALULEKE,
and MALULEKE took him into the office there,
and then he turned back. So at least we could
account for PRITCHARD as well. Then the other 25

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two incidents happened, and in the investigation I'm really satisfied that we had all the statements, to show that: Here are the other two - which was GORDON DUBE as well as JOHNSON NYONI. Because I think DUBE and JOHN NYONI were arrested later, around January, after that incident. The people who were involved in those arrests - it shows that Crime Intelligence gathering investigators from PRETORIA were involved in those arrests. With DUBE I have actually set it out in this memo, and I can give you a copy of this, because that really explains what my understanding was at the time of the investigation - how it unfolded. DUBE was supposed to appear in court at ATTRIDGEVILLE on serious offences of robbery and house breaking, because he was a wanted criminal. The Crime Intelligence guys came from PRETORIA - that's what they normally do, they go to the police station in the area and look for the suspects, to help trace them through their sources. So MALULEKE understood that they were looking for DUBE, and he actually asked them, to say: Trace this person for us, which

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they did in DIEPSLOOT, and they arrested him.
We got a statement from the investigating
officer who was MEYER, of those documents, who
said MALULEKE demanded that he hand over DUBE,
the accused, to MALULEKE, to be taken to 5
ZIMBABWE, where he was to face charges of
armed robbery and murder. The investigating
officer did that, contrary to the fact that
this case was on the roll in ATTRIDGEVILLE.
I don't think we could trace the charge sheet, 10
or if we did trace it - no, we did have the
charge sheet, but we didn't have the
explanation from the prosecutor. Apparently
the prosecutor had resigned as well - in the
ATTRIDGEVILLE case - because we wanted to get 15
an understanding of why he allowed an accused
who was facing court not to be brought to
court, and whether there was a warrant issued,
and all that. But it seems from the computer
of MALULEKE there was a statement MALULEKE 20
made, which I think MEYER also confirmed,
which may have been handed to court to show
that DUBE was taken to ZIMBABWE for
deportation purposes and he had been sentenced
to life imprisonment and was never coming back 25

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to SOUTH AFRICA. That seems to have been the
explanation to close our diary.
The firearm as well - when DUBE was arrested
they found a firearm which allegedly was a
firearm robbed from this Colonel in ZIMBABWE, 5
and although it was handed in to Ballistics,
the two police guys were instructed by
MALULEKE to go and fetch that firearm and
bring it to PRETORIA to MALULEKE, which they
did. That firearm - and there are photographs 10
you can see, which were taken on the premises
of PROMED Building, where GENERAL DRAMAT is
based, you can see is still in the forensic
bag. They deliberately took a photo of it as
being the firearm, as if it was being handed 15
to the ZIMBABWEAN Police to return with it.
So we managed to trace that DUBE was arrested,
and he, together with JOHNSON NYONI - I just
want to see the dates here, because on the
12th - there were documents, sort of progress 20
reports of MALULEKE that we saw, but he didn't
explain, and it didn't make sense from the
initial story. However, when we got this
information and he had explained the various
incidents, you can say, on 5 November they 25

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arrested four people and deported two. On 23
November they arrested PETER CHUMA and
deported him as well, presumably, because he
was taken to the border. The two further
incidents were then these guys DUBE and 5
JOHNSON NYONI. NYONI was arrested as well,
using these Crime Intelligence gathering
officers from PRETORIA, because they had a
source in DIEPSLOOT. I think he is the one
who alerted them to DUBE as well as NYONI. 10
They then arrested him as well. But he was
arrested and apparently taken directly to
PROMED BUILDING, and that's when allegedly, as
some of the witnesses stated, GENERAL DRAMAT
came and congratulated them whilst he was in 15
the vehicle in custody. There were
photographs of him being there. After that
the members say a braai was made to thank them
for their participation. This was a TRT unit,
sorry, not the TOMS - in other words the 20
support unit that helped arrest them, the
TACTICAL RESPONSE TEAM.
After that, NYONI was kept at the MOOT Police
Station. We managed to get the records there
that showed SAB14, or whatever, and showed 25

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that he was detained, and was allegedly
detained for fraud. Then the next day he was
taken out by MALULEKE himself. The record
says he was taken to BEIT BRIDGE to be
deported. 28 January I think corresponds with 5
MADILONGA's testimony that people were taken
to the border. That really accounted for all
five, because seemingly there were five people
sought by the ZIMBABWEAN Police. It looks as
if they did an excellent job in arresting all 10
five of them, and all five of them you can say
were taken out (indistinct). The only thing
still remaining were the corroborating
documents in the computer of MALULEKE, which
showed that there was a letter from the 15
ZIMBABWEAN High Police Office, written to our
SOUTH AFRICAN counterpart, where they thanked
them for these arrests of DUBE and NYONI, and
also some other operations. I'm not sure
which ones, but they happened at the same 20
time.

There was just one more thing, there was a
suspect, MOYO, who was facing charges in
PRETORIA for bank robbery. He is a ZIMBABWEAN
National as well. He had escaped several 25

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times, and the one time he had escaped -
because from that computer of MALULEKE I think
there was some evidence which showed they may
have been involved in getting MOYO, almost
like the reciprocal action on the part of the 5
ZIMBABWEAN Police to reciprocate for what
happened with these five. That happened
around May of 2011. We pursued that
investigation and statements and KHUBA even
went to see MOYO in prison. MOYO's story is 10
yes, he was shot by the ZIMBABWEAN Police
after he had escaped from SOUTH AFRICA, he was
brought back to SOUTH AFRICA, and at the
border he was seemingly handed over to the
SOUTH AFRICAN POLICE - the HAWKS - and taken 15
to a hospital in MUSINA, where he was again
brought to court in SOUTH AFRICA. I thought
that also corroborated the basic allegations
that the SOUTH AFRICAN POLICE helped. On the
evidence regarding who of the police was 20
involved, I think that it was where KHUBA
spoke with DRAMAT several times, trying to get
their statements - their warning statements.
He had taken a warning statement from
MALULEKE, but he was trying not to be 25

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cooperative, really. From MADILONGA's statement he mentioned that when this contingent of ZIMBABWEAN Police came there, they had a cellphone number, which they said was DRAMAT's and they should phone DRAMAT to confirm. It seems it turned out that that number was his official cellphone, and he was called. We also have a record of his cellphone to show the call was received from that number. So there was just a slight thing about the dates. I think he misjudged the dates in terms of when the ZIMBABWEAN Police came, but it was a minor thing. In fact what he said really corroborated it. What we did, because the only thing that was really doubtful was the involvement of SIBIYA. The four initial Crime Intelligence officers did allude to the fact that he was present - not all four of them, but they had actually made two or three statements each.

MR JULY:

Now, when you're talking about "present", do you mean present at the crime scene, where they were assaulting, and all those kinds of things?

MR MOSING:

Yes, at the very first - on 5 November. To me

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the evidence wasn't really conclusive, but one
guy said MALULEKE did all the talking during
the briefing. Because they first briefed all
the members at the place where they met. I
think it was some supermarket just outside of 5
DIEPSLOOT where they all gathered, and
seemingly MALULEKE was doing the briefing, and
then the two ZIMBABWEAN Police guys were
present. The story was that they were from
PRETORIA, and they were actually ZIMBABWEAN 10
Police guys. They were now going to look for
suspects. They said GENERAL SIBIYA was
present, but he was sitting in the car, and he
let MALULEKE do all the talking. Then when
they moved into DIEPSLOOT the other members 15
managed to arrest these four guys. Then there
were discussions as to what must happen to
them, and where must they be taken. Some of
the ZIMBABWEAN witnesses said the General in
the car said they must go to SOWETO Police 20
Station. You see, all that evidence of course
was not conclusive, to say who the General
was, and for me, what was really not
satisfactory was that these Crime Intelligence
members ought to know SIBIYA. They knew him 25

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because they worked with him as part of the TOMS. That evidence wasn't conclusive at that stage.

With the cellphone location we tried to see, because that would have proved conclusively whether he was present or not at the scenes, especially at the first scene. Unfortunately I think the one cellphone that was alleged to be his, if I understood it correctly, showed that he may not have been there, he was somewhere else in PRETORIA, or whatever. I think it was the cellphones as well as the vehicle tracking, because there was tracking on those vehicles. That is why you have that evidence from some expert company that mapped the movements of the vehicles. Those other vehicles definitely show that they were around that vicinity, and from there they moved to SOWETO. But again, that evidence wasn't conclusive to say that SIBIYA was there beyond a reasonable doubt.

That's basically the investigation. Then KHUBA prepared his report, because we agreed we had uncovered what may have been the true version of what happened with

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all these events. That version was clearly very different from the official version that had been given by the HAWKS in the beginning. We were satisfied that definitely there were offences committed, and again we could define who the members were who were involved.

It is true that when KHUBA was requested to draft a report, because it was our understanding that the ICD previously - and now IPID - when they do an investigation they would compile a report, with a clear recommendation as to who must be charged or not, and they then submit it with the docket. He did compile the first report, which is dated 22 October 2013. I have a copy of it here. He submitted it to us and then ...

MR JULY:

Can we have copies of that report?

MR MOSING:

I think you can have a copy of that. Yes, I will make a copy of it. When he submitted this report to us, we basically sent it back to him to say it was not sufficient, because for the persons who must make a decision - the evidence in the report must be summarised

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properly. In fact, summarise all this
evidence and mark it accordingly, to say: A1
says this, A2 that, A3 that. There were some
inaccuracies in terms of that. But you will
see I made pencil notes. So he went back and
of course he did that. Then I think around
22 January 2014 was when the report was
brought in this fashion, of which I have
copies. There was one last thing that KHUBA
needed to get before we could say we were
closing the investigation from our
perspective. Remember now, we were merely
asked to assist the investigation. It
was made clear to the investigators that
the decision to prosecute is not ours, it's
not myself and BILLY, it is going to be the
DPP.

MR JULY:

All they do even then, is they recommend.

MR MOSING:

Yes, they recommend. But I'm saying our role
in the matter we made clear to them, that this
report is not given to me so that I can make
a decision, we would submit it to the relevant
DPP office, who would take it, and we were
merely guiding that investigation and
assisting them. As I said, we had continuous

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discussions with the investigating team, so at
no stage did he disagree really as to what was
happening. I think there was a lot of
pressure as well to terminate the
investigation, to move over to arrest. We 5
basically had to say: Make your investigation
complete first, make sure you've got all the
evidence, which at least indicates a *prima*
facie case so that a prosecutor can take it
forward and at least is assured of getting a 10
conviction. But really there wasn't any
pressure from anybody to say: Arrest this
person and arrest that person, in a sense.
But I'm saying of course this matter happened
some time ago already, and there was some 15
delay in really getting to the nitty-gritty,
to the truth of the whole event, until we
started making progress. It was just to make
sure: Finish your investigation so that there
is nothing extra to go and get. So by the 20
time he then wrote the final report, which we
then had agreed in terms of who would be
charged, and so on - as I said, where we had
agreed, and we mentioned names as well, as was
mentioned in this report dated 22 January 25

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2014. Based on this report, which we understood to be the final report, with the investigation being final as far as we were concerned, the matter was now ready to be submitted to a prosecutor to make a decision on whether to prosecute anyone or not. BILLY MOELETSI and myself drafted a memorandum to the Deputy National Director of Public Prosecutions, ADVOCATE JIVA, attaching - let me just get that report, first of all. 5 10

MR JULY: Let's take a break while you are looking.

THE INTERVIEW ADJOURNS

THE INTERVIEW RESUMES

MR JULY: You prepared a memorandum to the Deputy National Director of Public Prosecutions, and I think you were looking for it. 15

MR MOSING: Thank you, Mr July. The memo I was looking for is actually from myself as Head, Special Projects to ADVOCATE JIVA, the Deputy National Director of Public Prosecutions. I think at that stage MR NXASANA of the NDPP was already appointed in October 2013, because the report is dated 13 February 2014. It's also addressed to CHAUKE, the DPP of SOUTH GAUTENG, because it was my understanding that the 20 25

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matter should be referred to the DPP, who would then decide on the prosecution. As I indicated, I was not to decide the prosecution, but merely to assist and guide the investigations. 5

If I can just read a few introductory things in this report, it says:

"The purpose of the report was 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." 10

Then paragraph 2 is "BACKGROUND", and it says:

"The investigation 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 two lever-arch files, together with other files containing the cellular phone data and evidence obtained from a computer belonging to the DPCI, is also enclosed." 15 20

Then the third paragraph is a summary of the 25

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facts of the investigation. So I don't know whether I can call it standard practice to provide this to the NDPP or my supervisor, really, with our report on the assistance we gave regarding the matter. As you can see, as far as we were concerned the investigation was complete, to the extent that the matter could now be referred to the DPP for a decision. It's just a pity that I did not refer to the date of the report of IPID which accompanied the docket. 5 10

MR JULY: But the date of your memo is ...?

MR MOSING: My date is 13 February 2014. It then precedes...

MR JULY: ... March? 15

MR MOSING: Yes. Not to go through the whole summary of the evidence ...

MR JULY: You will also make a copy of that?

MR MOSING: I will make a copy of this, yes. We did an analysis of the evidence, as far as we were concerned, and then the challenges that we anticipated. The last paragraph really deals with the recommendations which we, as the team guiding the investigations, were making to the DPP. It reads: 20 25

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"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 contained in the docket. Those directly implicated in the actions are the Head of the DPCI, Lieutenant-General Dramat, Lieutenant-Colonel Maluleke, Warrant Office Makoe, Constable Radebe and Captain Nkosi. The recommendation in respect of Major-General Sibiya is not supported for the reasons mentioned above. 5 10

In addition to the charges mentioned in the IPID report, we would also recommend a charge of fraud, alternatively forgery and uttering in respect of the Home Affairs document that was submitted to the Civilian Secretariat and others." 15

In summary our recommendations tallied with the recommendations that were contained in the report from IPID which was dated 22 January 2014. To refer to those recommendations, that reads: 20

"Based on the available evidence, the 25

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Independent Police Investigative
Directorate recommends that Lieutenant-
General Dramat, Major-General Sibiya,
Lieutenant-Colonel Maluleke, Constable
Radebe, Captain S E Nkosi and Warrant
Officer Makoe be charged criminally for
kidnapping, defeating the ends of
justice, assault and theft (only
applicable to Captain Maluleke, Warrant
Officer Makoe, Radebe and Nkosi)."

That is the assault and theft charges. So in
essence we were in agreement with this
recommendation. It is in line with what we
had seen from the investigation up to that
stage. I then handed this memorandum,
together with the dockets - and I think I even
handed it personally to ADVOCATE CHAUKE, who
at that stage was at the head office, in the
presence of ADVOCATE JIVA, who was the head of
Prosecution Services at the time. This
included the report from IPID, dated 22
January 2014.

That was as far as our involvement went in the
matter. To our mind the matter was with the
NDPP SOUTH GAUTENG, who was going to make a

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decision whether to prosecute or not to
prosecute. Some time during 2014 - and I
don't have the exact dates - I was called by
ADVOCATE ZEISS VAN ZYL from the DPP SOUTH
GAUTENG office, who was enquiring about this 5
particular docket. He mentioned that some
police people came and fetched the docket
from him under circumstances which for him
were very suspicious. He felt they were going
to bring the docket back, they hadn't 10
returned the docket, and he was getting
worried and suspicious about it. He thought
the docket were back with us, being at head
office. I said to him: No, that can't be the
case because the docket are now with the DPP, 15
for the DPP to decide the matter. He also
phoned ADVOCATE MOELETSI to the same effect -
I think he phoned MOELETSI before he phoned
me. When he heard we hadn't received the
docket, he was worried. As I said, he became 20
very concerned. We then suggested as well
that perhaps the docket were returned to the
NDPP, MR NXASANA, who was now the new head of
the NPA, without our knowledge, and they could
enquire about it from him. So I think they 25

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wrote a memo enquiring about it, setting out
the circumstances of the matter, and enquiring
about the dockets. I have seen that memo in
the file, in an email. It was in the custody
of the NDPP, MR NXASANA. This was in the last 5
few days of December 2014 - last year - and
this was after the media reporting that
GENERAL DRAMAT had been suspended, and so on,
with regard to this matter. MR NXASANA of the
NDPP called me in and asked me about the 10
matter, and then mentioned that the docket was
with him. He showed me a box with certain
lever-arch files which appeared to be the
docket in the matter, and he showed me the
IPID report. I saw it was dated some time in 15
March - I think it was 18 March 2014. He
showed me the recommendation, and I was
shocked to see that the recommendation was
completely different to the recommendation
that we had seen when the matter was referred 20
to the DPP SOUTH GAUTENG for prosecution or
for decision. I think the latter report
basically said that GENERAL DRAMAT and GENERAL
SIBIYA were exonerated - that's the word that
was used. I then briefly paged through the 25

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body of the report to see whether certain evidence was still there, still discussed in that report, particularly the statement of MADILONGA, because that was the one that I think pertinently implicated GENERAL DRAMAT as such. I did see that a summary of his evidence was still in that report. I then mentioned to the NDPP that to my mind this recommendation was not the recommendation we... 5 10

MR JULY: It was not consistent with the statement?

MR MOSING: ... it was not consistent with the evidence that was in the report - that was still part of the report.

MR JULY: Tell me, Mr Mosing, because you were in your capacity as the NPA, you were just assisting. 15

MR MOSING: Yes.

MR JULY: The decision to prosecute was not yours, but you were assisting. Were you consulted when the second report or the so-called second report was produced? 20

MR MOSING: No, not at all. That's why I said I was so surprised in December 2014 to see that the recommendation in the report now said these two were exonerated. As you can see from my 25

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memo, initially I felt that the evidence was not conclusive with regard to SIBIYA, but with GENERAL DRAMAT we ourselves had recommended as well that there was evidence that implicated him.

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MR JULY: And the part which was not conclusive was his location?

MR MOSING: Yes. It was a question that look, that could have been supplemented by further evidence from members who were there, who had not yet made statements at the time, as well as ID parades perhaps, because it was mentioned by the ZIMBABWE Police, but it was also dark and maybe they couldn't identify him properly. But I felt that the other police members, who were part of that operation, or even other evidence could come out that showed that. Because with cellphone things - with cellphones people know how to bypass things. If you are a policeman of that calibre, you will know what evidence - I think the investigators had mentioned that he may have used other cellphones, which they didn't have, and which would perhaps have placed him in that location. It's also unlikely, it's

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improbable that he wouldn't have been there, because he was actually the person designated to work in cooperation with the ZIMBABWEAN Police with regard to this cross-border cooperation. 5

MR JULY: His own statement says that. He says he was asked for personnel, and he had to provide that personnel.

MR MOSING: Yes.

MR JULY: The question then is how does that personnel carry out its duties without instructions from him? 10

MR MOSING: Yes, and TOMS in GAUTENG were reporting to him basically, I think. That's also the statement of the members from Crime Intelligence. 15
Because their evidence, which they gave right at the beginning, and which is now corroborated by the rest of the investigation, suddenly gains a little bit more credibility. Because now you can actually see, if they say 20
he was present, then he would have been present. You start now giving a bit more belief to what they were saying, because they are not just uncorroborated statements from people that are said to be in cahoots, or 25

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maybe have some motive. But now that the whole case was done, I think if you look at the evidence, I was not excluding the fact that the DPP could decide that SIBIYA was properly implicated, or that other evidence could do that. It's just that at that stage when we did our memo, or our report basically, the evidence was not conclusive as far as he was concerned. But we definitely felt there was a strong case to be made out regarding the rest. 5 10

Can I just maybe say that that report of March also did not even mention the other members like MALULEKE, MAKOE - I think it maybe mentioned MALULEKE, but MAKOE ... 15

MR JULY: It doesn't mention what should happen to others.

MR MOSING: And for me throughout that case it had always been clear - in fact we had gone so far as to give the IO draft charge sheets as far as the kidnapping and assault. We had pinpointed exactly the theft of the cellphones and the monies. We had prepared those charge sheets for the investigating officer. It was always that these people should be charged for those 20 25

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smaller offences as well. For them to be excluded completely in the report just showed me that the report is not very consistent with the evidence.

MR JULY:

I was going to say the meeting - and we don't know when the meeting took place between KHUBA, MAKOE and SESOKO, a meeting with you. MAKOE confirms the meeting, KHUBA confirms the meeting and the only person who is not sure about the meeting is SESOKO.

MR MOSING:

I think the only time that I met MR SESOKO was once, when he was part of this thing. That could be the meeting that is being referred to. I remember it was also at a venue which was not the usual venue where they used to meet. Due to the nature of the case, we were also not meeting in the office places because of the need to keep the matter confidential. That was the only time SESOKO came, and it was here at the PETROPORT. What exactly was discussed was really nothing out of the ordinary from what had already been discussed, and I think that was not after the reports were done, it was still well within the matter being investigated. Unfortunately I did not -

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I can try and find out when, more or less, from my records, to be exact. Perhaps I will be able to pinpoint the exact date. But it wasn't as if it was a matter where it was being referred to the NDPP already or that the investigations were done at that stage. 5

I think the purpose of MR KHUBA bringing MR SESOKO as well, was because SESOKO was a senior person within IPID. I think he's the Chief Director, or something like that. 10
Obviously at that stage we were getting a little bit worried as the team, because these allegations were serious, they involved high-profile people, and the question was whether IPID reported these things as well to the principals, or whatever, so that at least there was proper reporting about that. I think that's what MR SESOKO's role would have been, because KHUBA was merely the investigator, and we were just assisting him. 20

MR JULY:

In your experience does the investigating officer, who is appointed by IPID and who signs the report, have to sign the report with other people, or does he sign the report alone? 25

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MR MOSING:

For us, when we received this report of 22
January, it was signed by MR KHUBA. It was an
official report and it was a final report.
There was no doubt that it was still subject
to somebody in higher office - because it was 5
done on a proper letterhead. As I indicated,
there were previous drafts which we helped him
to correct, so that he could give us a
complete product. There was no indication
that this report was still subject to being 10
corrected, or signed, or authorised, or
approved by somebody else. I think it was
basically the report from IPID about the
matter. That is why I did not expect - and if
it was going to be changed, I would have 15
thought that they would at least have
discussed it with us to say: This evidence
has changed, we've got new evidence which
shows something else. But nothing was
discussed. To my mind, given what ADVOCATE 20
VAN ZYL wrote in his memo, he said basically
that he received the dockets, as we had handed
them over, they were with him for a couple of
weeks, or something like that, he never looked
at them at the time, and they were then 25

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retrieved by IPID. So nothing new was added
to that investigation. Even up to today I'm
not sure what was added which then led to the
report being changed, which then exonerated
these people. If there is that evidence one
can at least say yes, maybe they got some
other evidence that ... 5

MR JULY:

But again, does it change the report, or do
you add to the report and that will influence
the decision? 10

MR MOSING:

You would normally make a supplementary report
to say: This was the decision at that stage,
now we've conducted a further investigation,
and this further investigation then changes
the initial recommendation. But to me it
doesn't look like there was. I didn't see
that. 15

I must also just mention that during November
GENERAL DRAMAT actually wrote through his
attorneys' representation to the NDPP, which
then happened to come to me as well. As a
consequence of that I had to draft a memo to
the NDPP, basically explaining the case and
what was going on with the matter. From that
as well, the involvement, in particular of 25

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GENERAL DRAMAT, because he was the one who was
now making this representation which we had to
address as to whether or not he was implicated
in the matter - we said that they were
responsible. As I said, when I saw it that 5
day, they say now that he is exonerated, and
I was really surprised because the evidence we
had managed to obtain, despite the
difficulties, was reasonably strong, to the
extent that a person taking a prosecuting 10
decision would have managed to say:
Definitely. To my mind now, I know the matter
since January this year was referred to the
DPP in PRETORIA by the NDPP. I understand
there was a recommendation to charge GENERAL 15
DRAMAT. Again, there doesn't seem to have
been - it was still on the same evidence that
we had. I think the only thing that was
different was also a recommendation of a
charge of murder. Between MOELETSI and myself 20
we had disagreed, and I also felt that there
was a case to be made out for murder, but he
felt otherwise. The murder being especially
of the first guy who was killed in ZIMBABWE,
and even others who would have been killed as 25

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a result of this kidnapping and handing over. Because there was evidence to the effect that MALULEKE actually bragged to the other members that the first one who was taken up was killed by the police, and that's how they dispense justice there, therefore if you continue on that argument, it means that he knew exactly what was going to happen. And if that thing happens then you are actually guilty of murder. It seems like it was borne out by our colleagues. 5 10

MR JULY: While we have this, can we ask to make copies of those documents?

MR MOSING: From the lady of the Secretariat pertaining to the report of their investigation - that statement was actually obtained. 15

MR JULY: What is her name?

MR MOSING: I'll tell you now.

MR JULY: I think it's QHOBOSHEANE.

MR MOSING: QHOBOSHEANE, yes. You'll see the date of her statement. It was very late. It was roundabout this time - here it is, JENNIFER IRISH-QHOBOSHEANE. It was the only thing KHUBA had to get before he basically finalised this thing. It's dated 17 February. The 20 25

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there, it's not just put under headings ...

MR JULY: Like the one which was ...

MR MOSING: Yes.

MR JULY: Also it was a final in October, but the only
reason why it had to (?), is the manner in
which it was drafted?

MR MOSING: Yes, it was the cosmetics. You see, if you
look at this one - the final one in January -
after he had changed it, it read better. I
think what he didn't do, it wasn't really
structured. We said: Discuss your evidence
that you rely on.

MR JULY: And then he changed that one to blocks when it
came to - he made blocks in order to get rid
of certain information.

MR MOSING: You see, that part I haven't seen. Where is
the new report? I didn't even get a copy of
that report.

MR JULY: If you look at this ...

MR MOSING: Oh, is this now the report? You see what is
also interesting, I looked at the dates, and
I thought, no, no, those dates can't be.

MR JULY: Let's start at page 9. If you look at page 9,
that is where the problem starts.

MR MOSING: And the rest is all the same?

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- MR JULY: Yes. Then on page 9, on the report of 22 January, if you look at page 9 as well - look at the paragraph that starts in the middle with:
- "He will state that ..."
- 5
- It's the fourth paragraph. It's in the middle.
- MR MOSING: You know why? Remember I said this one is a draft.
- MS BADAL: Oh, is this yours?
- MR MOSING: Yes. 10
- MR JULY: Oh, let me show you this one.
- MR MOSING: There would have been some changes. Can I just look to see what it says at the front? That's why I wrote "draft", because he needed to do something else before we could say yes. 15
- It will be identical, but there was something...
- MR JULY: It will be the pages that will be different. But the problem with this here is page 9.
- "He will state that he told 20
- Superintendent Ncube that he has to verify with his seniors ..."
- MS BADAL: This is 18 March.
- MR JULY: On 18 March, where it is supposed to start with "He will state", after the paragraph ends 25

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with "suspects". After that it's supposed to read:

"He will state that ..."

MR MOSING: Yes, yes.

MR JULY: It's not there. 5

MR MOSING: It's not there.

MR JULY: He starts here.

MR MOSING: He left out that entire part?

MR JULY: Yes.

MR MOSING: What does it state. (Reading to himself.) No 10
but this is ridiculous, because this is
exactly the basis of MADILONGA's evidence,
where he said they had a cellphone, he phoned,
he had called RADZILANI. RADZILANI made a
statement - I think he made a statement as 15
well, which corroborated that guy, because he
didn't want to phone DRAMAT himself. He was
a junior officer, so he phoned his immediate
boss, and I think he said his immediate boss
told him: You can phone Dramat, and he then 20
phoned.

"... but she requested that he should
call Brigadier Makushu, who was a
Provincial Head Protection and Security
Services. He then called him on his 25

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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 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 cellphone and he responded
by saying that he is aware of the
Zimbabwean Police and he must let them
come." 5 10

MR JULY: That doesn't say this.
MR MOSING: No, that is clear tampering. What does KHUBA
say, because KHUBA ... 15
MR JULY: It was taken out.
MR MOSING: But he knows that it was supposed to be in?
MR JULY: He knows that it was supposed to be there.
MR MOSING: Clearly that is what we also understood.
MR JULY: Then if you go to page 21, this paragraph: 20

"DOCUMENTARY EVIDENCE ACQUIRED FROM DPCI
OFFICES ..."

This is what it says.

MR MOSING: That is 5.2.

MR JULY: It starts with "Success report". What then 25

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happens, you see this looks like it reads the same, but here it changes when it comes to another success report.

"The report bears reference number 26/02/1 and again to the Deputy National Commissioner DPCI. The person to whom enquiries must be directed is Captain Maluleke ... 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."

But here, on that one, there is not that paragraph. So this is the part that is not there.

MR MOSING:

Both of them?

MR JULY:

Both of them.

MR MOSING:

But they removed this one?

MR JULY:

Yes. In 5.2. You see if you start here:

"The report bears reference number 14/02/01 ... General Dramat held a meeting with Zimbabwean police ..."

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That is not there. You won't see it there.
It's this part of the report. This is where
it starts.

MR MOSING: It just says:

"The report also covers ..."

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MR JULY: Yes. It says:

"The report also covers the arrest of
Gordon Dube ..."

Instead of having ...

MR MOSING: I think it's this part here:

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"The report also covers the arrest of
Gordon Dube ..."

But it doesn't talk about this other part.

MR JULY: Yes, they delete all of this part.

MR MOSING: If you look at that success report, and you
look at how they are reporting here and how
they are reporting there, you will see which
one is more credible and which one is more
complete. That will be a simple exercise, to
show this one is (talking together).

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MR JULY: You will see what has been deleted there is,
it says:

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

You won't find it there.

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MR MOSING: It's not there, it just says:
 "He sent email to Zimbabwean Police
 trying to find out how they travelled
 back home and that he is still
 tracing..." 5

This one says also sent email to the
 ZIMBABWEAN Police, so in the first one he is
 saying - I mean, really, it's no wonder they
 said he is chopping and changing on this
 thing. 10

MR JULY: Yes, and there is no GENERAL DRAMAT mentioned
 there. I think 5.5 on the next page, just
 before "CELL PHONE RECORD OF LIEUTENANT
 NEETHLING", it says:
 "Captain Maluleke also communicated with 15
 General Dramat in terms of outgoing
 SMSs..."

MR MOSING: "... at a very important milestone of the
 operation."

MR JULY: "He also called a Zimbabwean number ..." 20
 And if you go and check on ...

MR MOSING: Did they change this now?

MR JULY: They changed it.

MR MOSING: "EVIDENCE IN TERMS OF SECTION 205."

MR JULY: Yes, do you see? Then they changed it and 25

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they put it in blocks.

MR MOSING:

They put it in blocks and changed the whole thing. But you see what they are saying - I don't know, but they are saying basically this was a progress report. Before that it's a 5
draft, it's a progress report. If you're now writing further - let's say it's a draft, but the fact of the matter remains that you have this draft, and then you have the other report. Clearly this other report - first of 10
all it doesn't deal as comprehensively with the evidence as this one does. It's less questionable (talking together).

MR JULY:

There is no explanation. Why did they leave out the information about the meeting of 5 15
November? That meeting DRAMAT does not dispute.

MR MOSING:

That was key. That's why I said MADILONGA's statement really corroborates the story. It was just on the dates that he wasn't sure. I 20
think he made a mistake about the exact date, but if you look at the records, the movement in and out, and the cellphone records in terms of what date he phoned, that fits in perfectly. And McINTOSH POLELA, who was a 25

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spokesperson, confirmed that he was called
into a meeting where these people were,
although he didn't really understand what the
story was about - although he's trying to
cover up a little bit. But I think he fully
knew what the story was. The strange thing is
that even with this thing, because he was the
spokesperson and he had to address the media
on this thing, he didn't disclose it then, to
say: There was this meeting. He should have
actually (?). So if you push him into a
corner he probably will have to explain
himself, because he phoned the media -
remember that's when they came up with this
story that there was a deportation, and all
that. In the light of the meeting he would
have known that this was not a deportation.

MR JULY:

So if it was there in the public, why do you
delete it from the report, unless you want to
come to a conclusion that is consistent with
what you are saying?

MR MOSING:

But it was never in the public then. I think
they never revealed, even to the Secretariat
on three or four occasions, in the light of
Parliamentary questions, in the light of the

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Civilian Secretariat, while the Minister was asking for explanations, they never ever revealed that there were ZIMBABWEAN Police who came here, and then there was a request and there was a meeting that took place, and as a result of that they did X, Y and Z. They never said that. I think they hid the fact that there was a ZIMBABWEAN delegation that came. And this was what MADILONGA actually revealed. They tried to cover it up by making a statement that (?) made initially in their investigation, to cover up the statement, where he basically said something to suit the story of the deportation. But that meeting was key. It informed the MALULEKE case, and he also eventually - although he's not saying so now - that's where he got his (?). In fact from his progress report you can see that he's the one who said the meeting took place when the ZIMBABWEANS came, and then he was tasked to go and do this thing. That is why every time he is reporting back. So how do you change it now in your report, and you delete all reference to that meeting, or even reference to them coming into the country?

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Because that whole report isn't consistent with the evidence.

MR JULY: It is.

MR MOSING: If you look at this one and you look at that one, you will see this one is more in line with the evidence than the later one is. That should also be conclusive that this report is... 5

MR JULY: That's fine.

MR MOSING: Sandile, sorry, just on that report, so that there is no confusion, both of these are dated 22 January, but I think because there have been some changes maybe we must compare these two. As I indicated, I wrote "draft", and I think I wrote draft because he still had to do one or two things. Although the date is still the same, this was already like the end. You can see this thing is almost like a final thing. There was just maybe one thing or another that he had to add. 10 15 20

MR JULY: This one is the one that he signed.

MR MOSING: Yes, this one he also signed. But, as I say, because there were maybe one or two things, I just want to check where exactly it was. Because you can see it starts there already, 25

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where there is a bit of difference there. They will be identical, except maybe there was something that he - this was CHUMA, this was SIBANDA and NYENDA and NELSON CHAUKE ...

MR JULY: No, but this one could be the way that it came out when he printed the grid. 5

MR MOSING: Because this is now my copy, and we haven't really ...

MR JULY: Let's go to paragraph 4.3.

MR MOSING: 4.3 is: 10

"STATEMENTS OF HOME AFFAIRS OFFICIALS:

QABA, NDWANDWE, JACKSON, SKOSANA,

LODEWICKUS ..."

Then you have:

"STATEMENTS OF SAPS: 15

MADILONGA ..."

Maybe MADILONGA's statement - these two are the same. I doubt there will be anything changed in this one.

MR JULY: No, this one is the same, you see. 20

MR MOSING: I know there must have been just some small thing that he did, which then accounts for the fact that the documents are not exactly the same.

MR JULY: But it will just be a question of the timing. 25

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After that it was this.

MR MOSING:

Yes, because like I say this one is just my draft. It was almost complete to the final one, so I think he may have just - perhaps it could be that MOSEANE(?), the addition of her. 5
Because he had to deal with the evidence. If you can see where he says anything about her - because I think the rest will ...

MR JULY:

This is what you submitted to the NDPP?

MR MOSING:

Yes. Like I say, what actually happened, was 10
I thought I hadn't kept copies, because I didn't make any.

MR JULY:

You see, the difference between this one and this one, even if they differ in terms of the format, the conclusion is the same. 15

MR MOSING:

Yes, and the statements are the same.

MR JULY:

Then they come with another report, where the people who were also involved in the investigation are not even advised: We are now changing this report. Because even 20
MOUKANGWE was not advised.

MR MOSING:

Yes, I don't think he would have ...

MR JULY:

And they didn't even tell KHUBA - if you look, this was taken out, and I don't know why.

MR MOSING:

KHUBA was also surprised.

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MR JULY: "On the 28th he was called by his former executive director, who gave him the following documents, saying they were received by the Secretariat of Police: Report on illegal rendition." 5

MR MOSING: You see that was the issue, because that report of the secretariat he wanted to put into the evidence as part of the docket. That was the whole domain thing. So we asked him where he got it, and that's when he explained 10 he got it from that lady who was in charge, MBEKI, I think it was.

MR JULY: Yes.

MR MOSING: He got it from her, because he wanted that really to be a part of the docket, because it 15 shows the whole matter. But is it now deleted from this one?

MR JULY: Yes.

MR MOSING: That's KHUBA's statement? Yes, here is his statement. No, he can't take that out, and it 20 was our advice that we must get that report in, because we took account of it. We read it and we knew what in there. Because it's an official version they gave, and now the investigation shows a different version. So 25

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in terms of fraud, you would want to say: You guys, who had a full opportunity to explain this case, said it was this. Now it's this. It would have shown that they had lied. So as far as I'm concerned we had lied to Parliament and to the Minister then, in the beginning, because in other words they cover up the real story. The investigation is supposed to have covered what really happened, and that's why I wanted that report from the Secretariat to be part of the docket. KHUBA wouldn't have left it out, because it was part of his evidence. Is it here where it is taken out?

MR JULY: The paragraph starts with: "On the 13th ..."

MR MOSING: This is his statement.

MR JULY: That's an analysis, that one. His statement will be ...

MR MOSING: But what does it say in the analysis?

MR JULY: No, no, they don't have a heading saying "ANALYSIS".

MR MOSING: Oh, they don't?

MR JULY: No.

MR MOSING: This report is completely ...

MR JULY: They just come up with a finding. Go to page 25.

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MR MOSING: It should be around page 24 or 25. I think that could have been the story, that his statement was not there, and I think we wanted him to give his side of it.

MR JULY: It says: "STATEMENTS OF SENIOR MEMBERS". 5

MR MOSING: Yes, "STATEMENTS OF SENIOR MEMBERS OF SAPS",

MR JULY: Then there is "STATEMENT OF HOW DIEPSLOOT" - this part is there.

MR MOSING: Yes.

MR JULY: INNOCENT KHUBA. So what makes a difference is 10
his statement, because after that his statement takes a lot of ...

MR MOSING: Here is an analysis of the evidence. So these few pages are the same, from what I do have.

MR JULY: Yes. 15

MR MOSING: And I know his statement is supposed to be in that thing, in the one we gave. Now I remember. That's why on this copy that I have, I wrote "draft", because it lacked his statement. Once he did that - and like I 20
said, in not making a copy I didn't anticipate something like this happening. Because we thought in good faith KHUBA would stand by that investigation and wouldn't be made to change it. In other words the original report 25

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that he signed - although he had signed this
one and I wrote "draft" on it - we said: This
one is incomplete and you need to summarise
your statement. I think maybe if you look at
the docket, when was his statement 5
commissioned? It was commissioned more or
less at the same time, because it was the last
thing he also did. Because he said although
he had a draft of what he had done, we said:
Do an investigating officer's statement, so to 10
speak, explaining, because in this case he
really needed to explain how this case
unfolded, because it would help anyone reading
the docket to understand what was going on.
They could be easily confused, because there 15
is a version here which we have to disprove.
Now I remember. I think that's why we didn't
even have this. You see, he didn't even
change the date, he kept the date. It took
him a day or two basically to finalise that. 20
I was a bit worried as to that one.

MR TOM:

That one, as to the one you submitted to the
NDPP?

MR MOSING:

Yes. You see what happened - and I'm not too
sure how you got a copy of that thing. 25

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ANTHONY MOSING

MR TOM: In the media.

MR JULY: No, no, no.

MR MOSING: That one was official.

MR JULY: It was given to us from the Minister's documents. 5

MR MOSING: What I want to say is KHUBA actually told me that report - because it had to go to the Minister. Once the report was done, when they gave us, as the NPA, the report, they gave it to the Minister's office as well. That's what we understood. That's why they took our copy. Unfortunately we didn't make copies. Even ZEISS VAN ZYL didn't make a copy. They took everything. That's why they wanted to take everything. They took everything, but now fortunately, even if I don't have a copy, I've got a recent draft, and you can see it's dated. We've got that draft that they started with, and you've got the docket. If you now look at the new statement or report they have, that report doesn't measure up to the evidence. 10 15 20

MR JULY: Yes.

MR MOSING: Unless they tampered with the evidence, because I think for you to change your 25

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recommendation like that, you would have had to tamper with the evidence.

MR JULY: That's what they gave, you see. Even the tampering is not consistent with their finding, because what they were doing was just to take out the reference to DRAMAT. 5

MR MOSING: Yes. But even if they tampered with the report, they wouldn't tamper with the evidence, because it's there.

MR JULY: You're right, they tampered with the report. 10

MR MOSING: So it means that if they want to insist that that is their correct report, once you review the evidence you will see that that report cannot be - why is there no reference? MADILONGA's statement, for instance, is still there. 15

MR JULY: Yes.

MR MOSING: They haven't changed it. They can't deface it. So it's still there, and it still shows that he phoned, and all that they took up. 20

MR JULY: I think we can go and eat now.

THE INTERVIEW ADJOURNS

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

AFFIDAVIT

I, the undersigned,

MATTHEWS SESOKO

do hereby state under oath:

- 1 I am the National Head of Investigation at the Independent Police Investigative Directorate ("*IPID*"), situated at 114 Madiba Street, Pretoria.
- 2 The facts deposed to below are within my personal knowledge, unless otherwise stated or indicated by the context, and they are, to the best of my belief, true and correct.
- 3 On 25 September 2019 I testified before the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State ("*the Commission*"). The chairperson of the Commission, the Honourable Deputy Chief Justice Zondo, requested me to

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depose to an affidavit dealing specifically with a report compiled by Werksmans Attorneys ("**the Werksmans Report**"). On 20 November 2019, I deposed to such an affidavit; and for the sake of convenience, I refer to that affidavit as "**my Werksmans Report affidavit**".

- 4 In my Werksmans Report affidavit I testified extensively about the Werksmans report authored by Mr. Sandile July ("**July**") and what I considered to be the unfair manner in which he conducted his investigations and made adverse findings against me and my colleagues, Mr. Innocent Khuba ("**Khuba**") and Mr. Robert McBride ("**McBride**"). I felt particularly aggrieved by the fact that he failed to give us an opportunity to respond to the allegations against us before releasing the report.
- 5 Khuba and McBride also deposed to affidavits dealing with the Werksmans Report.
- 6 July has responded to each of our affidavits. He has done so in three separate affidavits.
- 7 The purpose of the present affidavit is to respond to July's response to McBride's affidavit (and not his response to my affidavit). I have adopted this approach primarily because I was initially provided only with July's response to McBride's (and only became aware that he had provided a

separate response to my affidavit after I had already submitted a draft of the present affidavit). I also do so because I wish to respond to July's interpretation of the legislative prescripts and his interpretation is contained exclusively in his response to McBride's affidavit. In any event, there appears to be a substantial amount of duplication in July's three affidavits.

- 8 I do not intend dealing with each of the allegations in July's affidavits. There is far too much information in his affidavits, much of which I should emphasise was not contained in the Werksmans Report. I however deny his assertions in response to my Werksmans Report affidavit; to the extent that they do not accord with what I have already deposed in my previous affidavits including this one, where necessary I will deal with specific aspects of his assertions if they were not previously dealt with.

BACKGROUND

- 9 Firstly, as background information which will be relevant for the purpose of what I will be deposing in this affidavit, it is important to state my history and career with IPID. I was first employed by Independent Complaints Directorate ("ICD") in March 1997 as an Assistant Director. ICD is the

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predecessor to IPID. I rose through the ranks to my current position at Chief Director level.

- 10 In my previous position as the Provincial Head for North West Province, I was part of the committee that developed the first ICD Standard Operating Procedures (SOPs) that were operationalised by the Directorate. When IPID was established in 2012, I was appointed by the former Executive Director, Mr Beukman ("**Beukman**"), to act as the National Head of Investigation. I developed the 2013 SOPs in consultation with Provinces, which was approved by the Acting Executive Director, Ms Koekie Mbeki ("**Mbeki**"). I was also involved with other Provincial Heads in the development of the IPID regulations, assisting the consultant that was employed to draft the regulations.

IPID STANDARD OPERATING PROCEDURES (SOP)

- 11 I will deal with IPID's SOP. Unfortunately, July has attached an incomplete copy to his affidavit (marked "**SJ29**"). ~~I attach hereto marked "**MS1**" a~~ complete copy of the SOP. I will demonstrate that July simply does not understand the IPID SOPs and how they were operationalised by IPID.

11.1 Khuba was investigating the Rendition matter as a case worker as defined in the SOP and not as a supervisor or Director Investigation or Acting Provincial Head. Therefore, he did not have authority to sign off on his own investigation, which is prohibited by the SOP. The structure of the SOP is such that each investigation conducted by IPID must go through a quality control process before it can be referred to an outside stakeholder like the NPA and the SAPS. Therefore, no case worker is allowed to approve and sign off his or her investigation. All investigations must at all times be referred to the supervisor and the approving authority before they can be referred to NPA or SAPS.

11.2 The IPID SOP contains the following important definitions:

11.2.1 A **Case Worker** is defined as *"any official who handles cases and includes a Data Capturer/CMS Clerk, Investigator, Senior Investigator, Principal Investigator, Assistant Director Investigation, Deputy Director Investigation, and Director Investigation"*.

11.2.2 A **Supervisor** is defined as *"any person who supervises a Case Worker (of any level)"*.

11.2.3 A **Director Investigation (DI)** is defined as “a person appointed as Head of Investigation at the Provincial level”.

11.3 The Rendition investigation was a National Investigation which was also interprovincial in nature. As such, it was supposed to be supervised by the National Head of Investigation or Programme Manager, as provided for in the SOP.

11.4 Clause 5 of the SOP deals with the duties and responsibilities of the different levels involved in investigation of cases.

11.5 July in his affidavit at paragraphs 173 to 174 deals with the duties and responsibilities of the Executive Director, Provincial Head (PH) and Director Investigations (DI). He omits, however, to deal with the duties and responsibilities of the Programme Manager contained in clause 5.2 of the SOP, a position held by me. I respectfully submit that this omission is deliberate as the duties and responsibilities of the Programme Manager do not accord with the narrative he is trying to put forth. Clause 5.2.11 provides that the Programme Manager must “[c]oordinate and supervise interprovincial task team investigations and draft terms of reference for the relevant task team”.

11.6 Since the Rendition investigation was a national and interprovincial investigation, Khuba, as a case worker, was supposed to conduct the investigation and refer the product of his work to me at different milestones in the investigation for supervision and, when initiating completion, for both supervision and quality control, before it could be referred to the Executive Director for approval and referral to the NPA. This is in line with section 7(4) of the IPID Act and Regulation 5(3)(i) and 7(3)(c).

11.7 To suggest that the Executive Director and I have no role in signing off investigative reports is simply a wrong interpretation of the IPID SOP and a misunderstanding of the operations of IPID. The structure that applies at a provincial level in respect of supervision and completion of cases is exactly the same with National investigations, the only difference being the National Head of Investigation and the Executive Director get involved instead of the Director Investigations and the Provincial Head.

11.8 The Rendition investigation was conducted in terms of section 28(1)(f) and 28(1)(h). The relevant SOP investigative procedure is set out in clauses 7.5 and 7.6. It is important to emphasise the following provisions of the SOP, which clearly show why the



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National Head of Investigation and the Executive Director must be involved in the supervision, signing off and approval of national investigations:

11.8.1 Clause 7.5.14 provides that *"[w]here resources are utilised from multiple offices, the jurisdiction will remain within the Province where the matter arose, but the custodianship and supervision will reside with the CD: Investigation and Information Management who will establish the task team and the terms of reference"*.

11.8.2 The rendition case arose in the Gauteng Province. Therefore, the Gauteng Province retained the jurisdiction over the investigation, but the custodianship and supervision over it was supposed to have resided with me as the Acting Programme Manager at the time. This did not happen in the Rendition investigation because of the instruction given to Khuba by Mbeki not to involve me in the investigation.

11.8.3 Clause 7.5.19 provides that the case worker/designated investigator must *"[r]efer [his or her report] to [his or her] Supervisor for review and recommendation of completion"*

or closure". Khuba should, in terms of this clause, have referred the report to me for my recommendation on whether the investigation could be completed. This did not happen as Khuba signed the so called January report without bringing it to me for my recommendation. He did this apparently because he had been instructed not to do so by Mbeki.

11.8.4 Clause 7.5.20 provides that the Supervisor must "[r]efer (Case docket) to the DI/PH for completion and/or closure (if case completed/closed by DI/PH should still be informed as per Regulation 5(3)(i))". This clause, accordingly, makes provision for completion and closure of cases to be done in accordance with Regulation 5(3)(i), where applicable.

11.8.5 In the Rendition investigation, the completion and referral was supposed to be done by the Executive Director since it was a National Investigation. At the time of the completion of the so-called "*first report*" in January 2014, Khuba's direct supervisor for Provincial matters was Mr Davis Mokoena. But Khuba could not take this matter to

Mr Mokoena because it was a national investigation. He could not bring it to me either as prescribed in clause 5.2.11 of the SOP, because he had been instructed by Mbeki not to involve me.

11.8.6 We all knew Mbeki was acting as the Executive Director until the acting appointment of Ms Nomkhosi Netsianda ("**Netsianda**") in February 2014. Khuba thus made enquiries with me and Mbeki's personal assistant about the whereabouts of Mbeki because, so he said, he wanted her to sign off the report.

11.8.7 Clause 7.10 of the SOP deals with the procedure for completion and closing of files and docket:

11.8.7.1 Clause 7.10.1 provides for "*the Case Worker to initiate completion of a file through the supervisor after completing a case investigative report*". So, in the rendition investigation, Khuba should have initiated completion through me, as a supervisor in this investigation. However, he had been instructed by Mbeki not to involve me. He did, however,


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comply with the SOP in preparing the so-called second report (completed in March 2014).

11.8.7.2 Clause 7.10.2 provides that "*[t]he Supervisor reviews and quality assures directives and reports and recommends completion to the DI/PH*". Since this was a national investigation, supervision was supposed to be by me in line with clauses 5.2.11 and 7.5.14. These provisions were complied with in the completion of the so-called second report.

11.8.7.3 Clause 7.10.3 provides that "*[t]he DI/PH approves completion and the completion register is utilised (COMR9/14/32/34)*". Since this was a national investigation, the approval of the Executive Director was required.

11.8.7.4 Clause 7.10.4 crucially provides that "*[n]o Case Worker acting as DI/PH will approve the completion of a file investigated by himself or herself*". This provision makes it clear that a Case Worker or an investigator cannot approve

an investigation that he conducted himself or herself. This is so because every investigation conducted within IPID must go through a quality control process and must always be approved by a higher authority. Clause 7.10.4 was not complied with in preparing the so-called first report, but was complied with in the preparation of the so-called second report.

11.8.8 The situation that arose in the Rendition case which required a higher authority to supervise a case worker involved in a national investigation, was not unusual. I attach marked "MS2" a report in respect of a similar (but unrelated) national investigation where we followed exactly the same process as in the Rendition investigation which required that McBride, as the Executive Director, sign the investigative report.

11.9 July's submissions regarding the IPID SOP from paragraph 172 to 182 of his affidavit are based on a misunderstanding of IPID SOP and how it is operationalised within IPID. This proves my point that had July taken time to approach us before releasing the report we

could have explained these SOP and how it was operationalised. Had he done so, his misconception that Khuba could validly sign his own investigation report for submission to the NPA and his conclusion that the so-called first report was thus, a final report, could have been avoided. Be that as it may, even if the so-called first report could have been validly signed by Khuba and/or could be regarded as a final report, this entirely misses the point as this would not have precluded the report being revisited should further information have come to light.

11.10 July quotes the definition of "*completed investigation*" and a "*final case investigative report*" in paragraph 147 and 148 of his affidavit, and purports to interpret what they mean in paragraph 149. With respect, the most that can be said for July's argument is that it demonstrates a complete lack of understanding of a criminal investigation and his confusion between a completed investigation and final case investigative report, as defined in IPID's SOP:

11.10.1 A completed investigation is defined in clause 3 of the SOP as "*an investigation which involves comprehensive effort to interview the complainant, the victim, witnesses and suspects SAPS/MPS member, the identification,*

location and acquiring of relevant physical evidence and upon which the conclusion is based on evidence obtained, excluding expert reports". From this definition it is clear that an investigation is regarded as completed for the purpose of a case worker, if the case worker has done all the required investigation as indicated in the definition, excluding technical reports.

11.10.2 "All the required investigation" means all that is within the power of the case worker that must be done. Things like technical reports that normally take a long time to obtain and are not within a case worker's power to obtain speedily, do not render the investigation incomplete. The failure to obtain a suspect's warning statement does ~~This~~ is because in criminal investigations, "~~suspects statements~~" are referred to as "warning statements", and are expressly stated to be required before the investigation can be regarded as complete for the purpose of a case worker.

11.10.3 A Final Case Investigative report, on the other hand, brings finality to the matter. As a result, all investigations,

including warning statements and technical reports must be available to enable the case worker to make recommendations through the supervisor to the approving authority.

11.11 A "*Final Case Investigative Report*" is defined as "*[a]n investigation report which documents the entire investigation and contains the conclusion, summary of affidavits and technical reports, written recommendations to SAPS/DPP with regard to the actions of the SAPS/MPS member concerned*".

11.12 In paragraph 144 of July's affidavit he asserts that "*[t]he investigation was complete when the first report was compiled and that report was final as contemplated in the above provisions of the SOP. From the literal reading of the definition, there is no requirement to the effect that in order for an investigative report to be final, it must have a warning statement*". This is completely wrong. At best, the first report would fall into the category of an interim report which is defined in the SOPs as "*a case investigative report where investigation has been completed but where a recommendation cannot be made to the DPP due to outstanding*".

technical reports, however recommendations may be made to SAPS”.

- 11.13 The first report was, therefore, not a final case investigative report as contemplated in the IPID SOPs.
- 12 Having said that, it is unclear why July deals in such detail with IPID’s SOPs. He made no reference to the SOPs in the Werksmans Report and the detail with which he deals with the SOPs in his affidavit smacks, with respect, of a contrived subsequent rationalisation.

THE IPID REGULATIONS

13 I will deal with the IPID Regulations and also show that July does not understand the Regulations and how they are operationalised within IPID.

13.1 The Rendition investigation was conducted in terms of section 28(1)(f) and 28(1)(h); it was not conducted in terms of section 28(1)(a) and (b).

13.2 The relevant regulations are regulations 5 (Investigation of criminal matters) and 7 (Investigation of referred matters). The investigation was to establish whether members of the SAPS unlawfully deported

Zimbabwean nationals to Zimbabwe and whether these Zimbabwean nationals were assaulted by SAPS members. Regulation 4 (Investigation of death in custody or as a result of police action) is therefore not relevant, there was no suggestion that a person had died in the custody of the SAPS or as a result of police action.

- 13.3 Paragraph 161 of July's affidavit is, with respect, simply contrived. July is merely trying to justify the flawed Werksmans Report. It is not supported by the IPID Act, the IPID Regulations or the SOP. What July fails to distinguish is that in IPID, there are provincial investigations and national investigations. Most investigations, in fact thousands of them, happen to be located at Provincial Offices. So McBride is right, as quoted in paragraph 156 of July affidavit that we do not get to see most of the reports as they are dealt with at the Provincial offices. This is so because they are provincial investigations. However, we have a number of cases that are national investigations, where we do get to see the investigation reports.

- 13.4 National investigations are recognised in clauses 5.2.11 and 7.5.14 of the SOP.

13.5 Regulation 5(3)(i) provides as follows:

“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 measures to be taken against a member of the SAPS or the Municipal Police Service or the criminal prosecution of such member”.

13.6 In terms of Regulation 7(2), the Executive Director or the relevant Provincial Head, as the case may be, must designate an investigator to investigate a matter contemplated in section 28(1)(h) of the IPID Act which had been referred to the Directorate for investigation.

13.7 Reg. 7(3) provides that an investigator designated in terms of sub-regulation (2) must *“as soon as is practicable, determine whether the referred matter relates to”*:

- “(a) a matter contemplated in regulation 4, in which case the provisions of that regulation apply with such changes as may be required by the context; or*
- (b) a criminal matter, in which case the provisions of regulation 5 apply with such changes as may be required by the context, notwithstanding that the criminal matter to be investigated may not be listed in sub-regulation (2) of that regulation.”*

13.8 Since the Rendition investigation was conducted in terms of section 28(1)(f) and 28(1)(h) of the IPID Act, it is clear that the applicable Regulations would be Regulations 5 and 7(3)(b). The investigation and the reports, therefore, had to be dealt with in terms of Regulation 5(3)(i). The submission of the report to the Executive Director is not merely to notify him, as July suggests in his affidavit at paragraph 160, but is it so that the Executive Director can engage with the report and refer same to the NPA or SAPS, as required by the Regulations and the IPID Act.

13.9 July's further confusion about IPID's Regulations can be seen in the last sentence of paragraph 160 of his affidavit, where he asserts that the Executive Director and the Provincial Head do not have the

power to approve and sign an investigation report submitted by the investigator. He says this, while at the same time asserting that Khuba could refer matters to the NPA as the Acting Provincial head. (Refer to Paragraph 163 of his affidavit.) This is, with respect, disingenuous. The truth is Khuba, as an investigator / case worker, could not sign off his own investigation. The SOP and the Regulations required him to submit his report to the Supervisor and the approving authority, in this case the Programme Manager (which was me) and the Executive Director (Mbeki / McBride). This is why both McBride and I signed the so-called second report.

13.10 What also needs to be emphasised is that while Khuba was acting as the Provincial Head for Limpopo for the most part of his investigation of the Rendition case, at the time when Khuba signed the so-called first report, he was not acting as the Provincial Head of Limpopo; Mr Davis Mokoena was acting in this position. Khuba only started to act again as the Provincial Head in February 2014 after Netsianda was appointed to act as the Executive Director. Before this, for his provincial investigations, Khuba was reporting to Mr Mokoena. However, for the Rendition investigation, Khuba should have reported to me as this was a national investigation.



13.11 It was only when Netsianda was appointed to act as the Executive Director that IPID management and staff became aware that Mbeki had left the department.

13.12 The signing off and approval of national investigations by the Executive is not a new thing; even during the ICD era, the Executive Director would sign off on national investigations. For example, the former Executive Director of ICD, Mr Neville Melville, signed off on an investigation of Intimidation against former national Commissioner, Jackie Selebi. As I have already indicated at paragraph 11.8.8 above, McBride signed off on another report in a national investigation attached above marked "MS2".

13.13 Any Provincial Head employed by IPID can attest to the fact that in all IPID investigations, no investigator/case worker can sign off on his or her investigation. They can also attest to the fact that Provincial Heads and/or Director Investigations are responsible for signing off and approving all provincial investigations; for national investigations this responsibility falls on the National Head of Investigations and the Executive Director.

THE LEGAL STATUS OF IPID REPORTS

14 The legal status of IPID reports pursuant to which investigations are referred to the NPA and those where investigations are referred to the SAPS, are distinguishable. The NPA referrals are provided for in terms of sections 7(4), 7(5) and 21(1)(d) of the IPID Act, whereas the SAPS referrals/recommendations are dealt with in terms of section 7(6),7(7), 21(1)(f) and 30 of the IPID Act.

14.1 Section 7(4) provides that *"the Executive Director must refer criminal offences revealed as a result of an investigation, to the National Prosecuting Authority for criminal prosecution and notify the Minister of such a referral"*. On the other hand, section 21(1)(d) provides that the Provincial Head is responsible to *"refer matters investigated by the Provincial Office under this Act to the National or relevant provincial prosecuting authority for criminal prosecution"*.

14.2 From the above, it is clear that the legislature recognised that there will be national and provincial investigations: the power of referral is conferred on the Executive Director in respect of national investigations and on the Provincial Head in respect of provincial investigations.

14.3 The provisions of section 7(4) are peremptory in nature. IPID took a policy decision that all referrals to the NPA will be done in a form of a report. The referral in the so-called second report was done in accordance with the provisions of section 7(4), including the notification to the Minister; these provisions were not complied with in the so-called first report.

14.4 There are similar provisions with regard to disciplinary referral in terms of section 7(6) and 21(1)(f). However, what distinguishes the NPA and SAPS referrals is that in terms of section 30, the disciplinary referrals are elevated to recommendations which must be initiated by SAPS. This is because the peremptory provisions of section 30 oblige the SAPS to implement the IPID recommendations within specific timelines.

14.5 In terms of section 30:

“The National Commissioner or the appropriate Provincial Commissioner to whom recommendations regarding disciplinary matters were referred, as contemplated in section 7(6) and (7), must:

- (a) *within 30 days of receipt thereof, initiate disciplinary proceedings in terms of recommendations made by the Directorate and inform the Minister in writing, and provide a copy thereof to the Executive Director and the Secretary;*
- (b) *quarterly submit a written report to the Minister on the progress regarding disciplinary matters made in terms of paragraph (a) and provide a copy thereof to the Executive Director and the Secretary; and*
- (c) *immediately on finalisation of any disciplinary matter referred to by the Directorate, to inform the Minister in writing of the outcome thereof and provide a copy thereof to the Executive Director and the Secretary."*

14.6 From the above it is clear that the legislature intended that the disciplinary recommendations by IPID to SAPS are enforceable and cannot be ignored. There is no similar injunction on the NPA and there are no similar provisions to section 30 in the IPID Act that oblige the NPA to act on the referrals to it; indeed, such an injunction would be inimical to its prosecutorial independence.

14.7 The recommendations to the NPA are, accordingly, not binding on the NPA and remain nothing other than recommendations. The NPA is obliged to independently apply its mind on whether to initiate prosecutions.

14.8 July, in his overzealousness to make an adverse finding against us, simply "ignored" these facts and the interviews he held with State Advocates from the NPA, Mzinyathi, Baloyi and Mosing, all of whom told him that their decision whether to prosecute or not would not have been influenced by IPID reports. Although not a single State Advocate stated that he or she was or could be influenced in any way by the recommendation made by IPID, July arrived at a conclusion in the Werksmans Report that by allegedly deleting "material evidence" which was "likely" to affect the decision of the NPA, we had defeated the ends of justice.

14.9 This was notwithstanding what he had been expressly told by Advocate Baloyi, when he interviewed him (at page 23, lines 20 to 25 and page 24, lines 5 to 15):

~~"There is so much made about the first and the second report, but I do not look at the 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 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. For our purpose 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 a file, and say – it's a summary basically, and it helps us in that way. Firstly, as I said, the reason why I did not 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 issue I would want to look at he might have overlooked".

- 14.10 The explanation now provided by July in his affidavit is, with respect, contrived; it is not what he said in the Werksmans Report. In fact, and to the contrary, he made no mention at all of what Baloyi had told him. This, with respect, is not coincidental.
- 14.11 An IPID report to the NPA is simply meant to assist the prosecutor to navigate the docket and have a sense of what is contained in the

docket. There is no way that either of the two reports could have affected the decision of the NPA whether certain individuals should be charged or not as alleged by July.

14.12 With respect to July, he did not deal with this in the Werksmans report and has not dealt with it in any of his affidavits. The inference is inescapable that he ignored these statements by Baloyi because it did not accord with what he wanted to conclude in his report.

14.13 In any event, July had interviewed several State Advocates who dealt with criminal matters for a living. He did not debate with them his notion that allegedly "*deleting*" paragraphs from a report to the NPA could amount to the crime of defeating the administration of justice. The IPID reports to the NPA cannot be elevated to something they are not, just because July feels they should.

14.14 Even if McBride and I had seen the so-called first report that was apparently sent to Mosing by Khuba (which we did not) that did not mean that we had committed any crime or misconduct. July has, with respect, somehow contrived to establish the so-called first report as the "*gold standard*" against which the second report has to be measured. But that cannot, with respect, be correct. The question was whether the conclusions arrived at and the

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recommendations made by Khuba in the first report could be supported. The same applies also to the second report.

- 14.15 If at the time we signed the so-called second report we believed, based on the available evidence, that Generals Sibiya and Dramat (and other officers) should not be charged, the change in the content of the report could not make us guilty of any offence or misconduct.

ALTERATION OF THE SO-CALLED FIRST REPORT

15 I have already dealt with the alteration of the first report in my interview with July and in my first and second affidavit to the Commission. I would, however, like to add the following:

- 15.1 I disagree with July's assertion in paragraph 60. I was in fact misled. The question was not whether he "*knew*" at the time he interviewed me that I had committed a crime or misconduct. The question is whether I was a suspect. It is apparent that I was. In any event, even if they did not "*know*" at the time of my interview whether I had allegedly committed a crime or had misconducted myself, surely

after they formed such view they had a duty to confront me with the new evidence and require me to respond to it.

15.2 It is also not true that Adams & Adams Attorneys were my legal representative at the time. July had been expressly informed by Mr Marais that his (Mr Marais') mandate was terminated by IPID and, whilst he was still acting for IPID, that he did not represent any individuals. As I understand the position, Adams & Adams started acting for McBride after termination of mandate by IPID. I attended the interview under the compulsion of Mr Kgamanyane, the Acting Executive Director of IPID.

15.3 I reiterate that I did not see the so-called first report when it was submitted to the NPA, nor was I a party to any discussion with regard to that report. The first time I became aware of the report was around January 2015, after it had been leaked to the media. The report Khuba emailed to me on 23 January 2014 to assist him in forwarding it to the Secretary of Police is not the same as the signed report he gave Mosing. That report came to a different conclusion and did not recommend that General Sibiya be charged.

15.4 The only time I got involved with this matter before Khuba submitted the so called first report, was when Khuba requested permission

from Mbeki to allow him to request my assistance when he was going to draft questions and interview Generals Dramat and Sibiya and Captain Maluleke. It was pursuant to this request that I was copied in the email between Mosing and Khuba. The request to Mbeki is in the attached email marked "MS3". If I was part of the investigation team as July alleges in paragraph 32 of his affidavit, why would Khuba request my services for the purpose of interviewing Dramat, Sibiya and Maluleke from Mbeki? The only other time Khuba requested me to meet the State Advocates from the NPA was when we met at Total Petro Port NI. Mosing confirms that the only time he saw me was at that meeting.

15.5 It is simply untrue that I went with Moukangwe and Khuba to the NPA to request warrants of arrest. This is also not supported by any evidence:

15.5.1 Moukangwe did not state who we saw at the NPA to demand the arrest warrants.

15.5.2 As indicated above, Mosing, both when interviewed by July and during my disciplinary hearing, made it clear that he only saw me once. At the time I met them I believe it was still at the early stages of the investigation. How does

one ask for warrants of arrest when it is still at the early stages of investigations? I do not recall any discussion at that meeting about the case, as it was a very short meeting. Surely, Mosing would have stated that Moukangwe and Khuba arrived together with me to seek warrants of arrest.

15.5.3 July and Moukangwe's assertions are not supported by the interview with Mosing at page 160 paragraph 5 to page 161 paragraph 20 of the transcript of the interview with Mosing. The conversation is recorded as follows:

"July: I was going to say the meeting – and we don't know when the meeting took place between KHUBA, MAKOE and SESOKO, a meeting with you. MAKOE confirms the meeting, KHUBA confirms the meeting, and the only person who is not sure about the meeting is SESOKO.

MOSING: I think the only time that I met MR SESOKO was once, when he was part of this thing, that could be the meeting that is being referred to. I remember it was also a venue which was not the usually venue where they used to meet. Due to the nature of the case, we were also

not meeting in the office places because of the need to keep the matter confidential. That was the only time SESOKO came and it was here at PETROPORT. What exactly was discussed was really nothing out of the ordinary from had already being discussed, and I think that was not after the reports were done, it was still well within the matter being investigated. Unfortunately I did not- I can try and find out when, more or less, from my records, to be exact. Perhaps I will be able to pinpoint the exact date. But wasn't as if it was a matter where was being referred to the NDPP already or the investigation was done at that stage.

I think the purpose of MR KHUBA bringing MR SESOKO as well, was because SESOKO was a senior person within IPID. I think he's the Chief Director, or something like that. Obviously at that stage were we getting a little bit worried as a team, because these allegations were serious, they involved high profile people, and the question was whether IPID reported these things as well to their principals, or whatever, so that at least there is

proper reporting about that. I think that's what MR SESOKO's role would have been, as MR KHUBA was merely an investigator and we were assisting him".

15.6 It is also, with respect, untrue that I tried to delay my disciplinary hearing. This is not borne by facts. I was suspended in March 2015 and my disciplinary proceedings only commenced in July 2015. This delay was caused by the employer. I fell ill twice during my disciplinary process:

15.6.1 First, I was admitted in hospital for surgery after my Achilles tendon was torn. This was in September 2015. My disciplinary proceedings were separated from that of Khuba as a result of my hospitalisation. When we resumed in February we raised point *in limine*, the chairperson at the time, Adv. Maselu, did not deliver judgement as promised and removed himself from the proceedings. It took the employer about two months before another chairperson was appointed.

15.6.2 I attended my disciplinary proceedings until I again fell ill, while attending my disciplinary hearing on 4 August 2016. The chairperson was made aware of this. Notwithstanding

this, I soldiered on and endured pain as the disciplinary hearing proceeded. On the next date of appearance, on 16 August 2016, I could not attend as I was admitted to hospital for depression. The chairperson, Adv. Mxolisi Zondo ("**Adv. Zondo**"), dismissed me in my absence, and refused to accept my doctor's certificate.

15.7 I launched an urgent application to the Labour Court, which was dismissed because it was considered not to be urgent; I fail to understand how that amounted to delaying the proceedings. Adv. Zondo conceded that my challenge was not without merit and that I was entitled to approach the court. I had also launched a High Court application to challenge the constitutionality of section 6(4) of the IPID Act, which empowers the Minister to appoint an acting Executive Director. I still maintain that these provisions are unconstitutional, having regard to the constitutional judgement in McBride's matter.

15.8 I launched an application for the recusal of Adv. Zondo after I became aware that he had chaired the disciplinary proceedings of General Sibiya, on the same facts and based on the very same Werksmans Report. It was also brought to my attention that he

dismissed General Sibiya for his involvement in the Rendition matter, when I stood accused of having exonerated General Sibiya. It became clear to me at this stage that I was not going to get a fair trial. This was proved when he dismissed me without hearing my version.

15.9 When one reads the only evidence led against me by the employer from page 77 to 89 of the transcript (which was testified to by Mosing), it is apparent that there was no evidence that was led or put before the Chairperson to support the charges against me that I had altered the first report. I attach marked "MS4" a copy of the transcript in those proceedings.

15.10 On pages 102 to 103 of the transcript, Mosing conceded under cross-examination that IPID recommendations are not binding on the NPA. On page 143, line 20 he testified that there were a number of reports that were not exactly the same. There is no evidence that was led to indicate which amongst these reports, was the one we worked on with Khuba.

15.11 At the beginning of page 149, Mosing conceded that we could change the recommendations in the same way he had with regard

A handwritten signature in black ink, appearing to be 'M. Lcw', is located at the bottom right of the page.

to the charging of General Sibiya, if we believed that the evidence did not support the charge.

15.12 On page 233 of the transcript, Mosing conceded that he did not testify about the altering of the report because he did not have knowledge of it, except for what had been told to him by Khuba.

15.13 When one reads Adv. Zondo's findings and the evidence that was led, there is no causal link. It is not even clear how he came to the conclusion that my conduct amounted to misconduct based on the testimony. I am not aware of any provision in the IPID Act, IPID Regulations or SOP that makes it misconduct to alter a report. What is clear is that he wished to dismiss me, as he had General Sibiya.

15.14 In any event, it is not clear where July obtained this evidence from. It is, with respect, rather suspicious that he went to this much trouble to follow our cases after he had apparently discharged his mandate and submitted the Werksmans Report.

15.15 July states at paragraph 244.2 that "*Ms Mbeki will testify before the commission that she never instructed Mr Khuba not to work with Mr Sesoko in the investigation but advised him not to put Mr Sesoko at the forefront of the investigation as he had a criminal record, which*

she believed might compromise the investigation". This is surprising. If Mbeki believed that my criminal record would compromise investigations, she will have to explain why she appointed me to act as the National Head of Investigation and the Head of Legal Services. I went up the ranks within IPID with this criminal record which was only expunged in 2013 and it was disclosed to the employer. (For the record there was no assistance from IPID in my application for expungement.)

15.16 More importantly, one wonders why I would be required to be excluded from the investigation if, as July maintains, it was not my function to be involved in investigations.

REINSTATEMENT TO MY POSITION

16 My reinstatement to my former position was as a result of an arbitration process at the Bargaining Chamber under case No. GPBC1853/2016. I would, with respect, have expected July, as an attorney, to establish the correct facts first, before making incorrect facts under oath.

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- 16.1 The employer did not attend the conciliation proceedings at the Bargaining Council and a certificate of non-resolution was issued. The matter was then referred to arbitration.
- 16.2 The arbitration was held on the 22 November 2016, where the employer and my legal representative agreed to settle the matter. This was after there were numerous engagements between the employer and my legal representative based on submissions that were made in my application to the Bargaining Council. See the attached settlement agreement marked annexure "MS5".

OBJECTIVE FACTS

- 17 The objective facts, unlike those proffered by July, are that this is a classic case of State Capture. I say this because of the following;
- 17.1 Minister Nhleko wanted to remove General Dramat from his position and replace him with General Ntlemeza. This is why the Minister's letter of instruction to Werksmans focuses on Generals Dramat and Sibiya and pays only passing reference to other persons apparently implicated. In fact, the second report did not recommend charging

any other police officers either, like Captain Nkosi, Warrant officer Makoe or Constable Radebe.

17.2 The description of General Sibiya in the assault investigation opened by members of Crime Intelligence after he frisked them during the first day of the hearing of the criminal matter against General Mdluli (after being tipped off that there was going to be an attempt on the life of one of the investigators), was exactly the same as the allegations against him by civilian witnesses in the Rendition case. Quite apart from the aforesaid, the witnesses were civilians who, it was clear, had never met or seen General Sibiya previously; it was highly unusual that they were able to provide so consistent, among themselves, a description of him. The conclusion is inescapable that members of Crime Intelligence probably coached these witnesses to implicate General Sibiya.

17.3 Members of Crime Intelligence had also alleged that General Sibiya opened a case of attempted murder against them. See the attached NPA query by Adv. Roberts SC marked "MS6". This confirms the well-known acrimony between Hawks members and Crime Intelligence members, which would have motivated them to falsely implicate General Sibiya.

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17.4 IPID was to be used to achieve the goal of getting rid of General Dramat. To this end, Khuba was instructed by Mbeki, to conduct the investigation in the Rendition matter in collaboration with Col. Moukangwe, who was a member of Crime Intelligence. Quite apart from the fact that Mbeki had surrendered the independence of IPID, members of Crime Intelligence had played an integral part in the arrests of the Zimbabwean nationals in the Rendition matter. Thus, to the extent that an independent investigation was being conducted, they too should have been considered as suspects or potential suspects.

17.5 When IPID management failed to deliver on the goal to get rid of General Dramat, each one of them, including me, came under attack by the former Minister, Nhleko.

17.6 The criminal charges and disciplinary actions taken against Khuba, McBride, Generals Dramat and Sibiya and me were all aimed at removing us from our positions as we did not fit in with the political agenda at the time and in fact undermined it. The intention was to replace us with individuals who are more compliant with that agenda.

17.7 The Werksmans Report, authored by July, was used as a catalyst to achieve Minister Nhleko's goal of getting rid of us and replacing us with more compliant individuals. This is the only reason why IPID reports, which are normally inconsequential in decision-making at the NPA on whether to prosecute or not, were elevated to a sacrosanct document, which, on July's reasoning, was not only incapable of alteration (assuming, that is, that the so-called first report was indeed a final report), but was "a useful tool" to the NPA in determining whether to prosecute Generals Dramat and Sibiya and could not be "rejected by the NPA without consideration".

DEPONENT

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 Parkview SAPS on this the 16 day of JULY 2020, 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.


71 Dundalk Avenue
Parkview
CSF

SOUTH AFRICAN POLICE SERVICE
STATION COMMANDER
2020 -07- 16
CLIENT SERVICE CENTRE
PARKVIEW
SOUTH AFRICAN POLICE SERVICE

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COMMISSIONER OF OATHS

CAPACITY: CST

FULL NAMES: Londwe Conellis Vilekezi

PHYSICAL ADDRESS: 71 Dundalk Avenue
Parkview
Randburg



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Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

**Title: Independent Police
Investigative Directorate Standard
Operating Procedures**

IPID Policy Number: 001-POL-PR2

Effective Date: 01 April 2013



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This SOP repeals all the previous SOPs and shall be read and implemented in conjunction with the Memorandum of Understanding (MoU) with the SAPS and MPS, Firearm Control SOP, Registers and the Case Flow Chart.

1. PURPOSE

The purpose of this Standard Operating Procedure is to establish policy and methods by which cases should be received, registered, processed and disposed of, while being cognizant of the provisions of the Constitution of the Republic of South Africa Act, 1996; the Independent Police Investigative Directorate Act 1 of 2011; the South African Police Service Act 68 of 1995, as amended; the Criminal Procedure Act 51 of 1977, as amended, the Regulations promulgated under both the South African Police Service Act and the Independent Police Investigative Directorate Act and other relevant legislation.

2. POLICY

It is the policy of the IPID to:

- 2.1. Ensure that investigative assignments to IPID staff are made in a clear and unambiguous manner;
- 2.2. Ensure quality investigations and that investigations are conducted with integrity without fear or favour;
- 2.3. Require investigative staff to provide regular reports regarding investigations to supervisors;
- 2.4. Ensure that supervisors actively manage the investigative activities of their subordinates;
- 2.5. Ensure that investigations are carried out in a coherent and standard method within the IPID;
- 2.6. To comply with the turnaround time agreed to in respect of the investigation of different classes of cases; and
- 2.7. Ensure compliance with established accountability mechanisms.

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3. DEFINITIONS

For the purpose of this SOP the following words/ expressions shall mean:

Act – means the Independent Police Investigative Directorate Act, Act 1 of 2011;

Acquitted (Criminal) – means a member was found not guilty of a criminal offence and discharged;

Acquitted (Departmental) - means a member was found not guilty of departmental misconduct;

Assistant Director Investigations (ASDI) - means a person appointed at a level lower than the Deputy Director Investigations;

Annual Brought Forward (ABF) – means a case carried over from the previous financial year, not older than 12 months;

Backlog – means cases carried over from previous financial years older than 12 months;

Brought Forward (B/F) – means a date by which a file must be submitted to a supervisor for evaluation of compliance with the directives, as per “E” clip on the case file;

Case Classification – Refers to the manner in which cases are classified in terms of legislation in terms of Sec 28 of the IPID Act;

28. (1) The Directorate must investigate:

- (a) any deaths in police custody;
- (b) deaths as a result of police actions;
- (c) any complaint relating to the discharge of an official firearm by any police officer;
- (d) rape by a police officer, whether the police officer is on or off duty;
- (e) rape of any person while that person is in police custody;
- (f) any complaint of torture or assault against a police officer in the execution of his or her duties;
- (g) corruption matters within the police initiated by the Executive Director on his or her own, or after the receipt of a complaint from a member of the public, or referred to the Directorate by the Minister, an MEC or the Secretary, as the case may be; and
- (h) any other matter referred to it as a result of a decision by the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case may be, in the prescribed manner.

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(2) The Directorate may investigate matters relating to systemic corruption involving the police.

Case Investigative Journal (CIJ) - refers to a journal used to record all directives and activities undertaken, on the IPID file, IPID docket and CMS, which journal must always be filed in the "C" clip of both the docket and the file;

Case Investigative Report (CIR) - refers to investigative reports that include the Interim Case Investigative Report, Final Case Investigative Report as well as the Closure Report;

Case Worker – means any official who handles cases and includes a Data Capturer / CMS Clerk, Investigator, Senior Investigator, Principal Investigator, Assistant Director Investigation, Deputy Director Investigations and Director Investigation;

Closed as Referred – means the manner in which cases that fall outside the mandate (Section 28 of the IPID Act) are closed as per ED guidelines;

Closure of a case – means the final disposal of a case where investigation, court processes and disciplinary processes have been concluded and the ED/PH is able to conclude that the file can be closed as Acquitted (Departmental/Criminal), Convicted (Departmental/Criminal), Declined, Dismissed, Closed as Referred, Unsubstantiated and Withdrawn by the Complainant/victim/referral authority or the Prosecutor, after which the file is ready for archiving;

Closure Report – means the Report of a case where the investigation, court processes and disciplinary processes have been concluded and the ED/PH/DI is able to conclude that the file can be closed as Acquitted, Convicted, Declined, Discharged, Dismissed, Referred, Unsubstantiated and Withdrawn, after which the file is ready for archiving;

Case Management System – means an IPID database used for the electronic recording and processing of cases;

Case Control Number (CCN) - means a unique computer generated number upon registration and recording of a case in the CMS. The number is relevant for use in all future correspondence by and between IPID and its stakeholders;

Cases Intake Committee (CIC) - refers to a committee that is constituted by no less than three persons, (DI, DDI, ASDI and any available Case Worker). In case of unavailability of personnel, the sitting by the DI or DDI or ASDI or PI will constitute a valid sitting. (As a last resort the PH may assist and if no other staff is available, the PH alone will constitute a valid sitting)

Completed investigation – means an investigation which involves a comprehensive effort to interview the complainant, the victim, witnesses and suspect SAPS/MPS member, the identification, location and acquiring of relevant physical evidence and upon which the conclusion is based on the evidence obtained, excluding technical reports;

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Convicted (Criminal) – means a member has been found guilty of a criminal offence;

Convicted (Departmental) – means a member has been found guilty of Departmental misconduct;

CPA - means the Criminal Procedure Act 51 of 1977;

Death in custody – means death whether natural or unnatural, which occurred while the deceased was in the custody of the SAPS or MPS;

Death as a Result - means the death of any person, including a member of SAPS/MPS or the action of SAPS/MPS, that was caused, or is reasonably believed to have been caused, by a member of the SAPS/MPS while acting in his or her capacity as a member of the SAPS/MPS, and shall include a death that occur in connection with -

- (i) an attempt to effect an arrest or to prevent an escape;
- (ii) a SAPS/MPS member's actions taken in private defence in the execution of his/her duties;
- (iii) a motor vehicle accident involving one or more SAPS/MPS vehicles (marked or unmarked) during the execution of their duties.;
- (iv) mass action where the SAPS/MPS is present;
- (v) any action or inaction by a SAPS/MPS member which amounts to a criminal offence or misconduct; and
- (vi) any action that caused death where a SAPS/MPS state asset was involved.

Declined – means a decision taken by the DPP, SAPS or MPS not to institute criminal or disciplinary proceedings against the member;

Deputy Director Investigations (DDI) – means a person appointed at a level lower than Director Investigations;

Directive(s) – Instructions/guidelines issued to the Case Worker by the Supervisor;

Director Investigations (DI) – means a person appointed as a Head of Investigations at provincial level;

Dismissed – means a case cannot be investigated because of lack of co-operation by the complainant/victim/referral authority; the complainant/victim cannot be traced or the case was investigated by the IPID before and there is no new evidence or facts; or the suspect is deceased;

DPP – refers to the Director of Public Prosecutions;

Exhibit – refers to any item of evidential value collected or obtained during the course of investigation;

Final Case Investigative Report – means an investigative report which documents the entire investigation and contains the conclusion, summary of affidavits and technical

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reports, written recommendations to SAPS/DPP with regard to the actions of the SAPS/MPS member concerned;

Full investigation – refers to where a Case Worker takes over a docket/copies of the docket from the SAPS, conducts an independent enquiry and assessment and proceed with any other search/enquiry for further evidence to enable him/her to make a finding;

High profile cases – refers to an incident which involves a high ranking member and/or a person with a high standing in the community and a matter which draws public interest or high media coverage;

IPID – means the Independent Police Investigative Directorate;

IPID Case Form – refers to an official form for the registration of Cases;

IPID File – Refers to a file (Z20) that contains all evidential documents, correspondence, investigative journal and QCF, which consists of A-E clips;

IPID Docket – Refers to a docket that contains all evidential documents, correspondence and the investigative journal. It consists of A-E clips. This docket is used to refer the IPID investigation to the DPP, SPP and to Court;

IPID 7-2 – refers to an official form, used by a case worker on standby for the recording of crime scene information on all section 28 cases of the Act;

Immediately – means at once, without hesitation or delay or as soon as it is practicable to act;

Interim Case Investigative Report – means a case investigative report where the investigation has been completed but where a recommendation cannot be made to the DPP due to outstanding technical reports; however recommendations may be made to the SAPS;

Manual registration number – means a temporary number allocated to a case while the CMS is off-line and which will be updated immediately when the CMS is on-line;

Member – means an official appointed in terms of the South African Police Service Act 68 of 1995, as amended, and includes a member of the MPS;

Misconduct – includes any act or omission by a member which constitutes a violation of rules, regulations, and standing orders, code of conduct and national orders;

MPS – means a Municipal Police Service established under section 64A. of the South African Police Service Act 68 of 1995;

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NPS – refers to the National Prosecuting Service which is a body within the National Prosecuting Authority and includes the Director for Public Prosecutions (DPP) and the Senior Public Prosecutor (SPP);

Offence – includes any violation of common or statutory law;

Official hours – means normal business hours as contemplated in the Public Service Act, 1994 (promulgated under Proclamation No. 103 of 1994), (PSA) and includes hours stipulated by the IPID Flexi Time policy;

Outside Mandate Case – means a case:

- Which does not involve a member of the SAPS/MPS;
- Which occurred prior to 1 April 1997;
- Which is older than 12 months;
- That was adjudicated upon by a court of law; and
- That relates to a service delivery complaint where the complainant/victim has not exhausted internal SAPS case mechanisms up to the office of the Provincial Commissioner and are not referred to the IPID by the Minister or the Member of the Executive Council;
- Any matter not within the scope of Section 28 of the IPID Act;

PAJA - refers to the Promotion of Administrative Justice Act 3 of 2000 which may be used by a victim of domestic violence where IPID deals with an application for exemption by SAPS;

Police action – refers to an act or omission by a member of the SAPS/MPS which is alleged to lead to a person's death;

Post Investigative Monitoring (PIM) – The continuous evaluation and monitoring of cases where the status of the case is "Completed" but the case is not yet ready for closure (Cases where DPP and SAPS/MPS feedback is awaited or cases on the Court Roll or Pending disciplinary outcomes; Cases completed with Interim report while awaiting technical reports)

Preliminary investigation – refers to an enquiry of limited scope undertaken to verify whether or not an allegation merits full investigation;

Programme Manager (PM) - means any person who has been appointed as the Head of the Programme;

Provincial Head (PH) – means an IPID Official appointed to head a Provincial Office;

Recommendation (Negative) – Recommendation is made that disciplinary/criminal prosecution should be instituted;

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Recommendation (Positive) – Recommendation is made that no disciplinary/criminal prosecution should be instituted including inquest recommendations and a feedback letter should be sent to the SAPS/MPS;

Referred – means a case that is referred to the most appropriate organisation or institution by the ED/PH;

Referral Authority – refers to the Minister, MEC, Executive Director, Secretariat for Police;

SAPS – refers to the South African Police Service as contemplated in the South African Police Service Act 68 of 1995;

SAPS Docket – refers to a docket that is obtained from SAPS by a Case Worker and contains all evidential documents, correspondence and investigation diary. It consists of A-D clips. This docket is used to refer SAPS investigations to the DPP, SPP and to Court;

Service Delivery Complaint - refers to a complaint which alleges that a member of the SAPS or MPS failed to perform his/her duties or performed his or her duties in an improper manner, and where the complainant/victim has exhausted all internal SAPS complaints mechanisms, up to the level of Provincial Commissioner;

Supervisor – means any person who supervises a Case Worker (of any level);

Systemic corruption - Systemic corruption is an institutionalised endemic manipulation of a system by individuals or networks or organisations, taking advantage of weakness in the process and systems for illicit gains, where there are leadership deficiencies, collusion and abuse of power

SOP - means the Standard Operating Procedure;

Technical Reports – refers to reports of an evidential value that are generated by experts required to reach an investigative conclusion, including but not limited to, FSL reports (Forensic Science Laboratory) post mortem reports, LCRC reports, pathology reports, medical reports, reports in terms of sections 212 and 215 of the CPA and a report in terms of section 34(3) (a) of the Prevention and Combating of Corrupt Activities Act 12 of 2004;

Standby Notification Reference Number – means a reference number issued immediately upon notification, by the Case Worker on standby to SAPS/MPS member, consisting of the Provincial Office abbreviation, date (yymmdd) and time (24 hour clock) of notification, e.g. GP1204012250;

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Torture – means any act by which severe pain or suffering, whether physical or mental, is *intentionally* inflicted on a person for such purposes as obtaining from him or her or a third person *information or a confession*, punishing him or her for an act that he, she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, whether such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising from, inherent or incidental to lawful sanctions;

Unsubstantiated – means there is no evidence to support the allegations contained in the case and IPID cannot make a recommendation of wrongdoing against any member;

Withdrawn by complainant/victim/referral authority – means the complainant/victim/referral authority indicated that he or she is no longer interested in proceeding with the case; and

Withdrawn by Prosecutor – means the Prosecutor has decided not to continue criminal proceedings.

4 APPLICATION

This SOP applies to all notifications and/or cases lodged with the IPID or initiated by the IPID against members of the SAPS/MPS by any person or organisation, alleging that a member committed an act or an omission which constitutes an offence and/or misconduct.

5. DUTIES AND RESPONSIBILITIES

The duties and responsibilities assigned to various officials and Committees:

5.1 The Executive Director (ED)

The Executive Director, in addition to the duties and responsibilities as contained in section 7 of the IPID Act 1 of 2011 and such other duties as may be imposed in the Regulations promulgated under that Act, must:

- 5.1.1 Ensure that there are systems in place for the lodging, receiving, processing, recording and disposal of cases against members;
- 5.1.2 Provide for the development and enforcement of policies to enable an environment that is conducive to lodge a case and receive cases reported;
- 5.1.3 Ensure compliance with the provisions of the IPID Firearm Control Standard Operating Procedure.

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5.2 Programme Manager (PM)

The Programme Manager must, in addition to any duties imposed under section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act:

- 5.2.1 Maintain an up-to-date SOP;
- 5.2.2 Determine investigation standards;
- 5.2.3 Identify priority areas to be attended during a financial year;
- 5.2.4 Conduct audits annually to ensure compliance with the SOP;
- 5.2.5 Monitor programme performance monthly, quarterly and annually;
- 5.2.6 Provide feedback on the programme performance;
- 5.2.7 Provide systems for the registration and processing of cases;
- 5.2.8 Maintain data integrity;
- 5.2.9 Ensure that the monthly reports and the data base are quality assured;
- 5.2.10 Ensure and comply with the provisions the IPID Firearm Control Standard Operating Procedure;
- 5.2.11 Coordinate and supervise interprovincial task team investigations and draft terms of reference for relevant task team.

5.3 Provincial Head (PH)

The Provincial Head, in addition to the duties and responsibilities as contained in section 21 of the IPID Act 1 of 2011 and such other duties as may be imposed in the Regulations promulgated under that Act, must:

- 5.3.1 Ensure that there are systems in place for the lodging, receiving, processing, recording and disposal of cases against the members;
- 5.3.2 Ensure compliance with the provisions of this SOP, the IPID Firearm Control Standard Operating Procedure and the ED guidelines;
- 5.3.4 Ensure that the relevant province conduct workload verification on a monthly basis and compile a Monthly Report;
- 5.3.5 Ensure data integrity, which is consistent with the CMS monthly, quarterly and annually;
- 5.3.6 Complete/Close cases on the Case Management System (CMS).

5.4 Director Investigations (DI)

The Director Investigations must, in addition to any duties imposed under section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act, must:

- 5.4.1 Supervise an investigation conducted by the Deputy Director Investigations;

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- 5.4.2 Ensure that the Case Intake Committee (CIC) meets daily to evaluate cases;
- 5.4.3 Ensure that cases are registered and updated on the CMS in terms of the strategic objectives;
- 5.4.4 Ensure that cases are investigated and completed in terms of the strategic objectives;
- 5.4.5 Ensure data integrity, which is consistent with the CMS monthly, quarterly and annually;
- 5.4.6 Review investigation reports, assess its quality, raise queries, if any, endorse recommendations to the SAPS and DPP and sign off on the recommendations;
- 5.4.7 Evaluate the decision by the SAPS/DPP and decide on further action to be taken;
- 5.4.8 Approve/disapprove completion of an investigation;
- 5.4.9 Approve/disapprove closure of the file for archiving;
- 5.4.10 Whoever is acting as the DI, must attach a copy of the Acting letter when closing or completing an investigation except where the investigation was done by the person acting;
- 5.4.11 Ensure that he/she has filled in the quality control form (QCF);
- 5.4.12 Co-ordinate the submission of a quality assured monthly report;
- 5.4.13 Determine and record B/F dates, directives and investigate targets and ensure that the information is captured on the CMS, in the event where the DDI is investigating the case;
- 5.4.14 Immediately upon being notified by the Case Worker, notify the PH, the National Spokesperson, the PM Investigation and the ED in writing of a high profile case, conviction and arrest;
- 5.4.15 Ensure that the province conduct workload verification on a monthly basis and compile a Monthly Report;
- 5.4.16 Ensure compliance with the provisions of the IPID Firearm Control Standard Operating Procedure;
- 5.4.17 Complete/Close cases CMS.
- 5.4.18 Ensure that the province conduct file audits on a quarterly basis and compile a Report which is separate from the Monthly Report;

5.5 Deputy Director Investigations (DDI)

The Deputy Director Investigations must, in addition to any duties imposed under section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act, must:

- 5.5.1 Ensure that cases are captured and allocated in line with the strategic objectives;
- 5.5.2 Convene and preside over the CIC;
- 5.5.3 Determine and record B/F dates, directives and investigative targets and ensure that the information is captured on the CMS;

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- 5.5.4 Ensure that prescribed registers are in place and kept up to date;
- 5.5.5 Lead and/or undertake investigations on high profile cases;
- 5.5.6 Review case reports pertaining to investigations where case worker providing report is directly reporting to DDI;
- 5.5.7 Co-ordinate the submission of a quality assured monthly report to the DI;
- 5.5.8 Ensure proper investigation of service delivery complaints lodged against the IPID;
- 5.5.9 Ensure that he/she has filled in the quality control form;
- 5.5.10 Ensure, before the DI can close the file that the case worker has complied with the information as contained on the quality control form (QCF) that guides the investigation process. The QCF must be attached on the "D" clip of the file;
- 5.5.11 Ensure that QCF is completed by the Supervisors and Case Workers;
- 5.5.12 Ensure that the Supervisors and the Case Workers comply with the provisions of 7.8 below;
- 5.5.13 Ensure that every activity undertaken by the Supervisor and Case Worker in the IPID file and docket is entered in the case investigative journal (CIJ);
- 5.5.14 Ensure that a Referral Register (RR4) containing all cases referred to the SAPS is sent to the Provincial Commissioner's office and IPID National Office monthly;
- 5.5.16 Conduct workload verification on a monthly basis and report in monthly report;
- 5.5.17 Conduct quality control before the file is archived;
- 5.5.18 Ensure compliance with the provisions of the IPID Firearm Control Standard Operating Procedure;
- 5.5.19 Complete/Close cases while acting as DI, notwithstanding the fact that a person might be closing/completing a case that he/she supervised;
- 5.5.20 Ensure that a case that was investigated by the person's supervisor, while he/she is acting as DI, is not completed/closed;
- 5.5.21 Whomever is acting as the DDI must ensure that an acting letter is attached in the files that were attended to by the acting DDI;
- 5.5.22 Send a Recommendation Register (RDCAR9/19/22/28/29), subject to the approval of the PH, containing all cases referred to SAPS to the Provincial Commissioner's office and IPID National Office monthly. Hardcopies of the recommendations sent to SAPS (and proof that they were forwarded) are to be forwarded to the National Office on a monthly basis;
- 5.5.23 Ensure that a Referral Register (RR4), subject to the approval of the PH, containing all cases referred to the SAPS is sent to the Provincial Commissioner's office and IPID National Office on a monthly basis.
- 5.5.24 Conduct community outreach programme and cell inspections for the Provincial Office.
- 5.5.25 Meet with Provincial SAPS and Secretariat monthly to discuss progress on recommendations made to SAPS by IPID.

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5.6 Case Workers

The Case Worker must, in addition to any duties imposed under section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act:

- 5.6.1 Receive and screen a case;
- 5.6.2 Consult with the complainant/victim/referral authority (only walk-in, written, emailed or faxed cases will be registered. Telephone cases will be accepted as a last resort);
- 5.6.3 Complete an IPID registration form, and ensure that the complainant/victim confirms the correctness of the information and appends his/her signature/mark or thumb print;
- 5.6.4 Register the case manually on a prescribed Case Control Register (CCR) as well as on the CMS and upload the notification received from SAPS/MPS or a signed IPID registration form, fax or email;
- 5.6.5 Acknowledge receipt of a case and issue an acknowledgement letter/SMS/e-mail to complainant/victim/referral authority;
- 5.6.6 Acknowledge receipt of a case and issue an acknowledgement letter/SMS/e-mail to next of kin (if information available);
- 5.6.7 Receive a file allocated for further investigations from the supervisor or CIC;
- 5.6.8 Update the CMS; generate letters to the complainant/victim/next of kin/referral authority and relevant stakeholders, indicating that he/she had been assigned to investigate the case;
- 5.6.9 Conduct investigations and submit file/docket for inspection as directed in writing in the CIJ;
- 5.6.10 Comply with brought forward dates as determined by the supervisor/CIC;
- 5.6.11 Initiate completion of investigation, by submitting a file/docket with recommendations to the supervisor for a decision;
- 5.6.12 Submit the file/docket to SAPS/DPP for a decision on prosecution of a member;
- 5.6.13 Follow-up on the recommendation forwarded to the DPP/SAPS, on a monthly basis, and attach proof of correspondence on the CMS;
- 5.6.14 Update CMS and generate progress letters to the complainant/victim/referral authority and relevant stakeholders; such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report should never contain the merits or demerits of the case;
- 5.6.15 Feedback on active cases should be done at least every 30 days and feedback on completed cases should be done at least every 90 days or when the status of the case change, including but not limited to, when feedback is received pertaining to the criminal case or DC process;
- 5.6.16 After closure of the case a final correspondence must be sent to the stakeholder detailing the outcome of the case within 30 days, failure to comply with this, must be recorded in the CIJ and CMS;


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- 5.6.17 Ensure CMS is updated and initiate closure of case file/docket;
- 5.6.18 Report feedback to stakeholders/complainant/next of kin;
- 5.6.19 Complete the quality control form where appropriate;
- 5.6.20 Enter every activity undertaken in the IPID file and docket in the CIJ (manual entry in file and updates on CMS);
- 5.6.21 Immediately report to the PH any high profile case;
- 5.6.22 Comply with the provisions of the IPID Firearm Control Standard Operating Procedure;
- 5.6.23 Ensure that prescribed registers are in place and kept up to date;
- 5.6.24 Any failure to complete cases within the period as per the regulation, reasons must be noted as per the applicable regulation in the CIJ and CMS.

5.7 Supervisor

The Supervisor must, in addition to any duties imposed under section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act:

- 5.7.1 Have the supervisory role over all responsibilities as outlined in the Case Worker section above;
- 5.7.2 Allocate files and give directives to the Case Worker;
- 5.7.3 Conduct file inspections prior to completion of the monthly report;
- 5.7.4 Determine and record B/F dates and ensure that B/F is adhered to;
- 5.7.5 Ensure that he/she has filled in the quality control form;
- 5.7.6 In case of the possibility of arrest a Case Worker should preferably obtain a warrant of arrest, in the event of an arrest without a warrant, the Case Worker should consult with the DI or PH as well as Legal Services before effecting the arrest. In high profile cases the ED and PH should always be consulted prior to the arrest;
- 5.7.7 The EH of MPS, the Station Commander as well as the Provincial Commissioner of SAPS is to be informed of any intention to arrest a Member prior to effecting the arrest;
- 5.7.8 Ensure that every activity undertaken by the Case Worker in the IPID file and docket is entered in the CIJ (manual entry in file and updates on CMS);
- 5.7.9 Establish manual registers for obtaining and returning SAPS dockets to Police Stations for each cluster in the Province and ensure the safe keeping of such registers. The register must be the same as Docket Register (DR10);
- 5.7.10 Ensure that the Case Workers comply with the provisions of 7.8 below;
- 5.7.11 Immediately report to the DI any high profile case, conviction and arrest as well as any death of a suspect of a high profile case;
- 5.7.12 Check the reports and recommendations by the Case Worker before submitting to the DI;
- 5.7.13 Ensure compliance with the provisions of the IPID Firearm Control Standard Operating Procedure;
- 5.7.14 Conduct workload verification on a monthly basis and compile a Monthly Report;

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- 5.7.15 Complete/Close cases while acting as DI, notwithstanding the fact that a person might be closing/completing a case that he/she supervised;
- 5.7.16 Ensure that a case that was investigated by the person's supervisor, while he/she is acting as DI, is not completed/closed;
- 5.7.17 Compile individual monthly report inputs and complete and sign a verification certificate in terms thereof;
- 5.7.18 Ensure that QCF is completed by the Supervisors and Case Workers;
- 5.7.19 Ensure that prescribed registers are in place and kept up to date.

5.8 Case Intake Committee (CIC)

The Case Intake Committee must, in addition to any duties imposed under section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act:

- 5.8.1 Receive new cases from Case Workers;
- 5.8.2 Discuss new cases to ensure that they are properly classified;
- 5.8.3 Give directives on what preliminary investigation must be conducted;
- 5.8.4 The chairperson must note the directives in the case investigative journal and the CMS;
- 5.8.5 Allocate the file to a Case Worker;
- 5.8.6 Should ensure that the file is allocated within the time specified and if not a reason must be recorded in both the CIJ of the physical file as well as the CMS;
- 5.8.7 Be constituted by no less than three persons, (DI, DDI, ASDI and any available Case Worker). In case of unavailability of personnel, the sitting by the DI or DDI or ASDI or PI will constitute a valid sitting. (As a last resort the PH may assist and if no other staff is available, the PH alone will constitute a valid sitting);
- 5.8.8 In the event a sitting constituted out of one person, that person cannot assign the files to themselves;
- 5.8.9 No minutes will be kept of the sitting.

6. CASE INTAKE AND INVESTIGATION PROCESS

6.1 Registration Sub-Process

The case registration process (Case flow diagram) must be used as a guide and note must be taken of the following:

- The left column indicates all role-players in the case registration process;
- The registration process follows as outlined in the case handling process;
- The computer icons represent the steps where information must be captured on the CMS;
- The drums represent the server where captured information is stored;

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- On step "1" the Complainant/victim/referral authority lodges the case or the IPID receives notification;
- On step "2": **Consultation Register (CR2)** must be utilised to capture consultations conducted;
- On step "3", a **Case Control Register (CCR3/8/9)** must be utilised to capture the case;
- On step "4" **Referral Register (RR4)** must be utilised to capture all cases referred to other institutions or organisations which do not fall within the mandate of the IPID;
- On step "5" the complainant/victim/referral authority receives acknowledgment of receipt of the case;
- On step "6", The CIC reviews, allocates and gives broad directives, an **Allocation and Brought Forward Register (ABFR6)** must be utilised, CMS journal to be updated;
- In case there is an internal transfer of a file from one case worker to another because of either a long leave, transfer, promotion, resignation and/or death of the case worker, the **Internal Transfer Register (ITR6)** must be utilised;
- On step "7" referral to Case Worker must be done;
- The left column indicates all role-players in the case registration process;
- The registration process follow as outlined in the case handling process;
- The computer icons represent the steps where information must be captured on the CMS;
- The drums represent the server where captured information is stored.

6.2 Investigation Sub-Process for Section 28(1)(a) and (b)

The Investigation sub-process (Case flow diagram) must be used as a guide and note must be taken of the following:

- The left column indicates all role-players in the case registration process;
- The registration process follow as outlined in the case handling process;
- The computer icons represent the steps where information must be captured on the CMS;
- The drums represents the server where captured information is stored;
- On step "8", the SAPS notify the IPID of a death in police custody and a docket is opened. The DDI/Case Worker/Supervisor receives a factual report/IPID7. A file is opened and the information is captured on the **Case Control Register (CCR3/8/9)**;
- On step "9" the Case Worker receives telephone notification and furnish the SAPS member with a Standby Notification Reference Number (SNRN) and record the number on the IPID 7-2 form; a case/notification must be registered on the **Case Control Register (CCR3/8/9)**;
- On step "10" the Case Worker attends the crime scene and interviews witnesses, identifies the deceased, notifies next of kin, obtains other details and takes over the docket. The **Scene Register (SR10)** is utilised, for exhibits the **Exhibit Register (ER10)** is utilised. The Case Worker takes over the docket and utilises the **Docket Register (DR10)**. The Case Worker must comply with the provisions of 7.8 below;

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- On step "11" the Case Worker receives the file and complies with the directives utilizing **Allocation and Brought Forward Register (ABFR6)**; and updates the CMS;
- On step "12" the Case Worker attends the Post Mortem and utilises the **Post Mortem Register (PMR12)**;
- On step "13" a Report is prepared and the Supervisor reviews the report and then sends it to the DI/PH; if it's an Interim Case Investigative Report continue to step 14, if a Final case Investigative Report continue to step 17;
- On step "14" the DI/PH reviews the Interim Case Investigative Report and endorses recommendations or raises queries. If the recommendations are endorsed, the **Completion Register (COMR9/14/32/34)** must be utilised and the CMS be updated;
- On step "15" the Case Worker obtains the outstanding reports and attends to queries if any;
- On step "16" the Case Worker prepares the Final Case investigative Report to the DPP/SAPS and forwards the report to his/her immediate supervisor, the **Completion Register (COMR9/14/32/34)** is updated;
- On step "17" the Supervisor reviews the report for quality assurance, the DI/PH reviews/ approves the DPP/SAPS report and utilises the **Recommendation, Decision, Conviction and Acquittal Register (RDCAR9/19/22/28/29)**;
- On step "18" the SAPS/DPP receives the reports;
- On step "19" the SAPS/DPP decisions registered making use of the **Recommendation, Decision, Conviction and Acquittal Register (RDCAR9/19/22/28/29)** and any feedback on disciplinary and/or criminal cases is updated on the CMS and give relevant feedback to any stakeholder;
- On step "20" the Case Worker attends to Court/DC queries if any and updates the **Court Register (CAR20)**;
- On step "21" closure of the file/docket is initiated with closure report, the DI approves closure and makes use of **Close Case Register (CC22/32/36)**, after capturing the feedback pertaining to the court case or the DC outcome;
- On step "22" the DDI conducts quality control and utilises the **Archive Register (AR23/36)**. If there are exhibits the **Exhibit Register (ER10)** is updated. Exhibits are disposed of.

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6.3 Investigation Sub-Process for Section 28(1)(c)–(h) cases (Investigation of Criminal and Misconduct matters), including Section 28(2) systemic corruption matters

The Investigation sub-process (Case flow diagram) must be used as a guide and note must be taken of the following:

- On step "23", the DDI/ASDI/Case Worker utilises the **Allocation and Brought Forward Register (ABFR6)**, the directives and investigative targets are given;
- On step "24", Case Worker receives file and requests docket from the SAPS if necessary;
- On step "25", the SAPS provides the docket or copy of the docket to the IPID, the Case Worker takes over the docket/copy of the docket and conducts the investigation and provides feedback based on the agreed due dates. Utilisation of **Docket Register (DR10)** is made, the Case Worker must comply with the provisions of 7.8 below;
- On step "26", a letter is written to the complainant/victim/referral authority informing him/her about the progress, such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report should **never** contain the merits or demerits of the case;
- On step "27", the complainant/victim/referral authority receives the status details about the case he/she has lodged with the IPID;
- On step "28" the Case Worker prepares a report, the Supervisor reviews the report and the DI approves/disapproves the recommendations and utilises the **Recommendation, Decision, Conviction and Acquittal Register (RDCAR9/19/22/28/29)**. If approved the file/docket goes to the SAPS/DPP, and the **Completion Register (COMR9/14/32/34)** and CMS is updated.
- On step "29", the Prosecution declines to prosecute or raise queries, the **Recommendation, Decision, Conviction and Acquittal Register (RDCAR9/19/22/28/29)** is updated;
- On step "30", the status/decision is captured on the system;
- On step "31" if there is a change in the status of the matter the complainant/victim/referral authority is notified with respect to the recommendations made, the **Recommendation, Decision, Conviction and Acquittal Register (RDCAR9/19/22/28/29)** is updated;
- On step "32", the complainant/victim/referral authority receives a letter from the IPID about the status of the matter. The process as contained on step 23 is followed and thereafter the **Closed Case Registers (CC22/32/36)** is utilised, thereafter the DDI conducts quality control and utilise the **Archive Register (AR23/36)**.

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7. PROCEDURES

7.1 Procedure for filing documents in an IPID file and docket

NO	PROCEDURE
1.	All evidential documents e.g. statements, technical reports etc. must be filed in the "A" clip of the IPID file (including docket);
2.	All correspondence (internal and external) e.g. Progress Reports, Recommendations to DPP and SAPS, CIR and Acting letters, must be filed in the "B" clip of the file and docket;
3.	Investigative journals must be filed in the "C" clip of the file and docket;
4.	The QCF form must be filed in the "D" clip of the file;
5.	The Brought Forward Control Sheet must be filed in the "E" clip of the file;
6.	All documents must be numbered and filed in numerical order;
7.	All documents must be uploaded on the CMS.

7.2 Procedure for the registration of cases

NO	PROCEDURE
1.	A Case Worker must immediately upon receipt of a case, whether in person, by fax, by telephone or by e-mail screen the case to determine whether or not it falls within the mandate of the IPID (Reg 3(1));
2.	If a case falls outside the mandate of the IPID, the Case Worker must record it in the CMS as an Outside mandate case as well as in the Consultation Register (CR2) and Case Control Register (CCR3/8/9) refer it to a relevant institution or organisation – a Referral Register (RR4) must be utilised to capture all cases referred to other institutions or organisations which does not fall within the mandate of the IPID. If it is a service delivery case and the case worker is in doubt if the case should be recorded as a referred case, then he/she must consult with the supervisor before registering such a case. After registering the case the Case Worker must print the IPID registration form and ensure that the complainant/victim/referral authority append his or her signature, then upload the IPID registration form, letter, fax or e-mail onto the CMS;
3.	If the case falls within the mandate of the IPID, the Case Worker must record the case as a Section 28(a)-(g) in the CMS as well as in the Consultation Register (CR2). After registering the case the Case Worker must print the IPID registration form and ensure that the complainant/victim/referral authority append his or her signature (where

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	applicable), then upload the IPID registration form, letter, fax or email onto the CMS;
4.	Then, the Case Worker must print the acknowledgement letter and hand/send it to the complainant/victim/referral authority via the requested method;
5.	Open a file and file the IPID registration form, QCF form as well as the copy of the acknowledgement letter/SMS and refer the file to the CIC immediately, and
6.	The allocation is done by the CIC; the CIC must complete the Allocation and Brought Forward Register (ABFR6) and also update the allocation details in the CMS.

- 7.3. Procedure for the investigation of a case i.t.o. Section 28(1)(a) or (b) (Deaths in custody or as a result of police action) of Act read with Regulation 4 and 8

Telephonic/Faxed notifications

1.	A case worker on standby/call (being automatically authorised to attend crime scenes) must immediately upon receiving a telephonic notification of a death, notify the PH/DI and attend the crime scene as soon as it is practicably possible to do so. In the event that a crime scene cannot be attended, permission for the non-attendance of the crime scene must be obtained from the PH or DI and reason must be noted in the CIJ file as well as the on CMS;
2.	Obtain and record all relevant information regarding the location of the crime scene, the time that the notification was made, the time of death, the SAPS/MPS member reporting the incident on IPID Form 7-2.

Arrival at the crime scene and cooperation with SAPS/MPS member in charge of crime scene

3.	Advise the SAPS/MPS member in charge, to preserve the crime scene and to keep it intact until the IPID case worker on standby/call, arrives at the crime scene;
4.	Introduce himself/herself by production of a valid IPID appointment certificate to the SAPS/MPS member in charge of the crime scene and take over the scene;
5.	Receive a briefing on what transpired on the crime scene;
6.	Inspect any wounds or bruises on the body of the deceased and make note of each and exact location (if any) on IPID Form 7-2;
7.	Identify the deceased and record his/her name, surname, age, gender;
8.	Ensure that all vital clues and forensic evidence have been marked and photographed on their original position by the Local Criminal Record Centre (LCRC);

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9.	Collect or ensure the collection of exhibits from the crime scene for processing by the Forensic Science Laboratory (FSL); ensure that the exhibits are booked in with the SAP 13 at the Police Station within that jurisdiction;
10.	Identify all witnesses to the crime and obtain their particulars for interview as soon as it is practically possible;
11.	Obtain particulars of the members involved for future interview.

Post scene investigation

12.	Ensure that the exhibits (obtained by IPID case worker) are sent to the Forensic Science Laboratory (FSL) within 48 hours;
13.	Upon receiving exhibits back from the FSL, the exhibits need to be returned to the Police Station for it to be booked back into the SAP13;
14.	Visit all the identified witnesses to conduct interviews and obtain statements;
15.	Establish the identity of the person who allegedly caused the death of the victim and obtain a warning statement in the case of Section 28(1)(b) cases;
16.	Visit the next of kin to notify them of the incident and your role as an IPID investigator; and interview them to obtain any information that may assist in the investigation;
17.	Ensure that the IPID Form 7-2 is fully completed with all the required crime scene information (this includes obtaining the signature of the SAPS members at the scene);
18.	Transmit the IPID Form 7-2 to the Case Worker responsible for registration of cases and ensure that a file is opened. The IPID Form 7-2 must be transmitted to the Case Worker responsible for registration on the morning of the first working day following the attendance of the crime scene. After registering the case the Case Worker must upload the IPID Form 7-2 onto the CMS;
19.	Upon the closure of a case and the return of a docket to the Police Station a disposal order should be issued to the SAPS.

Post Mortem

20.	Attend post mortem on the date, time and place identified for purposes of observing the conducting of the post mortem; in the event the post mortem cannot be attended an entry must be made on the CIJ manual file and the CMS as to why the PM could not be attended;
21.	Advise the pathologist of any investigations you would like to concentrate on;
22.	Ensure the LCRC is present at the Post Mortem and that photos of the Post Mortem is taken (if required);
23.	Ensure that all vital clues and forensic evidence have been marked and photographed on their original position by the LCRC;

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24.	Inform the Pathologist of observations made at the crime scene, in the event of any inconsistencies with his findings or, where there is disagreement with the Pathologist report, this to the Supervisor;
25.	Document and file detailed notes on the observations made during the Post Mortem.

Further investigation

26.	Upon receipt of the File, assess evidence contained in the file, conduct outstanding investigations as per directives and make a finding on the outcome of the investigation;
27.	Where resources are utilised from multiple offices, the jurisdiction will remain within the province where the matter arose, but custodianship and supervision will reside with the CD: Investigation and Information Management who will establish task teams and terms of reference;
28.	Update the CMS and generate a progress letter to the next of kin and relevant stakeholders; Progress letters should be forwarded monthly on the status of the case until the case is completed, thereafter quarterly or when there is a change in the status of the case; such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report should <u>never</u> contain the merits or demerits of the case;
29.	Compile an interim CIR and compile a Recommendation Report to the SAPS; if a final CIR is created first, then compile a Recommendation Report to the SAPS/DPP or recommend closure;
30.	Refer to Supervisor for review and recommendation of completion or closure;
31.	Refer to the DI/PH for completion and/ or closure. (If case completed/closed by DI – PH should still be informed as per Regulation 4 (3)(i));
32.	Upon receipt of the outcome of the Recommendation, update the CMS and refer the case to the DI/PH for closure.
33.	All investigations contemplated in terms of these Sections should be completed within 90 days and if not reason should be provided and noted in the CIJ and CMS and approved by supervisor and DI/PH as per Regulation 4(6).

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7.4 Procedure for the investigation of a case ito Section 28(1)(c) of Act read with Regulation 6

1.	Over and above any directive and investigation, comply with the provisions of Regulation 6;
2.	Upon receipt of the file, conduct outstanding investigations as per directives by CIC/Supervisor;
3.	Where no docket is opened, ensure that the case docket is opened at any stage during the process of investigation;
4.	Conduct a preliminary investigation to establish if full investigation will be warranted (preliminary investigation may not exceed 30 days as pre Regulation 6 (3));
5.	If full investigation is warranted: Visit all the identified witnesses to conduct interviews and obtain statements;
6.	Ensure the collection of exhibits, by forensic experts, for processing by the Forensic Science Laboratory (FSL); ensure the proper registration, handling, transportation and disposal of exhibits;
7.	Compile CIR and compile a recommendation to the SAPS/DPP. If completion of case was done with interim report, recommendations may be made to SAPS. If completion of the case was done with a final report, recommendations may be made to SAPS/DPP;
8.	Where no misconduct/criminal activities can be proven, the case should be closed as unsubstantiated and for warded to Supervisor and DI/PH for approval;
9.	Update the CMS and generate a progress letter to all relevant stakeholders. Progress letters should be forwarded monthly on the status of the case until the case is completed, thereafter quarterly or when there is a change in the status of the case; such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report should <u>never</u> contain the merits or demerits of the case;
10.	Refer to Supervisor for review and recommendation of completion or closure;
11.	Refer to the DI/PH for completion and/or closure; (If case completed/closed by DI – PH should still be informed as per Regulation 6 (4)(e));
12.	Upon receipt of the outcome of the disciplinary and/or criminal process, refer for closure;
13.	In the event that the CIC decides that a case should rather be referred to

	the SAPS for investigation, these cases should be closed as Referred;
14.	All investigations contemplated in terms of these Sections should be completed within 90 days as per Regulation 6(5) and if not reason should be provided and noted in the CIJ and CMS and approved by supervisor and DI/PH.

7.5 Procedure for the investigation of a case ito Section 28(1)(d)-(g) of Act read with Regulation 5 and 8

1.	Over and above any directive and investigation, comply with the provisions of Regulation 5;
2.	Upon receipt of the file, conduct outstanding investigations as per directives by CIC/Supervisor;
3.	Where no docket is opened, ensure that the case docket is opened within 24 hours after designation; (Regulation 5(3))
4.	In addition to the standard investigation of criminal cases the following should be noted:
5.	Investigations ito Section 28(1)(d) and (e): Ensure, if not yet done, Victim is examined by a medical practitioner;
6.	A sexual assault kit is obtained, properly sealed and submitted to the Forensic Science Laboratory (FSL);
7.	Provisions of Sexual Offences and Related matters Amendment Act and any SAPS National instruction relating to rape are complied with;
8.	Ensure the collection of exhibits, by forensic experts, for processing by the Forensic Science Laboratory (FSL); ensure the proper registration, handling, transportation and disposal of exhibits;
9.	Investigations ito Section 28(1)(f): Advise the SAPS/MPS member in charge, to preserve the crime scene and to keep it intact until the IPID case worker on standby/call, arrives at the crime scene;
10.	Introduce himself/herself by production of a valid IPID appointment certificate to the SAPS/MPS member in charge of the crime scene and take over the scene;
11.	Ensure, if not yet done, Victim is examined by a medical practitioner;
12.	Ensure the collection of exhibits, by forensic experts, for processing by the Forensic Science Laboratory (FSL); ensure the proper registration, handling, transportation and disposal of exhibits;
13.	Investigations ito Section 28(1)(g): Where the amount in question is above R 100 000 ensure that the provisions as per Section 34(1) and 34(3)(a) of the Prevention and Combating of Corrupt Activities Act are complied with;
14.	Where resources are utilised from multiple offices, the jurisdiction will remain within the province where the matter arose, but custodianship and supervision will reside with the CD: Investigation and Information Management who will establish task teams and terms of reference;

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15.	Visit all the identified witnesses to conduct interviews and obtain statements;
16.	Compile CIR and compile a recommendation to the SAPS/DPP. If completion of case was done with interim report, recommendations may be made to SAPS. If completion of the case was done with a final report, recommendations may be made to SAPS/DPP;
17.	Where no misconduct/criminal activities can be proven, the case should be closed as unsubstantiated and forwarded to Supervisor and DI/PH for approval;
18.	Update the CMS and generate a progress letter to all relevant stakeholders. Progress letters should be forwarded monthly on the status of the case until the case is completed, thereafter quarterly or when there is a change in the status of the case; such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report should <u>never</u> contain the merits or demerits of the case;
19.	Refer to Supervisor for review and recommendation of completion or closure;
20.	Refer to the DI/PH for completion and/or closure; (If case completed/closed by DI/PH should still be informed as per Regulation 5 (3)(1));
21.	Upon receipt of the outcome of the disciplinary and/or criminal process, refer for closure;
22.	In the event that the CIC decides that a case should rather be referred to the SAPS for investigation, these cases should be closed as Referred;
23.	All investigations contemplated in terms of these Sections should be completed within 90 days as per Regulation 5(4) and if not reason should be provided and noted in the CIJ and CMS and approved by supervisor and DI/PH.

7.6 Procedure for the investigation of a cases i.t.o. Section 28(1)(h) of Act read with Regulation 7, other criminal matters

1.	Upon receipt of a complaint of a criminal nature not falling within the scope of cases as indicated in Section 28 (1)(a) to (g), a request must be forwarded to Provincial Head or the Executive Director, requesting approval for the registration of the case in terms of Section 28 (1)(h);
2.	In the event that approval is not granted the case must be registered as "Outside Mandate" and referred to relevant stakeholder as directed by National Office;
3.	In the event that approval is granted upon receipt of the file, conduct outstanding investigations as directed by National Office;
4.	Over and above the directives above, comply with the provision of Regulation 7;

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5.	Where no docket is opened, ensure that the case docket is opened at any stage during the process of investigation;
6.	Visit all the identified witnesses to conduct interviews and obtain statements;
7.	Compile CIR and compile a recommendation to the SAPS/DPP. If completion of case was done with interim report, recommendations may be made to SAPS. If completion of the case was done with a final report, recommendations may be made to SAPS/DPP;
8.	Where no misconduct/criminal activities can be proven, the case should be closed as unsubstantiated and for warded to Supervisor and DI/PH for approval;
9.	Update the CMS and generate a progress letter to all relevant stakeholders. Progress letters should be forwarded monthly on the status of the case until the case is completed, thereafter quarterly or when there is a change in the status of the case; such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report should <u>never</u> contain the merits or demerits of the case;
10.	Refer to Supervisor for review and recommendation of completion or closure;
11.	Refer to the DI/PH for completion and/or closure;
12.	Upon receipt of the outcome of the disciplinary and/or criminal process, refer for closure.

7.7 Procedure for the investigation of a cases i.t.o. Section 28(1)(h) of Act, Misconduct matters

1.	Where internal remedies up to the level of the Provincial Commissioner have not been exhausted a case should be classified as "Outside Mandate" and complainant should be referred to relevant stakeholder;
2.	Where internal remedies up to the level of the Provincial Commissioner have been exhausted, the PH should provide direction regarding investigation, period of completion and manner of disposal as per Regulation 7(3)(c). Cases of this nature should be completed within 90 days;
3.	Upon receipt of the file, conduct outstanding investigation as per directives by CIC;
4.	Obtain docket/copies of the docket and peruse to establish whether the investigation was properly conducted;
5.	Obtain witness statements and suspect members statements where the veracity of the allegations cannot be ascertained by merely perusing the docket;
6.	Compile CIR and compile a recommendation to the SAPS;

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7.	Update the CMS and generate a progress letter to all relevant stakeholders. Progress letters should be forwarded monthly on the status of the case until the case is completed, thereafter quarterly or when there is a change in the status of the case; such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report should <u>never</u> contain the merits or demerits of the case;
8.	Refer to Supervisor for review and recommendation of completion or closure;
9.	Refer to the DI/PH for completion and/or closure;
10.	Upon receipt of the outcome of the disciplinary process, refer for closure.

7.8 Procedure for the investigation of Section 28(2) cases

1.	Upon identification of a case of possible Systemic Corruption, do preliminary investigation and forward a report to National Office (For the attention of the Executive Director and the Program Manager: Investigations) for approval for registration of a Systemic Corruption Case;
2.	If approval is granted register the case accordingly;
3.	If approval is not granted register the case as directed by National Office;
4.	Where no docket is opened, ensure that the case docket is opened if applicable;
5.	Where resources are utilised from multiple offices, the jurisdiction will remain within the province where the matter arose, but custodianship and supervision will reside with the CD: Investigation and Information Management who will establish task teams and terms of reference;
6.	Update the CMS and generate a progress report which should be forwarded to National Office monthly on the status of the case until the case is completed, thereafter quarterly or when there is a change in the status of the case; such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report to National Office should be detailed and include timelines, project plans and expenditures ;
7.	Refer to Supervisor for review and recommendation of completion or closure; a report with findings should however always be submitted for approval by Supervisor, DI/PH;
8.	Refer to the DI/PH for completion and/or closure;
9.	Upon receipt of the outcome of the disciplinary and/or criminal process, refer for closure;
10.	Where no disciplinary and/or criminal recommendations are made but only a report with findings the case can be closed without capturing any feedback on report.

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7.9 Procedure for the investigation of a case i.t.o. Section 33 of Act read with Section 29 of Act

1.	Upon establishing a failure on the part of any SAPS member to comply with their obligation to report matters referred to in Section 28 (1) in terms of Section 29 the following should occur:
2.	A docket should be opened against member(s) i.t.o. Section 33;
3.	Where no docket is opened, ensure that the case docket is opened at any stage during the process of investigation;
4.	This file should be investigated separately of the main offence;
5.	Upon receipt of the file, conduct outstanding investigations as per directives by CIC/Supervisor;
6.	Visit all the identified witnesses to conduct interviews and obtain statements;
7.	Compile CIR and compile a recommendation to the SAPS/DPP. If completion of case was done with interim report, recommendations may be made to SAPS. If completion of the case was done with a final report, recommendations may be made to SAPS/DPP;
8.	Where no misconduct/criminal activities can be proven, the case should be closed as unsubstantiated and forwarded to the Supervisor and DI/PH for approval;
9.	Update the CMS and generate a progress letter to all relevant stakeholders. Progress letters should be forwarded monthly on the status of the case until the case is completed, thereafter quarterly or when there is a change in the status of the case; such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report should <u>never</u> contain the merits or demerits of the case;
10.	Refer to Supervisor for review and recommendation of completion or closure;
11.	Refer to the DI/PH for completion and/or closure;
12.	Upon receipt of the outcome of the disciplinary and/or criminal process, refer for closure.

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7.10 Procedure for completion and closing of files and dockets

NO.	PROCEDURE
	Completion of File
1.	The Case Worker initiates completion of a file through the Supervisor after completing a case investigation report;
2.	The Supervisor reviews and quality assures directives and reports and recommends completion to the DI/PH;
3.	The DI/PH approves/disapproves completion and the Completion Register is utilised (COMR9/14/32/34);
4.	No Case Worker acting as DI/PH will approve the completion of a file investigated by himself/herself;
5.	All Section 28(1)(a)-(g) cases must be referred for decision to the SPP/DPP, before closure;
	Closing of Files
6.	The Case Worker initiates closure of a file through the Supervisor after completing a closure report, which will include the outcome of the criminal case/DC process;
7.	The Supervisor reviews and quality assures directives and reports and recommends closure to the DI/PH;
8.	The DI/PH approves/disapproves closure and the Closed Case Register is utilised (CC22/32/36);
9.	No Case Worker acting as DI/PH will approve the closure of a file investigated by him/her;
10.	Where a file is closed as Withdrawn , the complainant/victim/referral authority's withdrawal statement must be filed, or an affidavit by the Case Worker in the event that the complainant/victim/referral authority's withdrawal statement could not be obtained.

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7.11 Procedure for archiving of files and dockets

PROCEDURE FOR ARCHIVING OF FILES AND DOCKETS	
Archiving of Case Dockets	
1.	The DI/PH approves the closure of the investigation of the case and completes the Closed Case Register (CC22/32/36) , and thereafter the process of archiving comes into effect through completion of the Archive Register (AR23/36) ;
2.	The Case Worker must return the SAPS docket to the Station concerned in accordance with procedure 7.8;
Archiving of Files	
3.	The DI/PH approves the closure of the investigation of the case and completes the Closed Case Register (CC22/32/36) , and thereafter the process of archiving comes into effect through completion of the Archive Register (AR23/36) ;
4.	The DDI conducts quality control before the file is archived;
5.	The Case Worker archives the file in the IPID Archiving facility in line with the Archive Register;
6.	Closed files must be archived within 60 days after closure.

7.12 Procedure for obtaining and returning SAPS dockets

PROCEDURE FOR OBTAINING SAPS DOCKETS	
1.	Request docket from the Provincial/ Station/ Branch Commander;
2.	Ensure that the Provincial/ Station/ Branch Commander transfers the docket on the CAS system and records on the register in accordance with the provision of the SAPS Standing Operating Procedure (SOP) dated 20/11/2007;
3.	Make an OB Entry to confirm receipt of docket from the station and member concerned;
4.	Record the transaction on the IPID manual docket register;
5.	On arrival at the office ensure that the information on the manual register is updated on the Docket Register (DR10) , as well as on the CMS;
PROCEDURE FOR RETURNING SAPS DOCKETS	
6.	When returning the docket ensure that the Provincial/ Station/ Branch Commander transfers the docket on the CAS system and records in the register in accordance with the provisions of the SAPS Standing Operating Procedure (SOP) dated 20/11/2007;
7.	Make an OB Entry to confirm return of the docket to the station and member concerned; or when the docket is returned to SAPS (other than at the station), written proof should be obtained;
8.	Record the transaction on the IPID manual docket register;
9.	On arrival at the office ensure that the information on the manual register is updated on the Docket Register (DR10) , as well as on the CMS.

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7.13 Procedure for referral of cases

1.	Upon registration of the case, the Case Worker will prepare a referral letter immediately and close the case where the complaint falls outside IPID mandate;
2.	In the situation where a discretion needs to be exercised, whether a case must be investigated or not, a Case Worker will refer the case to CIC;
3.	The CIC will analyse the case and advise the PH whether to refer a case in terms of Section 7(9);
4.	The PH will decide whether the case is to be investigated or referred.

7.14 Scenes

1.	All scenes relating to investigation of Section 28 matters should be investigated where necessary;
2.	Over and above the directive above, comply with the provisions of Regulation 8;
3.	Where a scene needs to be reconstructed, permission should be obtained as to justify the costs.

8. REGULATIONS

This SOP should be read together with the Regulations promulgated under section 34(1) of the Independent Police Investigative Directorate Act 1 of 2011, especially in relation to the following aspects:

- (a) investigation of death in police custody or as a result of police action (Reg 4);
- (b) the rape of a person, whether in police custody or by a member; torture or assault by a member; and involvement in corruption (Reg 5);
- (c) the discharge of an official firearm (Reg 6);
- (d) investigation of matters referred to the IPID (Reg 7);
- (e) securing of a crime scene (Reg 8); and
- (f) identification parades, taking of affidavits and giving evidence (Reg 9).

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9. DELEGATION

- 9.1 The Executive Director delegates authority to the Provincial Head to refer matters that fall outside section 28(1)(a) to (g) to the relevant Provincial Commissioner, if it is not a high profile matter or a serious offence or misconduct that has potential to attract public interest.
- 9.2 Provincial Heads and Director Investigations should under no circumstances delegate their functions, in terms of this SOP, on a permanent basis to another member of his/her staff.

10. PENAL PROVISION

Failure to comply with any provision of this SOP amounts to misconduct and shall be dealt with in terms of the disciplinary code of conduct of the Public Service.

11. REVISION

This SOP shall be revised as and when a need arises.
Approved by the Executive Director.



MS K MBEKI
ACTING EXECUTIVE DIRECTOR
DATE: 01/04/2013

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ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

IPID CRIME SCENE REPORT
(To be completed by IPID Investigator at the scene)

(SOP)
IPID Form 7-2

1. REFERENCE NUMBERS

1.1. IPID Office: _____ CCN: _____

Standby Notification Reference Number: _____

1.2. SAPS/METRO Station Area: _____

CAS NO: _____

2. IPID PERSONNEL PRESENT

2.1. Investigative Supervisor: _____

2.2. IPID Investigator: _____

2.3. Other IPID Personnel: _____

3. SAPS/METRO MEMBERS PRESENT

3.1. Crime Scene Officer: Name: _____

Station: _____

Rank: _____

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3.2. SAPS/METRO Investigating Officer:

Name: _____

Station: _____

Rank: _____

4. ARRIVAL AT SCENE: Date: _____ Time: _____

5. SAPS MEMBER IN CHARGE OF THE SCENE: _____

6. ADDRESS/LOCALITY OF SCENE: _____

(Full address or locality of scene)

7. DESCRIPTION OF SCENE UPON ARRIVAL⁶

- | | |
|--|--|
| 7.1. Indoors/Outdoors. | 7.2. Urban/Rural Area. |
| 7.3. House/Business Premises/ Warehouse/Police Station/Police cells/Field/Public Road/ Farm/ Other | |
| 7.4. Visibility: Good/Weak/Bad. | 7.5. Rain/Sunshine. |
| 7.6. Natural/Artificial Light. | 7.7. Open/Built up/Bush/Grass/ Water/ Other: |
| 7.8. Cordoned Off: Yes/No. | 7.9. Deceased/Victim on Scene: Yes/No. |
| 7.10. Injured Person on Scene: Yes/No. | 7.11. Exhibits on Scene: Yes/No. |
| 7.12. Forensic Experts on Scene: Yes/No. | 7.13. Witnesses at Scene: Yes/No. |
| 7.14. SAPS/METRO member(s) involved at Scene: Yes/No. | |

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8. PARTICULARS OF INJURED PERSONS

8.1. Name

Age: _____ Sex: _____ Telephone No: (H) _____ (W) _____

Address _____

8.2 Name:

Age: _____ Sex: _____ Telephone No: (H) _____ (W) _____

Address: _____

8.3 Name:

Age: _____ Sex: _____ Telephone No: (H) _____ (W) _____

Address: _____

9. PARTICULARS OF DECEASED*

9.1 Name:

Age: _____ Sex: _____ Race: _____

Address: _____

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9.1.1. Apparent Manner of Death:

(E.g. Gunshot/Knife Wound/Dog Bite/Asphyxiation)

9.1.2 Family of deceased identified? YES/ NO - If "Yes" provide details:

9.2. Name:

Age: _____ Sex: _____ Race: _____

Address: _____

9.2.1. Apparent Manner of Death:

(E.g. Gunshot/Knife Wound/Dog Bite/Asphyxiation)

9.2.2 Family of deceased identified? YES/ NO - If "Yes" provide details:

9.3. Name:

Age: _____ Sex: _____ Race: _____

Address: _____

9.3.1. Apparent Manner of Death:

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(E.g. Gunshot/ Knife Wound /Bite/Asphyxiation)

9.3.2 Family of deceased identified? YES/ NO - If "Yes" provide details:

10. PARTICULARS OF WITNESSES

10.1. Name:

Address:

Tel. No. (H) _____ (W) _____ (Cell) _____

10.1.1 Interview arranged: YES/NO.

For: Date: _____ Time: _____

Venue:

10.2. Name:

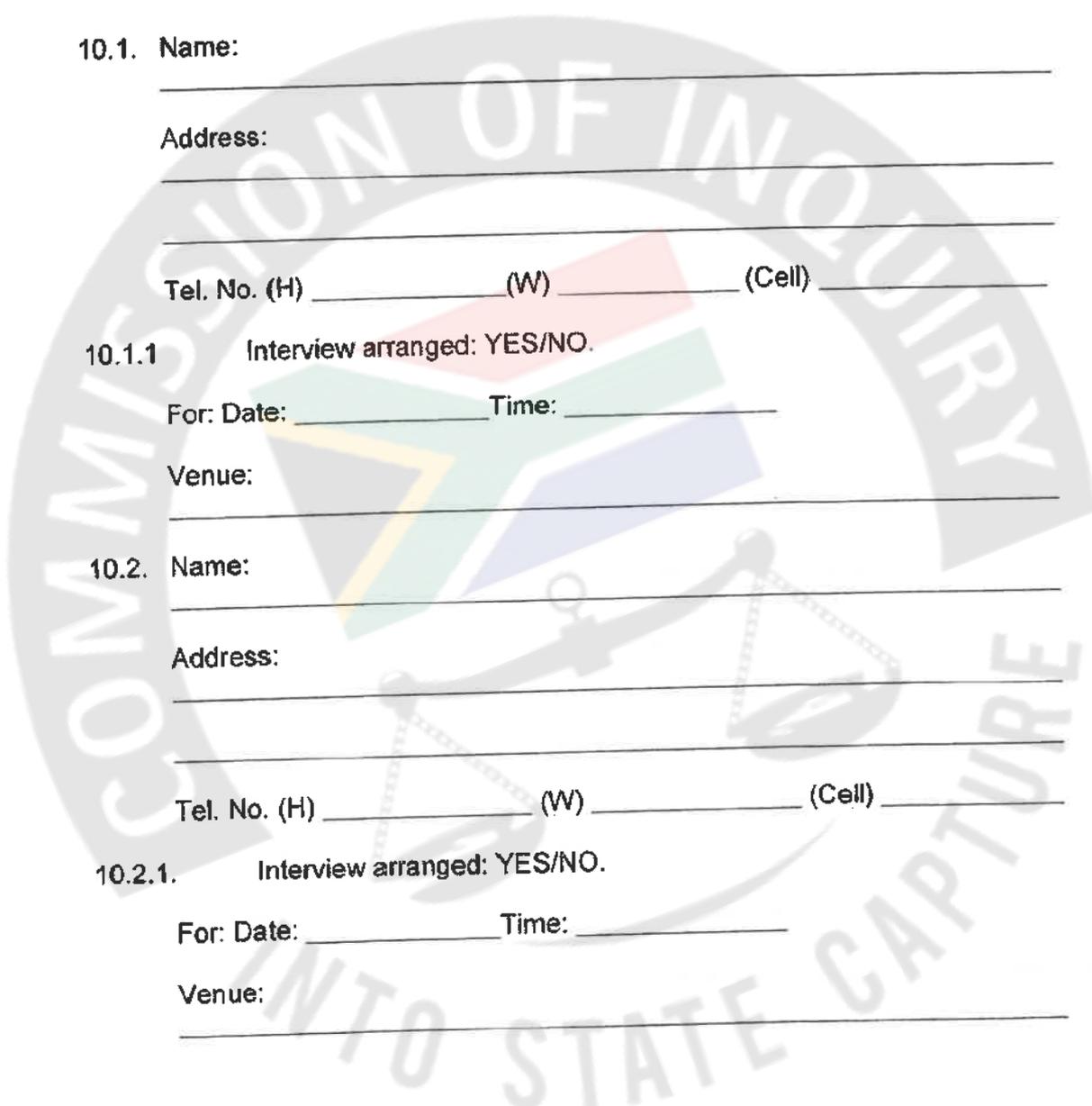
Address:

Tel. No. (H) _____ (W) _____ (Cell) _____

10.2.1. Interview arranged: YES/NO.

For: Date: _____ Time: _____

Venue:



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10.3. Name:

Address:

Tel. No. (H) _____ (W) _____ (Cell) _____

10.3.1. Interview arranged: YES/NO.

For: Date: _____ Time: _____

Venue:

10.4. Name:

Address:

Tel. No. (H) _____ (W) _____ (Cell) _____

10.4.1. Interview arranged: YES/NO.

For: Date: _____ Time: _____

Venue:

11. PARTICULARS OF SAPS/METRO MEMBER/S INVOLVED

11.1. Name:

Service Number: _____ Rank: _____

Station: _____ Unit: _____

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11.2. Name:

Service Number: _____ Rank: _____

Station: _____ Unit: _____

11.3. Name:

Service Number: _____ Rank: _____

Station: _____ Unit: _____

12. **EXHIBITS ON THE SCENE:** (Describe each exhibit and the place where it was found)

12.1. _____

12.2. _____

12.3. _____

12.4. _____

12.5. _____

12.6. _____

12.7. _____

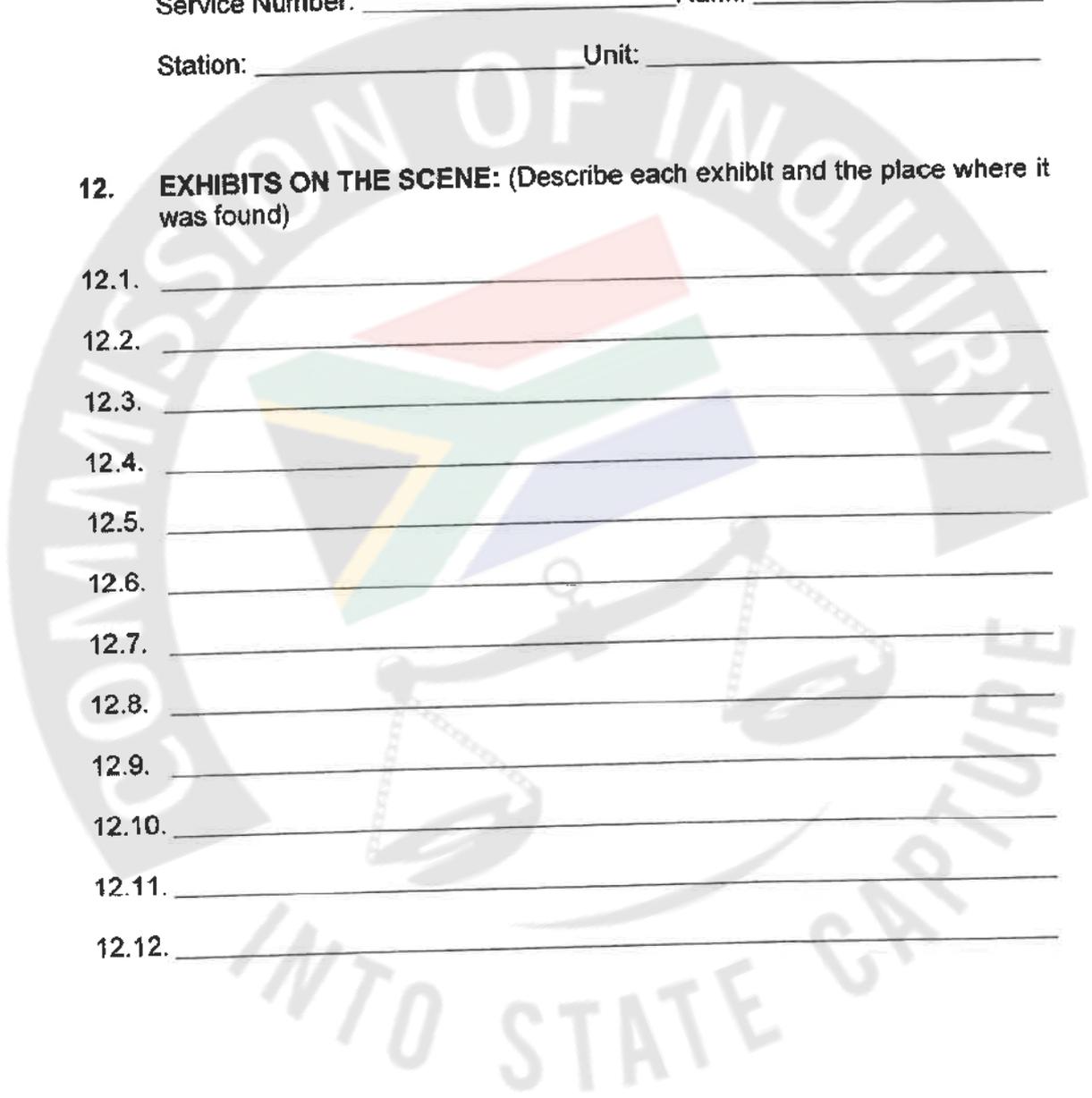
12.8. _____

12.9. _____

12.10. _____

12.11. _____

12.12. _____



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13. MANNER OF DISPOSAL OF EXHIBITS

- 13.1. _____
- 13.2. _____
- 13.3. _____
- 13.4. _____
- 13.5. _____
- 13.6. _____
- 13.7. _____
- 13.8. _____
- 13.9. _____
- 13.10. _____
- 13.11. _____
- 13.12. _____

(E.g. Taken by SAPS/METRO investigating officer/Ballistic expert/Pathologist)

14. FORENSIC AND OTHER EXPERTS AT SCENE

- 14.1. Fingerprint:
_____ Name and Contact details
- 14.2. Photographer:
_____ Name and Contact details
- 14.3. Ballistic:
_____ Name and Contact details
- 14.4. Pathologist:
_____ Name and Contact details

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16. POST MORTEM DATA

16. 1. Name of the deceased: _____

Body No: _____

16.2. Name of the Pathologist/Doctor: _____

16.3. Place and Date: _____

16.4. ID Number: _____ or Date of Birth _____

16.5. Observations: _____

16.5.1. IPID investigators requested Pathologist/Doctor to specifically look at/focus on: _____

16.6. Doctor's Findings: _____

16.7. Cause of Death: _____

16.8 Signature and date of the Pathologist/Doctor acknowledging that IPID investigator was present at Post Mortem:



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Name of Pathologist/Doctor: _____

Signature: _____

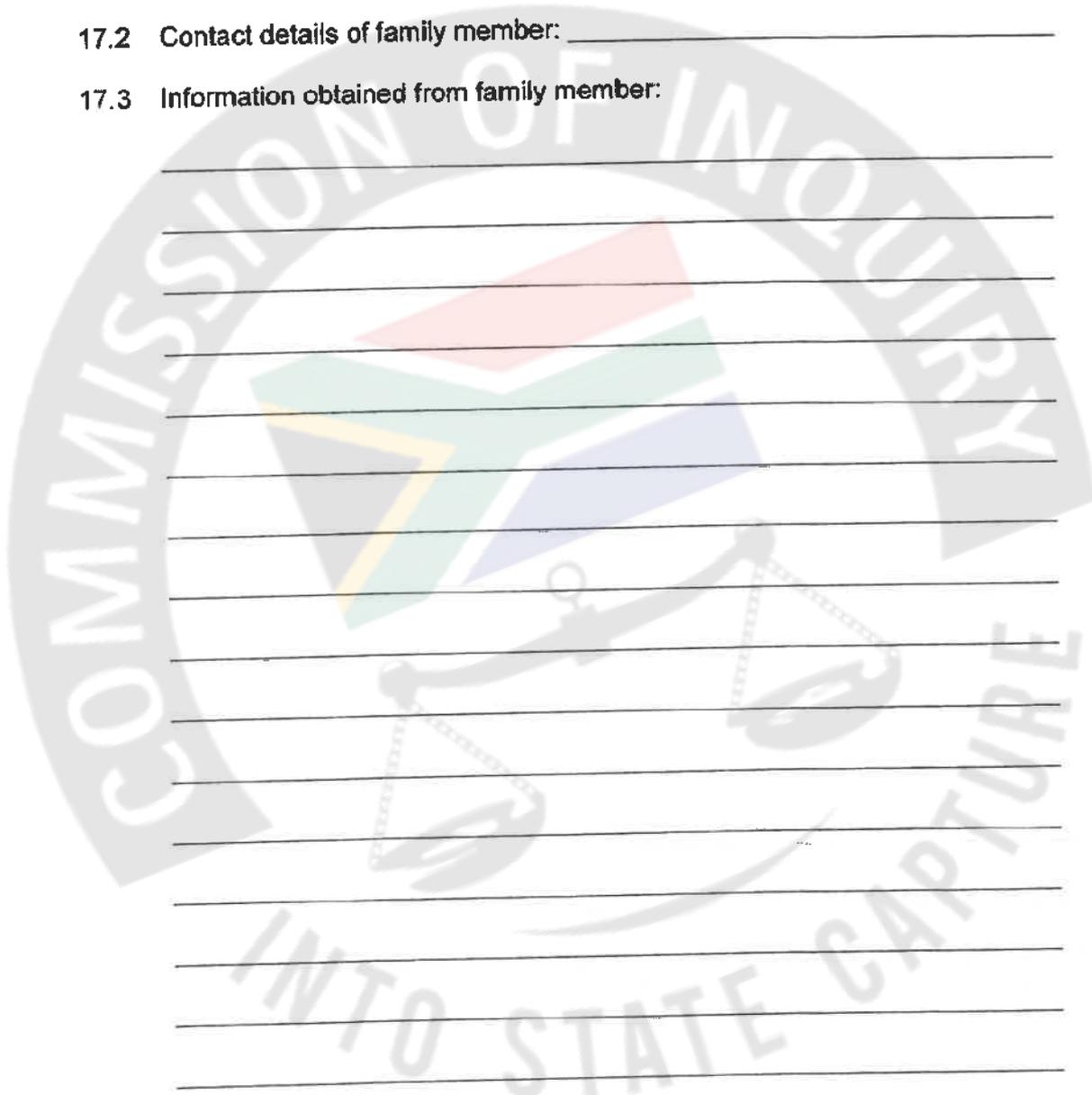
Date: _____

17. FAMILY LIAISON:

17.1 Name of family member communicated with: _____

17.2 Contact details of family member: _____

17.3 Information obtained from family member:



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Date: _____

Time: _____

Signature of IPID Investigator

- * Delete where not applicable
- * Continue on loose folios if necessary

Addendum to Form 7.2:

When arriving at scene:

In the event of a case as per Section 28(1)(a), (b), (d), (e) of (f):

Was a request made to the SAPS member in charge of the scene to provide assistance relating to:

Yes	No	Type
		Providing of crime kits
		Providing of forensic evidence bags
		Any other type of assistance:

Was failure to assist explained as a contravention of Section 29 of the IPID Act and those possible criminal actions can result in the event of a failure to assist?

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Yes	No

Response of SAPS member on scene:

Signature of IPID official:

Signature of SAPS official:

Name, Surname, Rank:

I, _____ hereby confirm that I attended the scene on (location) _____, at (time and date) _____ and that the following SAPS official _____, confirms my attendance on the date, time and location as indicated.

Signature of IPID official:

Signature of SAPS official:

SAPS Persal Number:

Name, Surname, Rank:

Date:

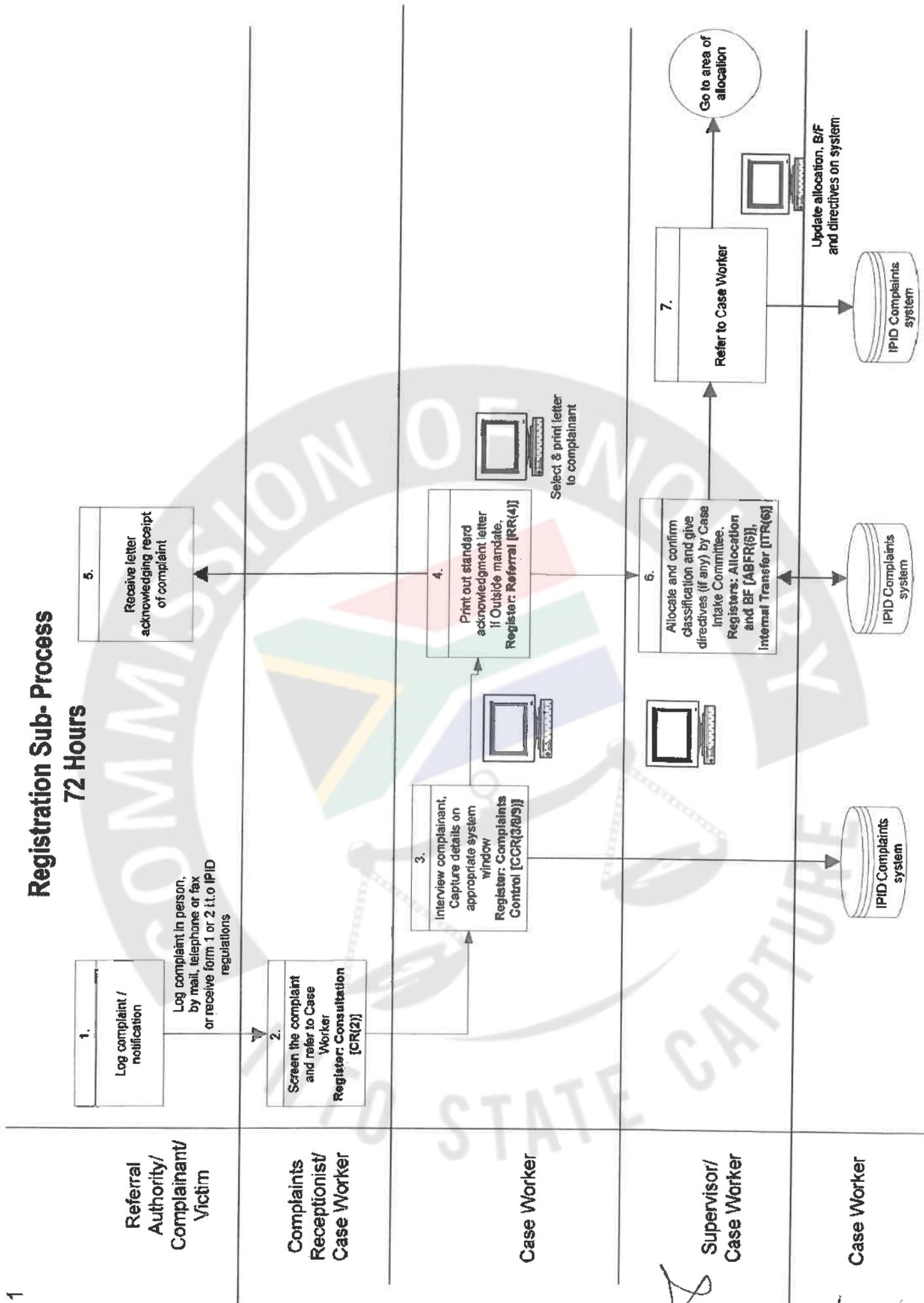
Time:

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Registration Sub-Process

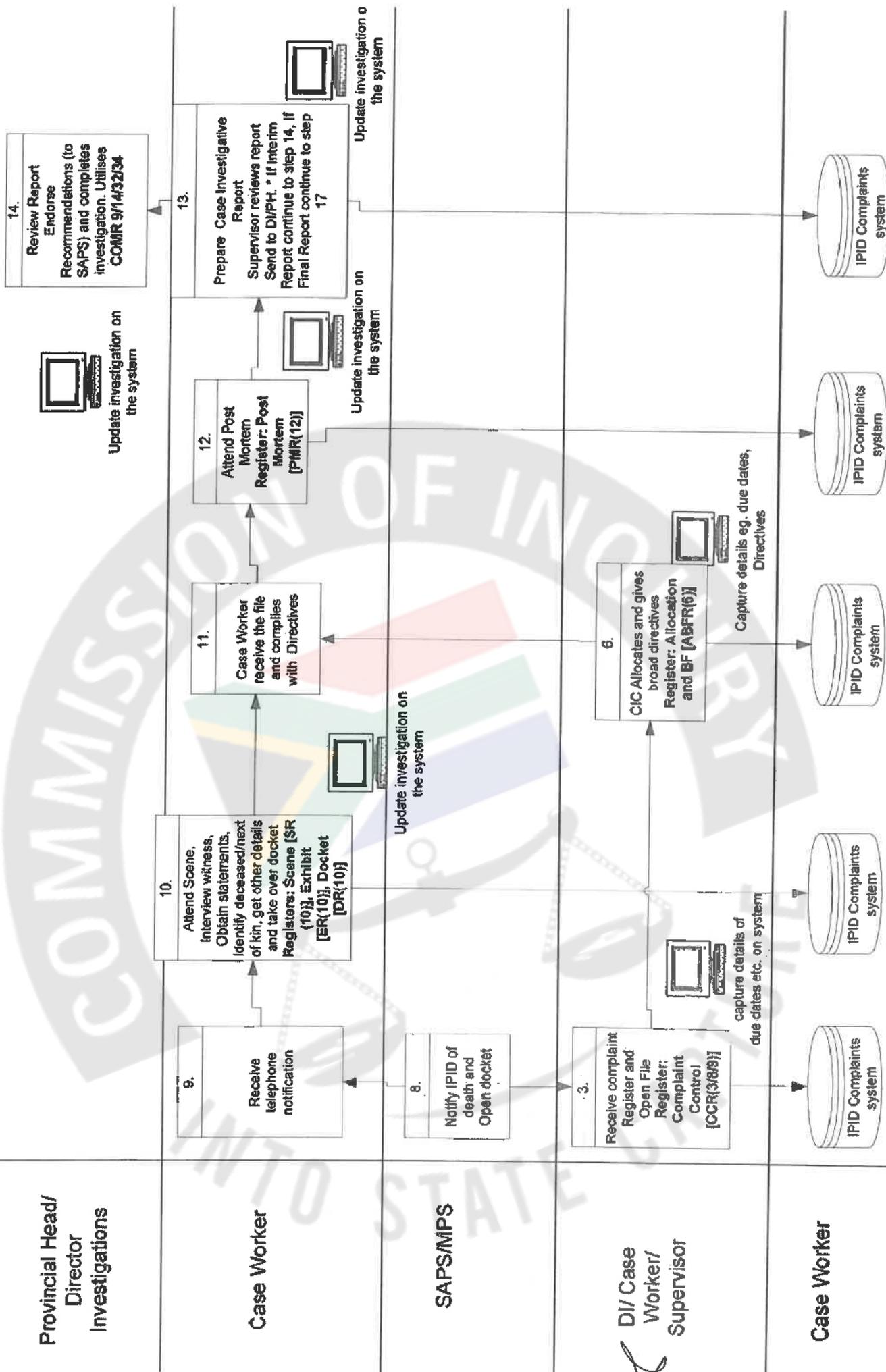
72 Hours



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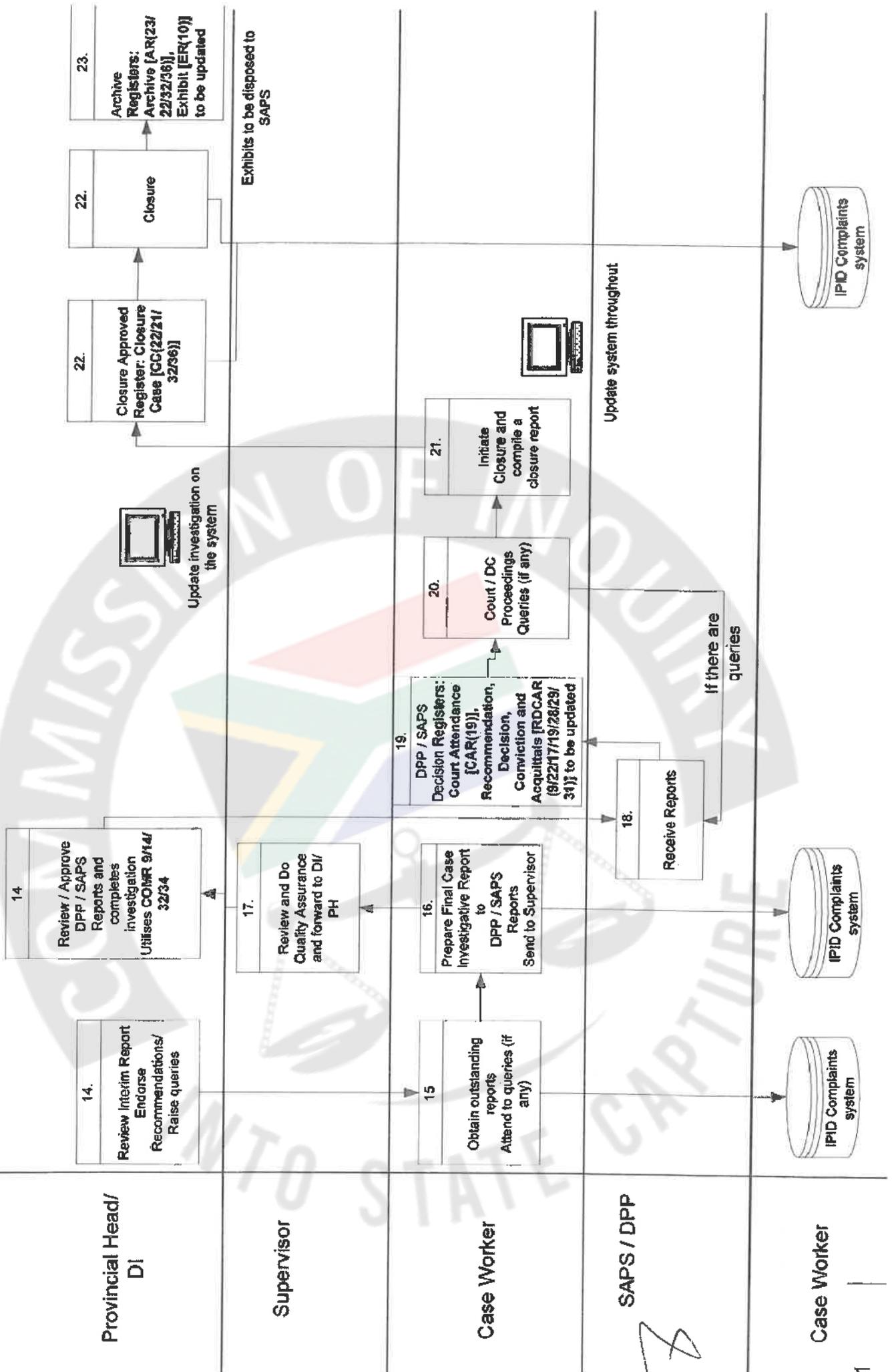
Investigation Sub-Process for Sec 28(1)(a) and (b)



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Investigation Sub-Process for Sec 28(1)(a) and (b)



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Investigation Sub-Process for Sec 28(1)(c)to(h), including 28(2)

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Referral Authority/
Complainant/
Victim

27.
Receive status details
about lodged complaint

SAPS

25.
Provide docket or copy of
docket to IPID

Case Worker

24.
Receive file and request
docket from SAPS (if
necessary)

25
Take over docket/copy
and conduct
investigation and
provide feedback based
on the agreed due
dates, in case of Sec
28(2) Case Worker
must comply with the
provision of 7.8 of SOP
Register: Docket
[DR(10)]

Update investigation on
the system

Supervisor/ DI/
Case Worker

B/F Directives and
investigative targets are
given
Registers: Allocation
and BF [ABFR(6)] to be
updated

Capture details eg. due dates,
Directives.

Case Worker

IPID
Complaints
system

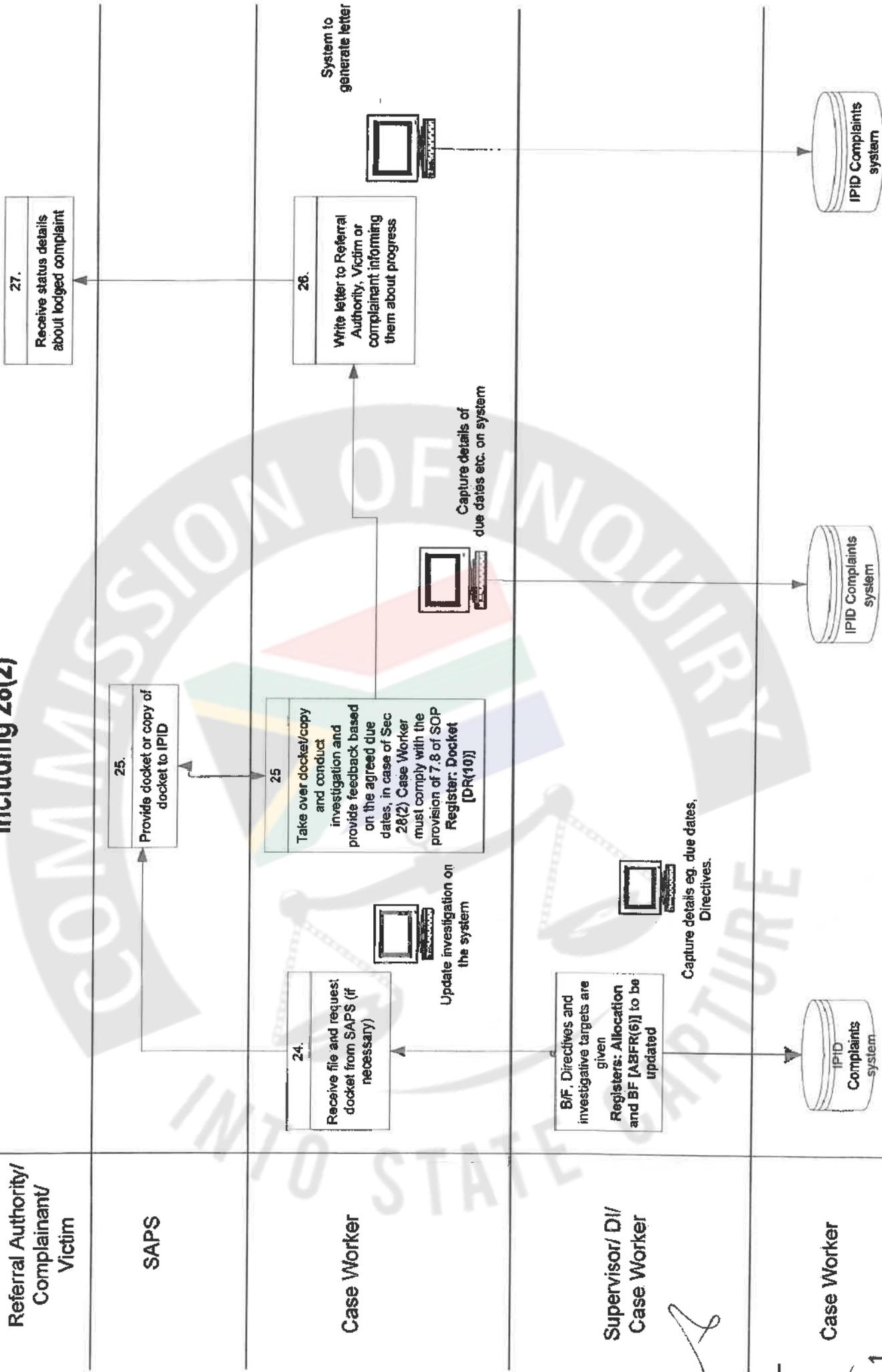
IPID Complaints
system

IPID Complaints
system

28.
Write letter to Referral
Authority, Victim or
complainant informing
them about progress

System to
generate letter

Capture details of
due dates etc. on system

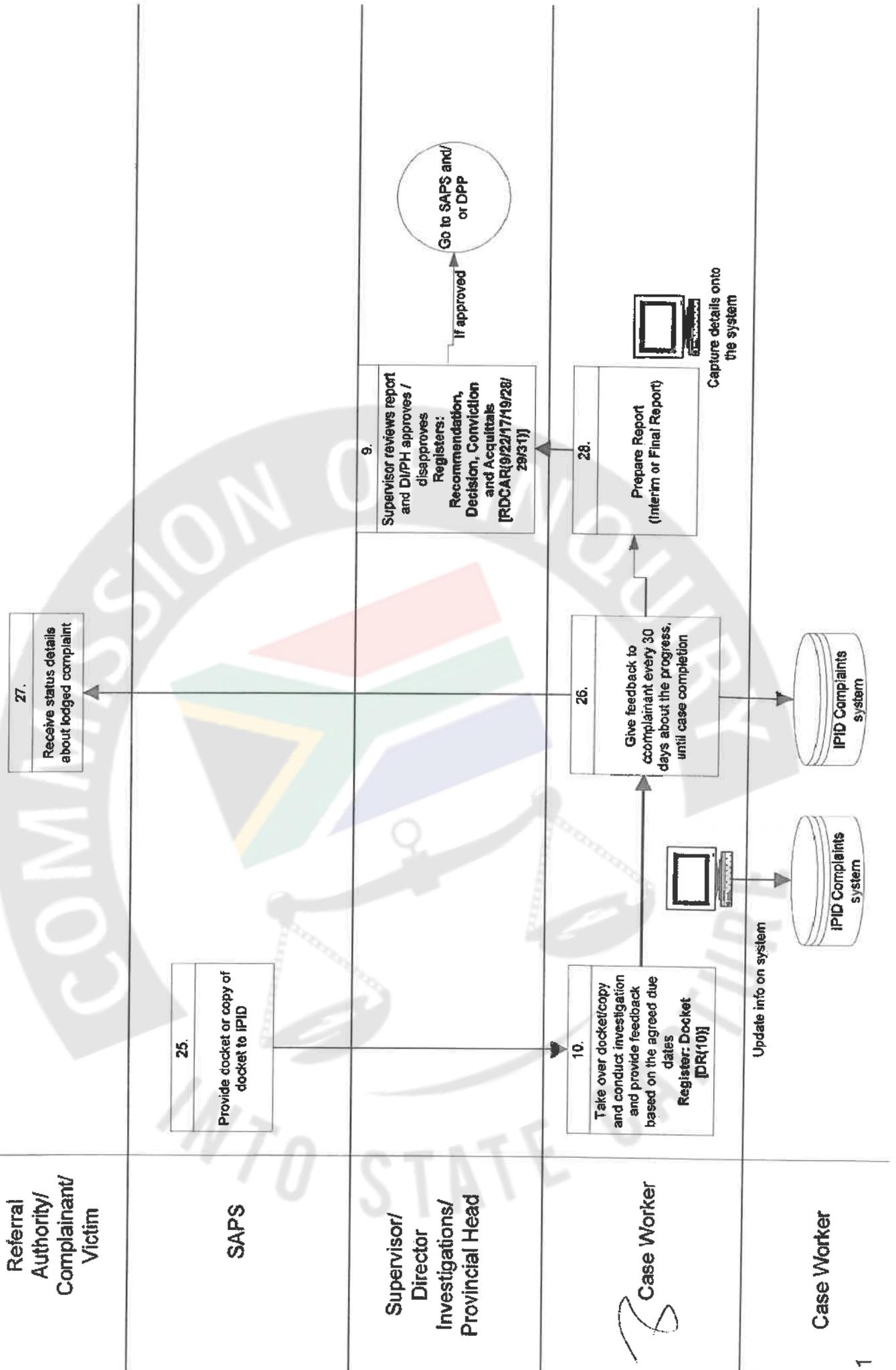


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Investigation Sub-Process for Sec 28(1)(c)to(h), including 28(2)

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Post Investigation Monitoring Sub-Process

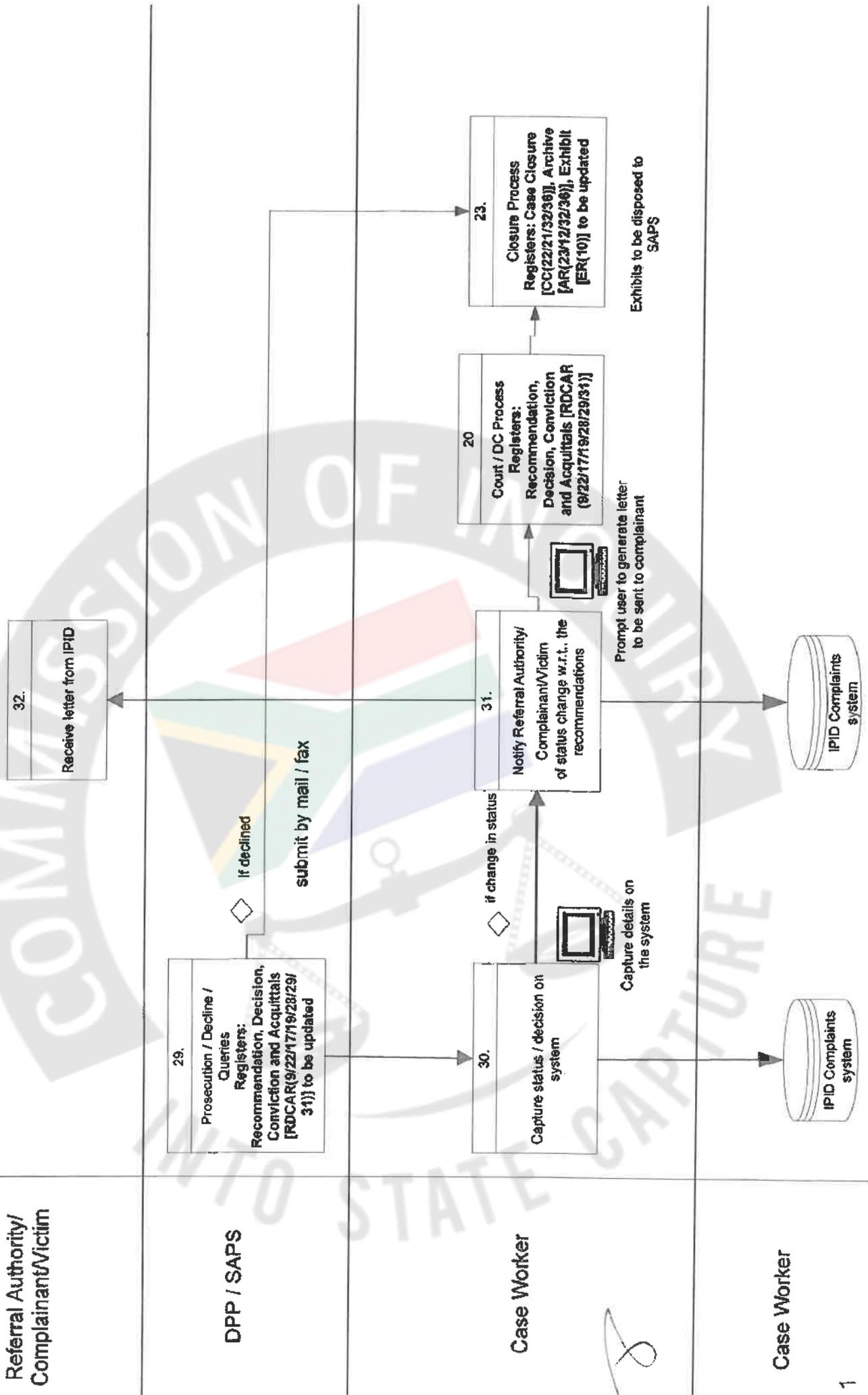
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Referral Authority/
Complainant/Victim

DPP / SAPS

Case Worker

Case Worker



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MS 2

DURBAN CENTRAL CAS 466/09/11

BRIBERY

***** CONFIDENTIAL *****



**DEPARTMENT: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE
REPUBLIC OF SOUTH AFRICA**

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Republic of South Africa

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
VICTORIA AND GRIFFITHS MXENGE BUILDING
SILVERTON
PRETORIA

Gerrie Nel
11/2/15

ATTENTION: ADV. GERRIE NEL

Date: 2015/02/05

CRIMINAL RECOMMENDATIONS IN TERMS OF SECTION 7(4) OF THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE ACT NO. 1 OF 2011 AGAINST COLONEL NAVIN MADHOE AND THOSHAN PANDAY UNDER DURBAN CENTRAL CAS NO. 466/09/11

1. **INTRODUCTION**

- 1.1. On the 13 October 2014, the Independent Police Investigative Directorate ("the IPID"), received a complaint from Ms Kolher Bamard, MP requesting the IPID to investigate the conduct of the Kwazulu-Natal Provincial Commissioner of the South African Police Service ("SAPS"), Lieutenant General BM Ngobeni relating to the birthday party of her husband; and
- 1.2. Further, that the IPID investigate whether or not, there is a corrupt relationship between a Durban businessman, Thoshan Panday ("Panday"), and the Kwazulu-Natal Provincial Commissioner of the SAPS, Lieutenant General Ngobeni BM Ngobeni.

2. **BACKGROUND**

- 2.1. On receipt of the complaint above, the IPID approached the Kwazulu-Natal ("KZN"), Provincial Commissioner Lieutenant General BM Ngobeni ("Ngobeni"), and enquired from

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the latter whether or not, she was aware of a complaint relating to her conduct about her husband's birthday party.

- 2.2. Ngobeni confirmed that she was aware of the complaint against her. Further, Ngobeni informed the IPID that the complaint was investigated by the KZN Directorate of Priority Crime Investigation ("DPCI"). Further that the investigation has been completed. Furthermore, that the matter was referred to the KZN Director of Public Prosecution ("DPP"), who declined to prosecute.
- 2.3. The IPID followed the information provided by Ngobeni and arranged a meeting with the KZN DPCI. At the said meeting between the DPCI and the IPID, the DPCI brought it to the attention of the IPID that there was more than one docket opened and investigated against Ngobeni. The DPCI confirmed that the KZN DPP has declined to prosecute Ngobeni and provisionally withdrew other cases.
- 2.4. Both the DPCI and the IPID discussed the reasons relied upon by the DPP in declining to prosecute. Further, both the DPCI and the IPID did not agree with the reasons relied upon by the DPP in arriving at her decision to decline prosecute. The DPCI and the IPID decided in the said meeting to request the National Director of Public Prosecution ("the NDPP"), to review the decision of the KZN's DPP to decline to prosecute Ngobeni based on the evidence gathered by the DPCI. Further, both the DPCI and the IPID decided to conduct joint investigation into the criminal conduct as well as misconduct of Ngobeni and other senior members of the KZN SAPS.
- 2.5. In the meantime, the Executive Director of the IPID, has formally taken over the dockets and the investigation from the DPCI in terms of section 28(1)(g) and (h) of the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011) ("the IPID Act"), in order to investigate the allegations of criminal conduct against Ngobeni and other senior members of the KZN Province of the SAPS.

3. SUMMARY OF ALLEGATIONS

3.1. DURBAN CENTRAL 781/06/10

- 3.1.1. It is alleged that on 28 April 2010 Brigadier L C Kemp ("Kemp"), the Head of KZN SAPS Provincial Financial Services reported suspected financial irregularities to the Head of KZN DPCI, Major General Booysen ("Booyesen"), relating to procurement expenditures for detachment duties.
- 3.1.2. The amount involved was R55, 502, 000.00 (fifty five million five hundred and two thousand rand), which was 63.4% higher than the previous financial year expenditure, to the benefit of five companies, all linked to Panday.
- 3.1.3. The irregular procurement processes were allegedly facilitated by Colonel Navin Madhoe ("Madhoe"), the Section Head of the Supply Chain Management of the KZN Provincial SAPS, Captain Aswin Narainpershad ("Narainpershad"), Madhoe's subordinate and Major General RS Pillay ("Pillay"), attached to the Supply Chain Management of the SAPS National Office.

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3.1.4. Further, it is alleged that on four (4) occasions, Ngobeni instructed Booysen to stop investigation relating to the financial irregularities involving the detachment duties. Three of the instructions were issued prior to the birthday party of Ngobeni's husband, whilst the last one was issued after the birthday party.

3.1.5. These instructions were issued by Ngobeni, despite the fact that Ngobeni was provided with the preliminary report showing the irregular procurement procedures of detachment duties by Madhoe, Narainpershad and Panday. Further, that Ntanjana did not comply with her instruction to investigate and finalize the said irregular procurement procedures within two (2) weeks. Thereby, obstructing or defeating the ends of justice.

3.2. DURBAN NORTH 386/09/2011

3.2.1. It is alleged that on 29 May 2010, 19 days after Ngobeni issued the third instruction on the 10 May 2010, Ngobeni arranged a surprise birthday party for her husband (Brigadier Lucas Ngobeni), assisted by Madhoe and other members. Further, it is alleged that the surprise birthday party was financed by Panday.

3.2.2. Panday paid an amount of R20, 963. 00 (twenty thousand nine hundred sixty-three thousand rand) for the surprise birthday party. However, after the birthday party, Panday approached the owner of to issue him with a receipt in the name of Ngobeni reflecting the sum of R29, 712. 00 (twenty nine thousand seven hundred twelve rand).

3.2.3. Further, it is alleged that after the surprise birthday party referred to above, Ngobeni issued the fourth instruction to Kemp and Booysen on the 25 August 2011, to stop the investigation relating to financial irregularities involving the detachment duties.

3.2.4. The fourth instruction above, was followed by Court interdict launched and filed by Panday's legal representatives in order to stop the investigation relating to financial irregularities referred to above. The court dismissed Panday's application with costs.

3.2.5. As a result of the controversial surprise birthday party referred to above, a case of corruption as per Durban North CAS 386/09/2011 was opened against the Kwazulu-Natal Provincial Commissioner, Lieutenant General Ngobeni.

3.3. DURBAN CENTRAL 466/09/11

3.3.1. It is alleged that during September 2011, Madhoe approached Booysen with a bribe proposal of R2, 000, 000. 00 (two million rand). The intention of Madhoe was to bribe Booysen in order for the latter to alter the section 205 Subpoenas

issued during the investigations referred to above, as per Durban Central CAS 781/06/2010.

- 3.3.2. A sting operation was set up by Booysen wherein Madhoe was arrested while bribing Booysen. Cash in the amount of R1, 430, 000. 00. (one million four hundred and thirty thousand rand), was confiscated from Madhoe. The sting operation was conducted in terms of the provisions of section 252A of the Criminal Procedure Act, 1977. The certificate was authorized by the DPP of KZN.

3.4. DURBAN CENTRAL 122/04/10

- 3.4.1. It is alleged that on the 31 December 2011, and as a result of the investigations relating to the financial irregularities as per Durban Central CAS 781/06/10 referred to above, Captain Stephens ("Stephens") contacted Booysen. Stephen informed Booysen that Panday and Narainpershad asked Stephen to create a call up instruction so that he could claim R15 000 000.00 (fifteen million rand) owed to Panday by SAPS.
- 3.4.2. Further, Panday told Stephen that if he (Panday) had a call up instruction that was authorized he will be able to take SAPS to court in order to force SAPS to pay him. Further, Stephen informed Booysen that Narainpershad had encouraged him to assist Panday.
- 3.4.3. The conduct by Panday and Narainpershad above, resulted in Booysen applying for section 252A of the Criminal Procedure Act, 1977 to the DPP of KZN to authorize and legalize the operation of entrapment. The purpose of section 252A certificate was to enable Stephen to record his conversation with Narainpershad and Panday discussing and requesting Stephen to do as requested by both Narainpershad and Panday. The operation led to the arrest of both Narainpershad and Panday.

3.5. CHRONOLOGY OF RELEVANT EVENTS

The chronology of events is as follows:

- 3.5.1. On the **16 April 2010**, Kemp noticed a large amount of payment done to detachment duties in the KZN Province. On perusing the payment schedule Kemp found that the said large payment was paid to Goldcoast Trading CC with an inflated amount of R850, 00 p.p. sharing, whereas the actual costs was R500, 00 p.p. sharing. Further, Kemp noted that from 1 April 2010 to 23 April 2010 an amount of R10, 869, 646. 00 (ten million eight hundred sixty nine thousand six hundred and forty-six rand) was already paid to Panday.
- 3.5.2. On the **28 April 2010**, Kemp informed Booysen about the expenditure for detachment duties for which SAPS was paying exorbitant amounts. Booysen requested Kemp to provide him with a report to that effect.

- 3.5.3. On the **29 April 2010**, Kemp signed information note addressed to Ngobeni, Booyesen and Major Generals Masemola (*"Masemola"*) and the Late BA Ntanjana (*"Ntanjana"*), highlighting the said irregular expenditures.
- 3.5.4. On the **3 May 2010**, Booyesen informed Kemp that he (Booyesen) has handed a copy of Kemp's information note to Brigadier Lategan (*"Lategan"*) to investigate.
- 3.5.5. On the **5 May 2010**, Kemp received a telephone call from Ngobeni who instructed Kemp to stop the investigation relating to procurement procedures of the detachment duties. Further, that Kemp must relay the message to Booyesen.
- 3.5.6. On the **8 May 2010**, Booyesen received a call from Ngobeni who instructed Booyesen to stop with the investigation relating to the procurement procedures of the detachment duties, because she was suspecting that Booyesen was defying her previous instruction to stop the investigation.
- 3.5.7. On the **10 May 2010**, Ngobeni called Booyesen to a meeting. Present at the meeting was Masemola, Ntanjana, Kemp and Madhoe. At the said meeting Ngobeni once again instructed Booyesen to stop the investigation relating to the procurement procedures of the detachment duties. Further, Ngobeni instructed Ntanjana to investigate the irregular procurement procedures of the detachment duties and submit a report within two weeks. Ntanjana did not comply with Ngobeni's instruction to investigate the irregular procurement procedures of the detachment duties.
- 3.5.8. On the **19 May 2010**, National Head of the DPCI General Dramat (*"Dramat"*), enquired from Booyesen about the progress made in the investigation of irregular procurement of detachment duties. Booyesen informed Dramat about Ngobeni's instructions. Dramat instructed Booyesen that the investigation into allegations of irregular procurement of detachment duties must continue under the supervision of National Office of the DPCI.
- 3.5.9. On the **29 May 2010**, Ngobeni arranged a surprise birthday party for her husband (Brigadier Lucas Ngobeni). Ngobeni invited Booyesen to attend the surprise birthday party of her husband (Brigadier Lucas Ngobeni). Booyesen did not attend because of other commitments.
- 3.5.10. On the **25 August 2010**, Booyesen received a call from Ngobeni who sounded uncomfortable. Ngobeni enquired from Booyesen about allegations that were made against her by Panday in his (Panday) statement.
- 3.5.11. During the month of **September 2011**, Madhoe approached Booyesen in order for the latter to stop investigating the irregular procurement procedure of detachment duties. The investigation related to Durban Central CAS 781/06/10. Madhoe promised Booyesen that Panday will pay him (*"Booyesen"*) R2, 000, 000. 00 (two million rand). Booyesen arranged for a sting operation in terms of section 252A of the Criminal Procedure Act, 1977. As result of the

operation, Madhoe was arrested after paying Booyesen R1, 430, 000. 00 (one million four hundred and thirty thousand rand).

- 3.5.12. On the **31 December 2011**, Captain Stephen ("Stephen"), contacted Booyesen. Stephen informed Booyesen that Panday and Narainpershad asked him to create a call up instruction in the amount of R15, 000, 000. 00 fifteen million rand. Further, to have the call up instruction authorized in order to sue SAPS. Stephen told Booyesen further that Narainpershad encouraged him to assist Panday. Booyesen arranged for section 252A certificate, which resulted in the arrest of Panday and Narainpershad.

3.6. **SUMMARY FORENSIC INVESTIGATION BY PRICEWATERHOUSE COOPERS ("PWC")**

- 3.7. The DPCI investigation team conducted searches and seizures at several places including offices of the KZN SAPS in terms of the Criminal Procedure Act 1977. Several documents were seized lawfully and were referred to PWC to conduct forensic investigation and determine relationships between significant events and benefits to SAPS personnel.

- 3.8. The forensic investigation revealed the following:

- 3.8.1. On the **11 May 2009**, SS Odendaal was requested to draft letter to Head Office requesting authority to use police colleges during Soccer World Cup ("SWC").
- 3.8.2. On the **1 June 2009**, SS Odendaal indicates that all Colleges are not available. This was caused by lack of communication with Head Office and recommended that the matter must be addressed by PC.
- 3.8.3. On the **28 September 2009**, Madhoe stated that he was busy arranging accommodation for 530 members.
- 3.8.4. On the **2 October 2009**, Goldcoast submitted quote for 530 members.
- 3.8.5. On the **8 October 2009**, Office of the KZN PC submitted application for accommodation for the SWC. Goldcoast received response. Coastlands did not receive a response. Coastlands was denied to quote.
- 3.8.6. On the **26 October 2009**, Madhoe sent a letter to Head Office requesting approval for 530 members.
- 3.8.7. On the **14 November 2011**, Panday pays Oyster Box **R6, 010. 00** for Madhoe's accommodation for the period 14 – 15 November 2009.
- 3.8.8. On the **20 November 2009**, Madhoe asked Panday for Financial Assistance in the amount of **R20, 000. 00**.
- 3.8.9. On the **17 December 2009**, Panday pays **R8, 584. 00** for Madhoe's flight from Durban to Cape Town.

- 3.8.10. On the **5 January 2010**, Panday pays **R1, 535. 92** to Europcar Car Hire for Pillay's car rental.
- 3.8.11. On the **10 January 2010**, Panday pays **R14, 510. 95** to Westin Cape Town for Madhoe's accommodation for the period 5 – 10 January 2010.
- 3.8.12. On the **20 January 2010**, Panday pays **R43, 500. 00** to Varsity College for tuition fees of Narainpershad's child.
- 3.8.13. On the **12 February 2010**, booking for accommodation of Narainpershad for the period 12 – 14 February 2010 only paid in May 2010.
- 3.8.14. On the **25 February 2010**, Panday pays **R7, 154. 00** to Game Retail for the purchase of Narainpershad's treadmill.
- 3.8.15. On the **8 March 2010**, Panday pays **R60, 000. 00** to Advocate Cars for the purchase of Toyota Corolla for Madhoe's child.
- 3.8.16. On the **20 April 2010**, Panday pays **R7, 256. 00** to Protea Hotel Waterfront at Richards Bay Narainpershad's accommodation.
- 3.8.17. On the **28 April 2010**, Kemp addresses an information note to Ngobeni informing the latter about increased financial expenditure related to Goldcoast Trading CC.
- 3.8.18. On the **1 May 2010**, Coastlands receives tender documents from Narainpershad. This was the first time Coastlands becomes aware of the request.
- 3.8.19. On the **5 May 2010**, Kemp is instructed by Ngobeni to stop the investigation relating to irregular procurement procedures of detachment duties.
- 3.8.20. On the **8 May 2010**, Ngobeni called Booyesen regarding the continuation of investigations relating to irregular procurement of detachment when she had issued instructions that same be stopped, and orders that same be stopped.
- 3.8.21. On the **10 May 2010**, Ngobeni issues an instruction that all direct lines or communication for information relating to procurement procedures must be terminated. Thereafter, she instructs Booyesen to stop investigation.
- 3.8.22. On the **24 May 2010**, Panday pays **R1, 752. 71** to Protea Hotel Karridene for Narainpershad's accommodation.
- 3.8.23. On the **26 May 2010**, the Deputy Provincial Commissioner issues a submission relating to payments of accommodation. Goldcoast is paid **R32, 810, 000. 00** (thirty million eight hundred and ten thousand rand), Pendlebury **R1, 827, 500. 00** (one million eight hundred twenty seven thousand and five hundred rand) and Coastlands **R2, 240, 000, 00** (two million two hundred and forty thousand rand).

- 3.8.24. On the **29 May 2010**, Panday pays **R20, 962. 00** to Royal Palm Dish Restaurant for Ngobeni's surprise birthday party for her husband (Brigadier Lucas Ngobeni).
- 3.8.25. On the **3 June 2010**, Colonel Moodley instructed to cease assisting anyone with documents relating to the investigation.
- 3.8.26. On the **4 June 2010**, submission to BAC certified as urgent by RS Pillay.
- 3.8.27. On the **7 June 2010**, accommodation of 760 members approved by National Commissioner.
- 3.8.28. On the **15 June 2010**, Ngobeni calls a meeting. Present in the meeting is Booyesen, Panday and his legal representatives.
- 3.8.29. On the **21 June 2010**, Booyesen informs Ngobeni that a criminal docket relating to the irregular procurement procedures has been opened.
- 3.9. The total amount received as gratification by Ngobeni, Pillay, Madhoe and Narainpershad is the sum of **R171, 266. 00 (one hundred seventy one thousand and two hundred and sixty-six rand)**.
- 3.10. Between the period November 2009 and August 2010, SAPS paid **R47, 346, 597. 00 (forty seven million three hundred forty six thousand five hundred and ninety seven rand)**, of which **R26, 320, 250 (twenty six million three hundred twenty thousand and two hundred and fifty rand)**, was for SWC accommodation.
- 3.11. SWC accommodation orders to Goldcoast were done on urgent basis with no advertisements or competitive bidding process whilst there was no urgency.
- 3.12. Narainpershad allocated 80% of the accommodation requirements to Goldcoast, 16% to Coastlands and 4% to Pendleburys (Coastlands at R440, 00 p.p., while Goldcoast at R850, 00 p.p.).
- 3.13. Prejudice suffered by SAPS as a result of various unlawful inappropriate conduct by Goldcoast relating to SWC accommodation is **R19, 514, 466. 00 (nineteen million five hundred and fourteen thousand and four hundred sixty-six rand)**.
- 3.14. The total prejudice suffered by SAPS is **R27, 648, 848. 00 (twenty seven million six hundred forty eight thousand and eight hundred forty-eight rand)**.

4. SUSPECTS INVOLVED

4.1. Police officers:-

- 4.1.1. Lt. General Ngobeni;
- 4.1.2. Major-General RS Pillay

- 4.1.3. Col. Navin Madhoe; and
- 4.1.4. Capt. Ashwin Narainpershad
- 4.2. Private individuals and related entities:-
- 4.2.1. Thoshan Panday (the Durban Businessman);
- 4.2.2. Arvida Panday (Panday's mother);
- 4.2.3. Privisha Summerjeeth (Panday's wife);
- 4.2.4. Seevesh Ishwarkumar (Panday's brother-in-law)
- 4.2.5. Goldcoast Trading CC;
- 4.2.6. Bravostat 25 CC;
- 4.2.7. Valoyone 21 CC;
- 4.2.8. Unite Mzansi Trading and Projects CC; and
- 4.2.9. Kaseev Traders CC.
- 4.3. Panday is the owner of Goldcoast Trading CC. Goldcoast was used to defer contracts to other entities referred to in 4.2 above. The owners of all these companies used maiden names to register the companies in order to mislead. These entities and their directors are all involved in the alleged fraud, corruption, money laundering, racketeering and defeating the ends of justice.
5. **CONSTITUTIONAL AND STATUTORY MANDATE**
- 5.1. Section 206(6) of the Constitution of the Republic of South Africa, 1996 provides that, upon 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 committed by a member of police service in the Province.
- 5.2. On the 11 May 2011, and as a result of the provisions of the Constitution referred to above, the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011) (*the IPID Act*), was assented to by the President of the Republic of South Africa.
- 5.3. The IPID Act came into operation with effect from the 1 April 2012. In terms of subsections 28(1)(g) of the IPID Act, the Directorate must investigate corruption matters within the police initiated by the Executive Director on his own or after receipt of a complaint from a member of the public or referred to the Directorate by the Minister, an MEC or the Secretary as the case may be.

- 5.4. And section 28(h) of the IPID Act, provides that the Directorate must investigate any matter referred to it as result of a decision by the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case may be.
- 5.5. Whereas section 28(2) of the IPID Act provides that the Directorate may investigate matters relating to systemic corruption involving the police.
- 5.6. Further, section 7(4) of the IPID Act provides that the Executive Director must refer criminal offences revealed as a result of an investigation, to the National Prosecuting Authority ("NPA"), for criminal prosecution and notify the Minister of such referral.
- 5.7. As a result of the investigation conducted by the IPID under Durban Central CAS 466/09/11, it is the view of the IPID that there is *prima facie* evidence upon which a reasonable court might convict both Madhoe and Panday on a charge of bribery.
- 5.8. That although the investigations reveal that the bribery was conducted in order to stop the investigations relating to irregular procurement procedures of the SAPS detachment duties under Durban Central CAS 781/06/10, the IPID proposes that the criminal prosecution be instituted against Madhoe and Panday whilst investigation in the other criminal matter linked to the bribery are being finalized.

6. THE EVIDENCE

The evidence in support for the recommendations of criminal prosecution of the suspects Madhoe and Panday identified above, is supported by evidence gathered and obtained by the IPID and DPCI's joint investigation in the following:

SUMMARY OF STATEMENTS OBTAINED FROM WITNESSES

- 6.1. **Brigadier Simon Madonsela (A19)**: A former SAPS Provincial Commander for Organized Crime in KZN state that During August 2011, Madhoe came to his office. Madhoe requested him to speak to Booyesen and establish how the case against him ("relating to irregular procurement procedures of detachment duties") was progressing. He told Madhoe that he did not deem it appropriate to ask Booyesen. Further, that he never heard from Madhoe again.
- 6.2. **Sandesh Dhaniram (A22)**: A constable attached to the Crime Intelligence Division before being transferred to Umhlali SAPS states that, during 2009 he was reporting to Col. Ayier ("Ayier") who was attached to the Provincial Task team. He became close to Ayier during this period. He met Madhoe during 2010 at the Provincial Head Office. During 2011 he used information from one disk and copied folders on four separate disks. He initially received the disk from Ayier.

He gave Madhoe the disk and Ayier also gave Madhoe the remaining three disks. Madhoe also informed him that the phones have been intercepted and monitored. Madhoe told him that his man Panday will protect him. Madhoe picked two cell phones from the Provincial Office. Madhoe took one and gave him another.

Madhoe told him that he was going to ask Booyesen to back date an investigation report. Madhoe explained that once the report is back dated it would assist him in his defense and then exclude Section 205 Subpoenas that were obtained by the investigating team.

- 6.3. **Detective Sergeant Deenada Yalan Govender (A24) and (A25):** attached to DPCI Durban Cator Manor state that he was contacted by Madhoe who informed him that he was in possession of photographs concerning members of the DPCI. Madhoe requested a meeting with Booyesen.

Further, he corroborates the evidence of Booyesen in the following:

- He contacted Booyesen and informed the latter that Madhoe wanted to meet him.
- The meeting was to be held at Jaypar Palace.
- Booyesen wanted the meeting to be held at Elangeni Southern Sun Hotel.
- Madhoe, Booyesen and him met at Elangeni.
- Madhoe showed them photos of dead persons from crime scene attended by ICD from the Madhoe's laptop.

- 6.4. **Paul Moster (A28):** A w/o at the Durban Central DPCI states that on the 17 August 2010 he received a call from Panday.

Panday met him at a SASOL garage close to his office. Panday asked him to help him get certain documents in a building in town. Panday wanted him to destroy those documents. Panday phoned a 'Colonel' in his presence.

He contacted Booyesen who told him that he will get a section 252A authority in order for him to continue talking to Panday.

On the 18 August 2010, he met Panday at the same garage. He told Panday that he has considered his offer. Panday told him that he will pay him R200, 000. 00 (two hundred thousand rand) upwards.

Panday never discussed this offer again.

- 6.5. **Major General Booyesen (A5) and (A32):** The KZN DPCI Provincial Head state that he was aware of an investigation relating to irregular procurement procedures of detachment duties. The suspects in the investigation of the irregular procurement procedures of detachment duties are Madhoe, Narainpershad from Supply Chain Management of the Provincial Office of KZN SAPS, Major-General RS Pillay attached to the SAPS Head Office of the Supply Chain Management, the KZN Provincial Commissioner Lt. General Ngobeni and a Mr. Thoshan Panday a Durban businessman.

On the 24 August 2011, he was approached by Sergeant Deena Govender ("Govender"), who informed him that Madhoe wanted to see him. He told Govender that he would meet him the following day.

On the 25 November 2011, Govender phoned him. Govender suggested that they meet at Jaypur Palace. He told Govender that he preferred to meet at the Elangeni Southern Sun Hotel in Durban.

On the very same day of the 25 August 2011 he met Madhoe and Govender at the Elangeni Hotel. Madhoe opened his laptop and showed him photos of the dead people and of a function held at the DPCI Cator Manor. Madhoe asked him about the investigation which was going on relating to the irregular procurement procedures of detachment duties. Further, Madhoe asked him to backdate a report relating to sec 205 in order for same to be regarded as inadmissible in court. He told Madhoe that he would have to speak to the investigating officer and get back to Madhoe regarding the outcome.

On the 26 August 2011, he received a call from Madhoe to come to the parking area at his office. He went down and got into Madhoe's car. Madhoe asked him about the report and he told Madhoe that he cannot find the report. Madhoe took out a brown envelope and gave him a copy of the report. He took the report and contacted the investigating officer Colonel Van Loggenberg ("Van Loggenberg"), to submit the report for finger print examination. The report referred to is attached to the docket as per A10, and relates to irregular procurement procedures of detachment duties.

On the 1 September 2011, he received a SMS (short message service) from Colonel Madhoe's number asking about the developments. At about 12:30 Colonel Sheriff ("Sheriff"), phoned him and told him entrapment in terms of section 252A of the Criminal Procedure Act, 1977 has been approved. He phoned Madhoe who was already outside the building. He went downstairs with a mini recorder in his hand.

The entrapment transaction was executed according to the plan. He gave the agreed signal and walked away. As Madhoe drove off he was arrested. He went to his office and he handed the key to his car to Sheriff. He also informed Sheriff that the memory stick, two disk and external hard drive was in his cabby hole.

The sequence of events for the entrapment:

The entrapment took place in the following sequence of events.

- On the **24 August 2011**, Govender approach Booyesen and tell him that Madhoe wanted to see Booyesen. Booyesen agrees to see Madhoe the following day.
- On **25 August 2011**, Govender phones Booyesen and suggest that they meet at Jaypur Palace. Booyesen prefers Elangeni Southern Sun Hotel
- Later during the day on the **25 August 2011**, Booyesen, Govender and Madhoe meet at the Elangeni Southern Sun Hotel.
- During the meeting at the Elangeni, Madhoe opens his laptop and shows Booyesen the photos of dead people from his laptop.
- Madhoe give Booyesen a memory stick containing the said photos. The photos are about the dead persons relating to the Cator Manor alleged killings of suspects by members of the DPCI of the Cator Manor.
- Madhoe requests Booyesen to pre-date a report concerning an investigation relating to irregular procurement procedures of detachment duties.

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- On the **26 August 2011**, Booyesen receives a call from Madhoe inviting the former to meet him at the parking area of Booyesen's work building.
- Madhoe ask for the report and Booyesen tell Madhoe that he cannot find it.
- Madhoe take out brown envelope containing the said report and give same to Booyesen.
- Booyesen take the report to the investigating officer Van Loggenberg and instruct him to take it for finger print examination
- On the **31 August 2011**, Madhoe hand over two CD's and external hard drive (Info erased) on P1.
- On the **1 September 2011**, Booyesen receives SMS from Madhoe enquiring about the developments.
- On the **6 September 2011**, Booyesen meet Madhoe at McDonalds, the said meeting is arranged by Booyesen in order to negotiate payment and venue.
- On the **7 September 2011**, Booyesen meet Madhoe at a funeral.
- At the said funeral Madhoe give Booyesen First National Bank ("FNB") ATM receipt.
- The slip is written the date 2010/05/10.
- Booyesen hand the slip over to Captain Pelsler ("Pelsler").
- On the **8 September 2011**, Booyesen meet Madhoe the former's work parking area (P1).
- Madhoe is concerned about CCTV footage.
- Booyesen suggest the Blue Lagoon.
- Madhoe agrees to hand over the money at P1 (parking area) of Servamus Building.
- On the very same day on the **8 September 2011**, Madhoe hand over money to Booyesen
- Madhoe is arrested by Sherriff at 12:30.

6.6. **Andrew Neil Denness (A46)**: A Chief Clerk at the Criminal Record and Crime Scene Management Department state that on the 8 August 2011, he saw Madhoe's car parked at one of the PC's parking bays. Madhoe was driving his RUN X. He saw Madhoe going at the back of his car. Took out a small suitcase and moving towards a Lexus that was parked next to the RUN X.

He saw Booyesen coming from the side of the Lexus and at the same time saw Madhoe climb into his car. Madhoe pulled off but before he could go far he was stopped by unknown individuals. He waved at Madhoe who seem not to notice him. Booyesen asked him to check if Madhoe was being stopped and he answered in the negative. Booyesen was having a small key in his hands.

Whilst they were in the lift Booyesen told him that he set up a trap.

- 6.7. **Colonel Johannes Van Loggenberg (A45) and (A47):** A Colonel of the KZN Durban DPCI Commercial Crime Unit. He is the investigator officer of this Durban Central CAS 466/09/11. He corroborates the evidence of Booyesen in all material respects where Booyesen refers to him and he refers to Booyesen.

Further, that he receive a green Woolworths plastic shopping bag containing a size A4 brown envelope on 26 August 2011. He placed these items in a SAPS exhibit bag with serial number FSD 711703.

- 6.8. **Colonel Phillip Herbst (A7):** A Colonel of the KZN Durban DPCI Commercial Crime Unit states that on the 29 August 2011, at approximately 08h00, Van Loggenberg handed a sealed SAPS tamperproof exhibit bag bearing serial number FSD 711703 to him. The exhibit was registered in the DPCI exhibit register SAPS 13/1/2011 by Van Loggenberg. He signed for exhibit and placed it in the exhibit safe. Further that he is the only person in possession of a key for the exhibit safe.

On the 30 August 2011, he booked the exhibit as referred to above, and completed a LCRC Laboratory Processing Request Form. On the 31 August 2011, he took the said exhibit to the LCRC in Pietermaritzburg where he handed same to Warrant Officer Els for finger prints analysis. W/O Els handed a copy of the LCRC Laboratory Request Processing Form to him with Lab No. 78/08/11 and LCRC Reference No. 782/08/2011.

He requested W/O Els to cut off the envelope that was in the SAPS tamperproof exhibit bag bearing the serial number FSD 711703 and to place it in another SAPS tamperproof exhibit bag bearing serial number FSB 1637395 in his presence and marked it with Durban Central CAS 781/06/2010; DPCI SAP 13; PMB LCRC 782/08/11; PMB Lab 78/08/11 and handed same to him.

On the 1 September 2011, he registered the SAPS tamperproof exhibit bag referred to above in the DPCI exhibit register. While the exhibits were under his care and control they were never tampered with.

- 6.9. **Colonel Phillip Herbst (A11)** During a search and seizure operation at 303 The Quartz which is the business premises of Goaldcoast Trading that is registered under the name Panday he noticed a copy of a set of fingerprints. The fingerprints were in a SAP 91(a) Enquiry intended for a police clearance of Panday.

On the 14 September 2011 he gave the same SAP 91(a) Enquiry form to W/O Els of the PMB LCRC and requested Els to compare the prints found on the document with those handed and referred to in A7 above.

6.10. **Seemla Padmawtee Kunjbehari (A12)**: A Chief Administration Clerk at the Durban North Police Station state that Col. Herbst showed her a copy of a SAP 91(a) that was seized during a search at the business premises of Goldcoast Trading. She states that she took the SAP 91(a) Enquiry form which is an application for police clearance. Panday also signed the SAP 91(A) in her presence.

6.11. **Christaan Johannes Els (A8)**: A W/O in the SAPS attached to the Pietermaritzburg LCRC with 17 years' experience as a finger print expert and having been employed as a Laboratory Technician for 4 years state the following:

On the 31 August 2011, he received a forensic bag with seal number FSD 711703 from the LCRC exhibit officer W/O DS Nel. He photographed the bag and the PMB LCRC fingerprint laboratory docket with reference number 78/08/2011 was opened.

The forensic bag was opened and the contents removed in the presence of Col Herbst. A green Woolworth's bag containing a brown envelope with a seven page document inside. The green plastic bag was not examined as per instruction. The envelope was marked as exhibit "A" and the document B1-B7. The seal on the top of the envelope was removed by him and placed in the forensic bag FSB 1637395 and handed over to Col. Herbst. The exhibits were then examined using chemical process and identifiable fingerprints were developed on the envelope exhibit A and documents B1, B6 and B7.

The exhibits were placed back in the forensic bad FSD 587389 and FSD 587391 and returned to the safe for safekeeping.

On the 14 September 2014, he received a copy of a set of fingerprints on the form SAPS 91(a) on which the name Panday appeared. The fingerprints were handed to him by Col. Herbst. He compared the prints found on the exhibit B1 with the prints as found on the SAP 91(a) and found that a left thumb exhibit B1 and the left thumb on the SAP 91(a) to that of the same person.

6.12. **Vassan Soobramoney (A30)**: An ex-police officer and the previous investigating officer of the Durban Central CAS 781/06/10. He compiled the Preliminary Report on Investigations Commercial Crime Enquiry 07/05/2010. The report is attached as per A10.

6.13. **Sgt R Lee (A41)**: Received a device (covert video camera), from Booysen. On the 8 September 2011 he created a folder on his Transend memory stick and thereafter burned a DVD Disk using Nero. On the same day he returned the camera and DVD to Booysen.

6.14. **Captain Hendrick Pelsler (A6); (A15) and (A27)**: A Captain in the DPCI Provincial office, will state that he is the coordinator for undercover operations and traps for the KZN Province. He is also the liaison officer between DPP and SAPS with regard to operations in terms of section 252A of the Criminal Procedure Act, 1977.

He will state the on the 25 August 2011, Booysen summoned him to his office. Booysen informed that he had a meeting with Madhoe earlier that day and in that meeting Madhoe requested him to alter the date on a document which would help his cause in the corruption matter. Booysen told him that discussions were going to take place between him and Madhoe and that he needed a section 252A authority.

He contacted Adv. Gert Nel from the DPP Office in PMB, who gave verbal authority to Booyesen in order to continue holding discussion with Madhoe. On the same day he opened a file in terms of section 25A operation with reference no. 09/08/2011.

- 6.15. **Leonard Bradford Sheriff (A1):** A Colonel attached to the Durban Commercial Crime Unit state that on the 8 September 2011, he was informed that Madhoe had approached Booyesen with the intention of bribing him and was in the process of handing cash to Booyesen in return for altering a document which Madhoe and Panday would use in a civil matter relating to Section 205 subpoenas.

He arranged a team of investigators to assist him with the arrest and placed them at the Provincial Office building where the handover was to take place. Just before 13:00 he witnessed Madhoe handing over a suitcase which he placed in the motor vehicle of Booyesen. He gave a go ahead to his members to arrest Madhoe.

When he reached level P1 he informed Madhoe of his rights and why he was being arrested. At all times Madhoe gave his full co-operation. Madhoe's motor vehicle was searched and the said document (Preliminary Report on Investigations Commercial Crime Enquiry 07/05/2010) that Booyesen gave to Madhoe was found in the latter's motor vehicle. Booyesen's car was searched and the suitcase with the money was found.

- 6.16. **Krishna Mannikam Naicker (A18):** A Major at the DPCI Durban Commercial Crime Unit state that on the 8 September 2011, at about 05h40, he received a call from Sheriff who requested his assistance in an operation without providing details of the operation. On the same day at about 11h30, he received a call from Sheriff who told him to meet him at John Ross Building at 11h30. Further, that he must inform Lt. Col. R Pillay and he immediately conveyed the message to Lt. Col. R Pillay.

On the same day at about 12h00 a meeting was held at Col. Naidoo's office. Present at the meeting was Col Naidoo, Sheriff, Lt. Col. R Pillay, Capt. Helberg and him. Sheriff informed them that Madhoe was about to bribe Booyesen at the Servamus Building. Sheriff confirmed that he made an application in terms of section 252A. Further, Sheriff explained that Madhoe was driving a black RUN X with a NUR number plate.

Sheriff informed the team as follows:

- Col Naidoo to take up position at the staircase to parking P1;
- Capt. Helberd to block the exit points in front of Servamus Building;
- Lt. Col. R Pillay to secure the exit at the rear of the Servamus Building; and
- Sheriff will be opposite the Servamus Building, near the lodge.

On the same day at about 12h35, Sheriff informed them that the black car had entered the building and that he will tell them when to go to the direction of Booyesen's car. At about 12h45, he received a call from Sheriff informing them that the exchange had taken place and that they must proceed to the direction of Booyesen's car where they must delay Madhoe until he arrived to arrest him. He informed Col. Naidoo and they took different directions, on arrival he found Col. Naidoo on the driver's door and tried to open the front door and could not open same. Sheriff arrived and arrested Madhoe.

Sheriff instructed him to assist Col. Naidoo to conduct the search. Members of the fingerprints office were present, that is,

- Lt. Col Ngcobo, exhibit collector;
- Capt. R Dlodlo photographer; and
- Col. Boltman scribe.

The money was seized and the seizure was completed at 14h10. The money was counted at Room 518 from 14h10. R28, 000. 00 (twenty thousand rand), was taken for fingerprint examination. The other exhibits were handed over to Capt. Helberg. They decided to continue counting the money on Monday. Helberg sealed the bag and handed the money in the DPCI SAP 13. On Monday the 12 September 2011, they continued counting the money and registered the money into SAP 13 according to their serial numbers.

- 6.17. **Capt L Helberg (A40)**: A Captain of the DPCI Durban Commercial Crime Unit will state that he participated in the arrest of Madhoe. He corroborates the evidence of Krishna Mannikam Naicker in all material respects. Further, that he searched a black car Toyota RUN X with registration number NUR 42857. When he searched the RUN X, he was with Col Sheriff, Col. Naidoo, Lt. Col. Pillay and Major Naicker.

He was requested by Sheriff to search Madhoe's and Booyesen's motor vehicles. Sheriff gave him a small silver key and said it is for the lock that is used to lock the suitcase.

He searched the black RUN X and asked Madhoe to observe him whilst he was conducting the search. Col. Naidoo gave him the key of the motor vehicle. Also present were members from the Criminal Record Center viz., Lt. Col Ngcobo, exhibit collector; Capt. DR Dladla, photographer; and Col. Boltman, the scribe. He found the following in the car:

- Brown envelope with Commercial Crime Enquiry Report 7/05/2010, found in the boot;
- Brown envelope with 5 CD's, found underneath the seat;
- Brown envelope with Commercial Crime Enquiry Report, underneath front passenger seat;
- Receipt Jarpur Express Fast Foods R65, 80, Cubby;
- Blackberry – Serial no. 25038-RCN 70UW with SIM, found in the consol between the front seats; and
- Nokia – Serial No.: 661AC-RM 484 with SIM, found in the consol between front seats.

He also searched the vehicle of Booyesen – Silver Lexus registration no. ND 94210 and found the following:

- Poken flash drive and three CD'S, found in the Chubby; and
- Money received from Col. Madhoe, found in the boot.

When he was searching Booyesen's vehicle, Madhoe informed Sheriff that the suitcase and money that he handed to Booyesen are in the boot of the vehicle. Photos were taken of that. He requested Sheriff to test the key that he gave to him with the lock that was next to the suitcase. The key and the lock were handed to Major Naicker.

The officers from the CRC, Major Naicker and him went with the exhibits to the 5th floor of at Servamus Building. The money and the suitcase were in possession of Lt Col Ngcobo who was always in his presence.

In room 518, the top and the bottom of each of bundle of the notes were photographed. Major Naicker and Col. Boltman kept record of the serial numbers. He used machine o count the money. Six hundred note bundles had Nedbank slips attached. The total amount in the suitcase was counted as R1, 362, 000. 00 (one million three hundred sixty-two thousand rand). Of this R28, 200. 00 (twenty eight thousand rand) was taken and sealed in exhibits bag by Lt. Col Ngcobo.

He received a device (covert video camera) from Booyesen. On the 8 September 2011 he created a folder on his Transend memory stick and thereafter burned a DVD Disk using Nero. On the same day he returned the camera to and DVD to Booyesen.

- 6.18. **Capt L Helberg (A44)**: This is an additional statement correcting the total amount confiscated amount from Booyesen's car. The total sum is R1, 372, 000. 00 (one million three hundred seventy-two thousand rand) and not R1, 362, 000. 00 (one million three hundred sixty-two thousand rand) as per A40. The witness states that it was an error on his part.
- 6.19. **Desiree Haug (A9)**: She will state that she is the Supervisor/Manager of African Palms where Panday purchased an office. Her brother is former police officer. She was picked up by Panday and she listened to the news on the radio in Panday's car with regard to the arrest of a Police Colonel. Panday said that was not the amount and the bastards have stolen some of it.
- 6.20. **Col Devanayagan Padayachee (A29)**: A Colonel at the Crime Intelligence of SAPS states that he visited Madhoe in the cells after he was arrested. He knew Madhoe for over 10 years and they were friends. He visited Madhoe on several occasions in the company of Madhoe's wife. On the 11 September 2011, Madhoe's wife asked his husband why he did it. He replied that he and his family had taken a lot during the year and this was a way to survive. The sequence of his engagements with Madhoe is the following:
- On the **8 September 2011**, Madhoe request him to inform Moodley that he wants to speak with Moodley. Madhoe communicate with Moodley over the phone;
 - On the **9 September 2011**, Madhoe is brought to the Provincial office from Durban Central Police Station. In the presence of Brig. Ndlovu and ask him for advice regarding his bail application;
 - On the **11 September 2011**, Madhoe's wife accompanies Padayachee. In his presence, Madhoe's wife asks Madhoe why he did it. Madhoe replied that he and his family had taken a lot during the year and that was a way of ending it;
 - On the **15 September 2011**, he visited Madhoe in the cells because Madhoe wanted to speak to Moodley;

- On the **17 September 2011**, Madhoe was angry that he did not get bail. Moodley informs him that he will see Madhoe the following day; and
- On the **18 September 2011**, Madhoe was taken to his house to fetch a document in support of his allegations made against Booyesen. It appears that Madhoe only wanted to do a prayer and no documents were produced.

6.21. **Thamodran Naidoo (A3)**: He is adult male person states that he went around withdrawing money for Panday. This happened at NEDBANK and other ATM's. Despite his efforts Panday gave him nothing.

6.22. **General D Moodley (A14)**: the Head of KZN Provincial Crime Intelligence Division will state that he visited and interviewed Madhoe while in custody. Madhoe informed him that the money that was recovered belongs to Booyesen. Madhoe informed him that there is damning evidence that implicate Booyesen in the torture and murder of suspects linked to cases handled by the Cato Manor Organized Crime Unit.

Madhoe told him that the money handed over to Booyesen is monies he was returning which were paid to him on a previous occasion. For Madhoe's loyalty he would have received a back dated document, that is, the Preliminary Report – Commercial Crime Enquiry 07/05/2010). He was taken aback by the latest revelations by Madhoe. Further, Madhoe told him that should the provincial head (Ngobeni) suspend him without pay she would 'see her ass'.

He arranged with Col Chetty to accompany Madhoe to his house to obtain the evidence. He was later briefed by Col. Chetty that it appeared that Madhoe made up the story in order to go home and pray or that he wanted to accomplish some other thing at home.

TECHNICAL EVIDENCE

- 6.23. **A13; A34; A38; A48 and A50**: Deals with the evidence relating to the cell phones confiscated from the accused person whereby the police conducted mirror images and extracted information in order to determine the use in commission in the offence of bribery. Information of movement of the accused linked to the case was found. This information was determined by Computer crime experts and Cyber-crime expert.
- 6.24. **A54 AND A55**: This relates to report by the LCRC report by Capt. Dlodlo and photo album of the scene as well as exhibits.
- 6.25. **A56**: It is the scribe report prepared by Col. Boltman.
- 6.26. **A57**: This are the copies of the Act 70 transcribed record regarding the monitoring of phone calls of the accused by Col. Brian Padayachee of the Crime Intelligence.
- 6.27. **A52 and A53**: This are section 205 of the Criminal Procedure Act No.51 of 1977 applications by Col. P Du Plooy to Vodacom and MTN respectively.
- 6.28. **A35; A36 and A51**: Forensic sample was taken from the accused and was send to Forensic Laboratory for DNA examination and a letter from the Forensic Science

Laboratory regarding the DNA examination relating to FSB 1637395, respectively. The results were negative.

- 6.29. **A31 and A33:** These are statement by NEDBANK employees who provided information on the NEDBANK paper strips used to secure bundled cash. The monies recovered in the operation were wrapped with these strips. Information about Goldcoast was also furnished. Information relating to the three cheques drawn was also furnished.

A section 236 of the CPA statement was also obtained regarding the bank statements of Goldcoast Trading CC banking account.

- 6.30. **A39; A42 and A43:** Section 205 of the CPA application was made by Sheriff regarding the BOB ATM receipt obtained by Booysen from Madhoe.

A section 236 of the CPA application was also made with regard to Madhoe's account.

A section 213 of the CPA statement by Alan Bentley of the FNB regarding the FNB ATM slip from Madhoe was obtained, confirming its link to Madhoe's FNB account.

THE ACCUSED'S CASE

- 6.31. **Warning statement of Col Madhoe (A2):** A Colonel in the KZN Provincial Office, the Head of SCM and a suspect state the following:
- 6.31.1. During 2009, he was working at the Acquisition Section of the Supply Chain Management ("SCM"), at the Provincial Office of SAPS until September 2010. It was there that he met Panday.
- 6.31.2. Panday own a company called Gold Coast Trading which facilitated accommodation for the police. It was around November 2009 when he met Panday for the first time
- 6.31.3. In January 2010 he went to Cape Town and stayed at the Western Grand hotel with his family. He did not pay for the accommodation because Panday had done the bookings and must have made the payment. When he got back to Durban he paid Panday R30.000.
- 6.31.4. Panday also assisted him to purchase a vehicle for his son for which he paid Panday R60,000.00 (sixty thousand rand). The car is a white 2002 Toyota Corolla.
- 6.31.5. During May 2010 he was approached Ngobeni. Ngobeni asked him if he knew of anyone that could assist her with a party for her husband Brigadier Ngobeni. His understanding was that Ngobeni wanted someone to pay for the party. He told Ngobeni that there was somebody, a supplier that the police was using after that he would ask.
- 6.31.6. He then contacted Panday who told him that he (Panday) was willing to assist. He then gave Panday particulars of Ngobeni's secretary. Not long thereafter, Panday came to his office and told him that he (Panday) had made a booking at the Dish in Gateway for the party of Brigadier Ngobeni. He was thereafter also invited to the said party.
- 6.31.7. About two months after the party, an article appeared in the newspaper about the party for Brigadier Ngobeni. He was called to the office of Ngobeni. Ngobeni asked him why he did

this to her. He replied that he had nothing to do with that. He felt that Ngobeni was blaming him for the article.

- 6.31.8. About two weeks ago he went to see Panday and told him that he was fed up with the whole case hanging over him and if he can speed it up or when was he going to see that end. Panday told him that if they could speed up the case relating to the section 205's then they could get closure quicker.
- 6.31.9. He told Panday about the progress report which he was aware of and was drafted by Col Soobramoney. Further, that they could have it back dated prior to the issue of the section 205. Panday agreed to that and suggested that he contact Booysen.
- 6.31.10. Not long thereafter he contacted Booysen and asked to see him. He met Booysen at the Elangeni Hotel in Durban where he told Booysen if it was possible to back date the said progress report prior to the issuing of the section 205. Booysen said that he could possibly assist.
- 6.31.11. About a day later he met Booysen at the SAPS Provincial Office where Booysen told him that he could assist but it would cost him. He was startled and did not expect that monies would change hands. He asked Booysen how much and Booysen told him there were people to pay. Booysen showed him two fingers to which he interpreted to mean R2 million rand.
- 6.31.12. He contacted Panday and told him that the person who could help them wanted R2 million. Panday said that he was prepared to give a million rand and another million later once everything was finalized.
- 6.31.13. He then went back to Booysen and told him that Panday was prepared to pay R1 million now and one million later. Booysen said that he rather wanted R1, 5 million (one million five hundred thousand rand) now and R500.000. 00 (five hundred thousand rand) later.
- 6.31.14. He then went back to Panday who agreed to hand the money over namely, R1, 500, 000. 00 (one million five hundred thousand rand) now and R500 000.00 (five hundred thousand rand) later.
- 6.31.15. He contacted Panday around 9am today after meeting Booysen and it was decided that the money would be handed to Booysen by him (Madhoe). He told Panday to have the money ready. He then met Panday at hypermarket by the sea at the parking lot.
- 6.31.16. Panday handed him a suitcase which he (Panday) placed in the boot of his car. Panday also handed him the keys of the suitcase. He told him that the money was in the suitcase. He says that Panday knew that money was in exchange for the document and Panday knew that it was illegal.
- 6.31.17. He then took the money and after receiving a call from Booysen he met him (Booyesen) at level P1 Police Provincial building.
- 6.31.18. They met at around 12:20. He placed the suitcase with the money in Booysen's motor vehicle. Booysen asked him to open the suitcase in order to see if their money was in it. He opened the suitcase and showed Booysen the money and gave Booysen the key.

Thereafter, Booysen handed over the document to him and he got inside his car and started driving after which he was arrested.

- 6.31.19. During August 2010 the police searched his office and his car. He had a copy of the progress report which was seized by the police. The progress report related to his involvement in the procurement fraud which was drafted by Col. Soobramoney. The progress report was left on his table by a black person when he was not there, He does not know who it was.
- 6.31.20. During April/May 2011 he received a phone call from Capt. Govender of POPS who told him that they could bring him down and had documents implicating him in the procurement fraud.
- 6.31.21. During October and November 2009 Capt. Narainpershad informed ORS that they could also use Panday for accommodation if there were no registered suppliers in the area where it was needed. Narainpershad worked in his office.
- 6.31.22. If Captain Stephen was not available or his commander they could deal directly with them as far as it related to accommodation for ORS. Narainpershad was the main person that was in charge of the office that obtained quotes and dealt with suppliers. Narainpershad in turn reported to him.
- 6.31.23. He started realizing by January 2010 that most of sourcing of accommodation for police was given to Panday. He queried this with Narainpershad. Narainpershad stated that Panday gave them a good service and was the cheapest around.
- 6.31.24. He also sent a letter to Head Office saying that Goldcoast trading was utilized all the time which was a security risk. The letter was signed by Ntanjana. In emergency cases they deal with registered service providers and deal directly with them.
- 6.31.25. There were few cases where he authorized single quotes even though he found out later that only a Brigadier and higher could authorize. This has been ongoing for a number of years because of pressure put on him by management.
- 6.31.26. He was satisfied with Panday's prices for accommodation as it seems realistic for the area that he stated.
- 6.31.27. In February 2010 he sent Panday a letter informing him that his prices were fluctuating and he requested him to make himself available for discussion in order to discuss a cap rate.
- 6.31.28. Invoice for payment of service provider use to come directly to Narainpershad who would do the scheduling for authorization of payment by finance. There were also others who did the scheduling.
- 6.31.29. The approval of these payments can be made at any level as long as the procurement approval was done at the right level. If the quotation for procurement is over R200, 000. 00 (two hundred thousand rand) approval must be given by head office.

- 6.31.30. In the beginning of 2010 he started attending the section 4 meetings for the world cup soccer although Col. Odendaal was the nominated representative. He was brought in the later stages to assist Col. Odendaal with matters relating to the needs of the different components. All needs of the different components of the Police were sent through to his office.
- 6.31.31. His office contacted suppliers of accommodation and requested quote for the SWC. About 8 suppliers replied back which they sent to Head Office for discussions. The suppliers did indicate that they have accommodation for the mentioned amount of space, costs, and quantity of members.
- 6.31.32. Head Office then notified them it had approved certain suppliers and for how many members and costs.
- 6.31.33. When it came to other items that the Police needed for SWC they obtained quotes and if the amount was above R200, 000. 00, they forwarded it to Head Office otherwise it was approved by Provincial level.
- 6.31.34. He did not have much to do with procurement of equipment because he was busy. Those were dealt with by Narainpershad who received quotations and processed them. Thereafter Narainpershad received invoices for equipment provided. Narainpershad also approved quotations to the amount of R100, 000. 00 (one hundred thousand rand). There are other offices that could and did authorize quotations.
- 6.31.35. Other suppliers also supplied the SAPS with equipment besides Panday. His department never received any equipment that he was aware of. There might have been a small item that was signed for. The person receiving the quotation must check it and make sure that the price is realistic. The amount for the order form authorized will be captured on the system and once the invoice for that amount is received no further amounts will be paid out.
- 6.31.36. As far as the Treasury Regulations are concerned relating to profit margins of suppliers he is not aware that there is any ceiling on the percentages be it equipment or accommodation. He is not aware of any fraudulent accommodation or equipment claims that were submitted.
- 6.31.37. Once the equipment is delivered the delivery note is signed by the receiver who will ensure that the delivery note comes to the office or GPA. Or equipment purchased must be placed on Government property account.
- 6.31.38. In May 2010 he was called by Ngobeni's secretary to attend with Ngobeni. Present at this meeting was Booyesen, Masemola and Kemp. Further, he states that he cannot recall if there were other officials. At this meeting Ngobeni mentioned that the investigation into procurement irregularities must stop and that Ntanjana must first conduct an internal investigation and submit a report to core management.
- 6.31.39. Further, he states that he does not know if Panday had dealings with any other officer at Provincial building besides those he had already mentioned.

- 6.31.40. Further, he states that he is not aware of any favors that Panday did for any other officer besides the Provincial Commissioner, which he has already mentioned and that last month Capt. Narainpershad did mention to him that he did take a loan from Panday for school or varsity fees for his son. He did not mention anything else.
- 6.32. A57: These are the SAP 69 OF Madhoe.
- 6.33. Phillip Herbst (A17): A Colonel of the KZN DPCI and part of the investigation team of the Durban Central CAS 781/06/10, states that he applied for the warrant of arrest of Panday as per A16.
- 6.34. Glory Makombisi Vukeya (A20): A Constable stationed at the OR Tambo International Airport Border police state that she received a circulation report about Panday arriving from Lusaka and a suspect circulated under Durban Central CAS 466/09/11. She arrested Panday.
- 6.35. Warning statement of Panday (A21): Panday's warning statement obtained by Sheriff. Panday elected not to make a statement.

7. ANALYSIS OF EVIDENCE

Having regard to all the evidence above, hereunder is the IPID motivation for criminal prosecution on a charge of bribery against both Madhoe and Panday.

- 7.1. Prior to the 8 September 2011, Madhoe and Panday were desperate to have the investigations under Durban Central CAS 781/06/10 stopped or gone and/or that the evidence, gathered during the investigation relating to the irregular procurement procedures of detachment duties is destroyed. This evident from the statements of A19, A22, A24, A25 and A28.
- 7.2. This desperation led both Madhoe and Panday to approach any police officer within the DPCI or closer to the investigations team irrespective of the person rank. The desperation was also evident when they resorted to blackmail and offer to pay money in exchange of information or evidence relating to investigations. See A24, 25 and A28.
- 7.3. It is for this reason that Booysen had to resort to legal means in order to ensure that the unlawful conduct by both Madhoe and Panday is stopped, by engaging in operation legally sanctioned in terms of section 252A (1) of the Criminal Procedure Act No.51 of 1977. The section provides that:

"(1) Any law enforcement officer, official of the State or any other person authorised thereto for such purpose (hereinafter referred to in this section as an official or his or her agent) may make use of a trap or engage in an undercover operation in order to detect, investigate or uncover the commission of an offence, or to prevent the commission of any offence, and the evidence so obtained shall be admissible if that conduct does not go beyond providing an opportunity to commit an offence: Provided that where the conduct goes beyond providing an opportunity to commit an offence a court may admit evidence so obtained subject to subsection (3)."

- 7.4. Having regard to the evidence of the witnesses referred to above and the conduct of both Madhoe and Panday, any suggestion that the conduct of Booyesen go beyond providing an opportunity to commit offence is unfounded and is not supported by a shred of evidence.
- 7.5. Having said that the events leading to the operation and arrest of Madhoe and later Panday cannot be ignored in the following:
- 7.5.1. On the 17 August 2010, Mostert is approached by Panday to help him get certain documents at building in town and have the documents destroyed;
- 7.5.2. During August 2011, Madhoe obtains from Dhaniram, photos of the dead suspects allegedly killed by the Cator Manor DPCI in order to blackmail Booyesen to stop the investigation;
- 7.5.3. In the very same month of August 2011, Madhoe approached Brigadier Madonsela and requested the latter to establish from Booyesen how the investigation against him was progressing;
- 7.5.4. On the 24 August 2011, Madhoe approached Booyesen's subordinate Govender to range a meeting between him and Booyesen. Madhoe uses the photos unlawfully obtained to blackmail Booyesen;
- 7.5.5. On the 25 August 2011, Booyesen meet Madhoe at Elangeni Hotel and shows him the said photos of the dead suspects involving members of the Cator Manor DPCI, in order for Booyesen to alter a document that Madhoe and Panday will use in a civil litigation intended to make the subpoenas legally obtained unlawful;
- 7.5.6. From the 26 August 2011 until the 7 September 2011, Madhoe persistently calls Booyesen persuading the latter to agree to his request;
- 7.5.7. In the meantime, Booyesen arranges an undercover operation in terms of section 252A. The authority is granted by the office of the DPP.
- 7.5.8. On the 8 September 2011, the operation is set into motion and Madhoe is arrested.
- 7.6. As aforesaid, the events leading to Madhoe's arrest are indicative of a person that was aware about his unlawful conduct. Further, as police official and senior member of the Provincial Office it is assumed that he knows and understands that to blackmail and bribe a person is unlawful.
- 7.7. The conduct of Booyesen referred to above, we submit with respect that it did not provide Madhoe with an opportunity to commit an offence. Therefore, the evidence obtained through the operation conducted on the 8 September 2011, is admissible in terms of the provisions of section 252A of the Act 51 of 1977. This is also supported by the following:
- 7.7.1. Captain Hendrik Pelsler who is in charge of the undercover operations of DPCI was approached by Booyesen to make the necessary relevant legal arrangements in order to conduct a lawful operation;
- 7.7.2. He arranged a team to assist him with the operation that included members of the LCRC;

M

Lcu

- 7.7.3. The team was only informed about the procedure and what is expected from them just before the operation;
- 7.7.4. Photos of the operation, the money, and all items seized from both Madhoe and Booyesen were taken.
- 7.7.5. All exhibits were registered in the DPCI SAP 13.
- 7.8. However, what is interesting is the finding made by the fingerprint expert W/O Els regarding the exhibits obtained from Madhoe is the Preliminary Criminal Investigation Report Enquiry that Madhoe handed over to Booyesen in order for the latter to alter it, in the following:
- 7.8.1. Booyesen gave the report to the Provincial Commissioner Ngobeni and Ntanjana only;
- 7.8.2. When Booyesen received the report in a brown envelope he put same in Woolworths plastic bag and sealed;
- 7.8.3. The brown envelope was handed to Els to conduct fingerprint examination. Els numbered the pages of the documents as per B1-B7;
- 7.8.4. On examining the document using a chemical process an identifiable fingerprints were developed on the envelope and documents B1, B6 and B7; and
- 7.8.5. Panday's fingerprint were compared to that of Madhoe;
- 7.9. This document is an official police document that is confidential. This document was meant for the most senior managers of the KZN Provincial Office even to the exclusion of Madhoe as a Colonel in the SAPS KZN Province. This shows the extent to which both accused persons (Madhoe and Panday) would go in order to obtain the information that implicates them in Durban Central CAS 781/06/10 without being given an opportunity to commit an offence.
- 7.10. This finding by the fingerprints expert further indicate that the evidence obtained by the investigation team during this operation is admissible and consistent with the provisions of section 252A of the Criminal Procedure Act.
- 7.11. However, same cannot be said about the conduct of Booyesen who was approached by Madhoe through Govender. Further, the subsequent calls made and sms sent by Madhoe to Booyesen is clear indication that Booyesen did not provide an opportunity to Madhoe in order for him to commit an offence.
- 7.12. The operation was authorized by the Office of the DPP of the KZN in accordance with the provisions of section 252A of the CPA.
- 7.13. The suggestion that the money belonged to Booyesen is farfetched especially when Panday's NEDBANK account statement is taken into consideration as well as the statement of A3, further, the statement of A24 and A25.

DURBAN CENTRAL CAS 466/09/11

BRIBERY

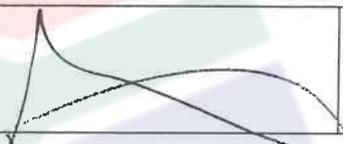
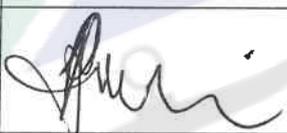
7.14. Having regard to all the testimony referred to above, it is submitted that there is a prima facie case against Madhoe and Panday.

8. **RECOMMENDATION**

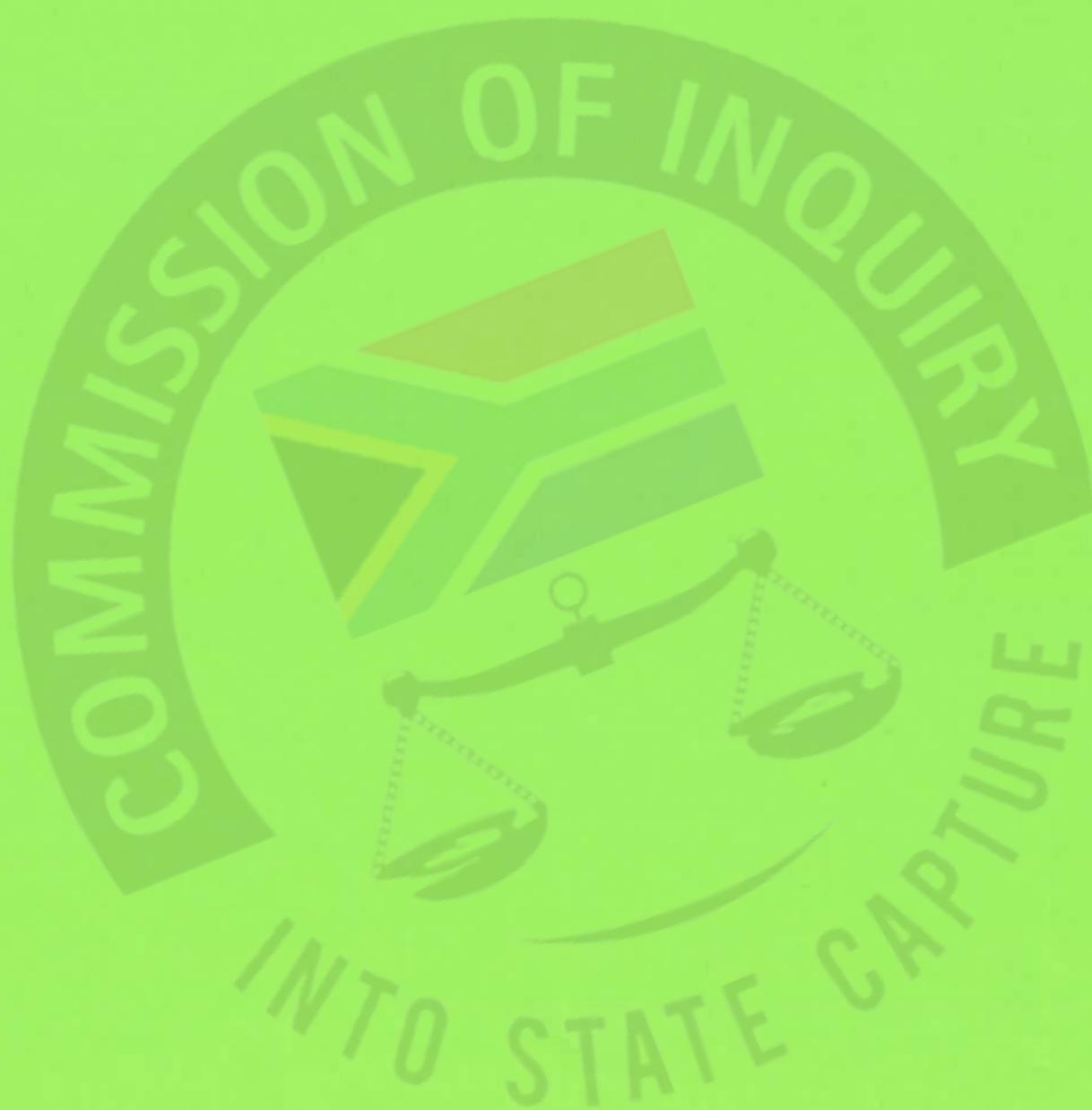
Based on the available evidence, the Independent Police Investigative Directorate recommends that Colonel Madhoe and Thoshan Panday be criminally prosecuted on a charge of;

- Bribery

The above recommendation is in terms of section 7(4) of the IPID Act No. 1 of 2011

Full Names of Investigator	Humbulani Innocent Khuba		
Signature		Date	09/02/2015
Full Names of Chief Director Investigations	Matthews Sesoko		
Signature		Date	09/02/2015
Full names of the Executive Director	Robert John McBride		
Signature		Date	09/02/2015

03



MS 3

Matthews Sesoko

From: IKhuba@ipid.gov.za
Sent: Monday, September 30, 2013 10:47 AM
To: KMbeki@ipid.gov.za
Cc: DMokoena@ipid.gov.za
Subject: Interview with General Dramat

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

Kind Regards

I H KHUBA

*Free*

04



MS 4

DISCIPLINARY HEARING

DATE: 2016-04-07 to 2016-08-16

In the matter between

IPID

Employer

and

MR MATTHEWS SESOKO

Employee

CHAIRPERSON : ADVOCATE MXOLISI ZONDO

ON BEHALF OF THE EMPLOYER:

ADV THEO MOKHATLA

ON BEHALF OF THE EMPLOYEE:

ADV BART FORD

Accura Africa Group

Your Forward-Thinking Partner

As per

07 APRIL 2016

ON RECORD

PROCEEDINGS RESUME ON 07 APRIL 2016

CHAIRPERSON: Is it on? A very good morning to everyone. We have already done the introduction before we went on record and as stated earlier, my name is Mxolisi Zondo. I am a practising advocate from the Johannesburg bar and I have been appointed to preside over this disciplinary hearing and then I would like to start from my right again. Out from, signed out for, for the record introduction, please.

MR MATHIBE: My name is Thabang Mathibe. I am from Thabiso Maseko Attorneys. I represent the employee.

10 **CHAIRPERSON:** Yes.

MR SESOKO: My name is Matthews Sesonko. I am the employee.

MR PALADI: Sam Paladi from the labour relation component, IPID.

CHAIRPERSON: Yes.

MISS GORDON: Cindy Gordon from State Attorney.

MR MOKHATLA: Theo Mokhatla from the Johannesburg Bar. I represent the employer.

20 **CHAIRPERSON:** Thank you. Just before we went on record I was advised by the parties that they had had a discussion and they reached an agreement that, to the effect that, owing to the fact that council for the employee is not available and there is some documentation which had been requested by the employee in order for him to prepare for the hearing that the hearing obviously subject to my decision and availability be adjourned to the 6th of May for a, an argument on a primary point, or points which would be raised by the employee, and that date is confirmed. I am available on that date and we had since agreed to the parties to set

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the matter down for the 6th of May for the primary points and what has also been agreed upon that we then set down, a week for the conductor of the proceedings, that is the continuation of the hearing or commencement of the hearing depending of course on which, on which, on which are enrolled needless to say that if I uphold the points which the employee will raise. Me though, I do not have any ideas to what, whether they, what impact they might have on the hearing and discontinuation or commencement, but I suppose it is my ruling that will then determine the way forward, whether then we, we proceed on the week of the 20th. So,

10 what has happened then is that the parties have agreed, We have agreed to schedule the matter, set the matter down for the week of the 20th of June up to the 24th of June at ten o'clock and also on the 6th when the primary points will be argued the matter will be heard at ten o'clock, where after I will then make my ruling and then, as I said earlier, depending on how I ruled, then the matter will be set down on these tentative dates which is the 24 June 2016. I think I have more or less captured everything that was agreed upon unless I have left something out.

MR MOKHATLA: No, I think you have captured everything.

20 **CHAIRPERSON:** Okay. Are there any other issues that each party wants to raise before we adjourn or, I mean, that will suffice for now?

MR MOKHATLA: No, I think that is sufficient for now, Chair.

CHAIRPERSON: Okay. That is good. Thanks very much, everyone. We then have reached the end of our proceedings today. The matter then adjourns to the, to the 6 May 2016 at ten o'clock. Order within the points.

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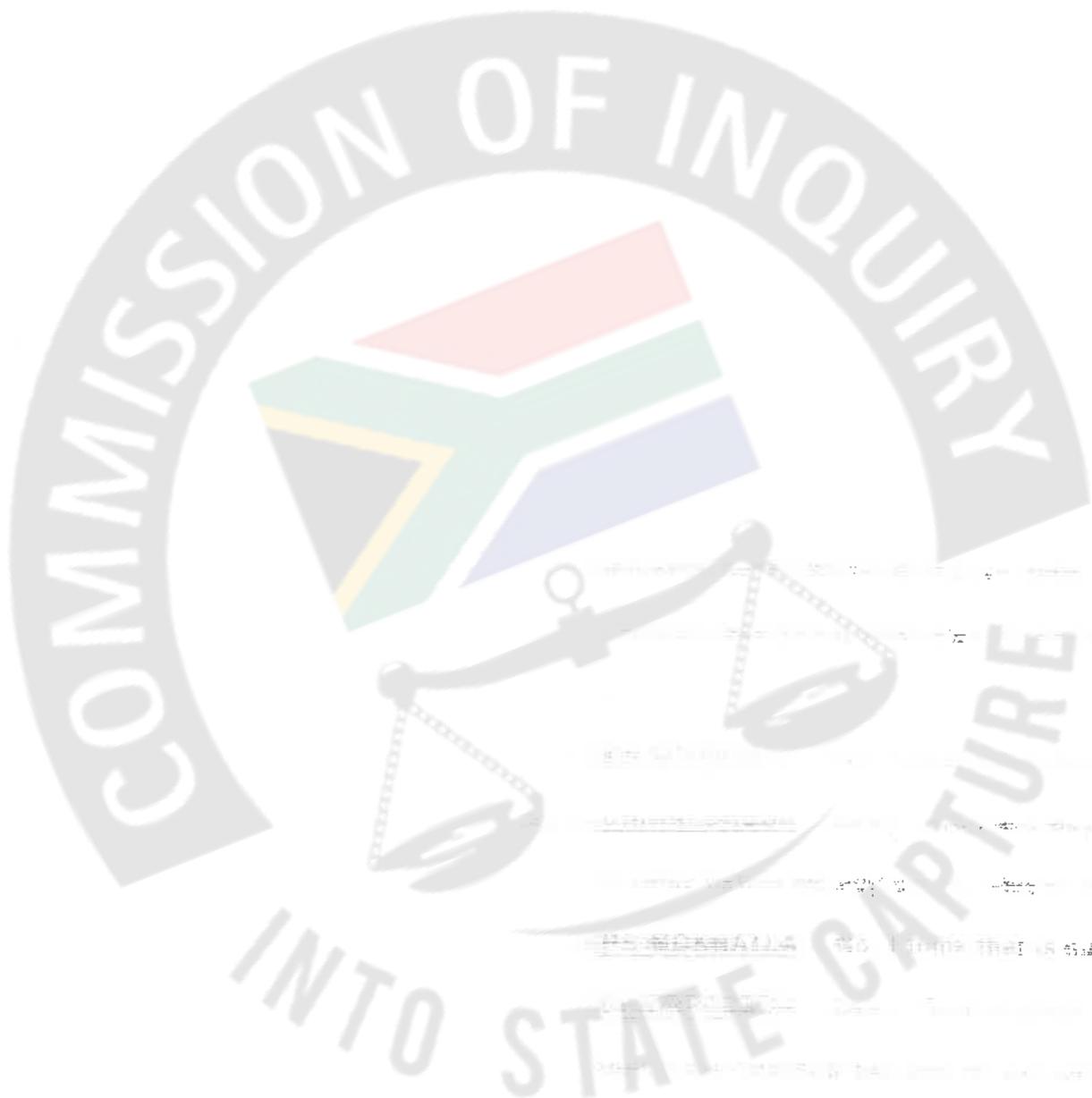
07 APRIL 2016

ON RECORD

will then be reckoned. That is it. Thanks.

MR MOKHATLA: Thank you.

HEARING ADJOURNS TO 6 MAY 2016



[Handwritten signature]
LCV

6 MAY 2016

ON RECORD

PROCEEDINGS RESUME ON 6 MAY 2016COURT FACILITATOR: We are on record.

CHAIRPERSON: Okay. Thanks. Good morning everyone. We are reconvening today on the matter between IPID as well as, and Matthew, Mr Matthew Sesoko. The first setting before me having set having been held on the 7 April 2016 wherein it was agreed that we set aside the date of the 6 May 2016 specifically for the employee to raise a premier point and we had further agreed on further dates depending on how my ruling is on that premier point.

10 The only person who was not available that day, on the 7th of April was the employee's council, that is Advocate Bart Ford. He is with us today and indeed; he is representing Mr Sesoko. We, just off the record, we, I, I gave the parties a chance to canvass whatever housekeeping issues there could be before, so that we do not really burden the record with unnecessary stuff, which could otherwise be discussed off the record.

Mr Mokhatla then raised a concern that he felt he had been ambushed, having been said to, having, having, when he came to knowledge about this, the nature of the application in respect of the premier point yesterday at about three p.m. and that courtesy would have dictated that

20 the employer's side be served with this application well beforehand and not also ordered, in order to also afford the employer an opportunity to respond.

However on the in the same instant breath, Mr Mokhatla then said, pointed out that it does not seem to him that it would have made any difference anyway because it is highly unlikely that I was going to make

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my ruling today which made sense to me and I agree with him.

So, and then, Mr Ford then responded that he does empathise with the employer's representative in this case because he probably – probably he would have reacted the same, however that there are no time limits that are set for the exchange of documents just like it is the case in our courts, but that he has got no difficulty in the proposition that the employer's representative was making so far as allowing the employer to file his response by Friday, the 13 May 2016 and the employee to file any, his reply if any by Friday, the 20 May 2016.

10 And then we then agreed on those dates. Both parties seem to be quite happy with that proposition. I must, I must indicate that, indeed, I was not, I, it, it, I was, I, it is highly unlikely in any event that I would have made my ruling today because I would have had to go away and apply my mind. I am also looking at the, the bundle of documents which is Bundle A, not so taking into account that this, when it comes to measures of this nature it is a matter that affects the employee's livelihood, one that can never be taken too lightly.

So before one makes a ruling on a certain point, it is, it is, it goes without saying that one would have to apply their mind and carefully consider all
 20 the points raised and in any event, the, at this point in time, I would ...[indistinct] they would have a substantial response from the employer, so it would have been out of the question to even contemplate making a ruling today. So, in the end it does not really make any difference. I do not think there is any prejudice because the parties will still be able, the employer will still be able to submit his response, by next week and the.

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employer by the week after next, if necessary, and then, I will be in a position to make my ruling by the 27th, Friday, the 27 May 2016 which is still within the time limits which we had agreed on so far as the conduct, the further conduct of the disciplinary hearing is concerned. So, in a nutshell, that is the position right now.

So, the parties have agreed as follows, that the employee submits his application raising his primary point which is contained in Bundle A, that the employer is going to respond by Friday, the 7th, and the employee, the employee will reply on Friday, the 20th if necessary, and I will make
 10 my ruling on Friday, the 27th, and as at that point, I think I have more or less captured what transpired, I mean, of the record unless I am leaving something out in which case I will welcome any input from the parties.

MR FORD: From our side, Mr Chairperson, it is the issue that the application before you it is an application that 60 percent contained in previous applications. [intervenes]

CHAIRPERSON: Yes. Thanks for that. ~~Mr Ford. Mr Ford is raising a~~ very important point which was raised ~~off the record.~~ It had somehow escaped my mind.

He did mention, and as he reiterated now that the application
 20 that is standing before me now is ~~sixty percent~~ what the employee submitted before the previous chairperson, who then withdrew without having made a ruling, and in which case, ~~this, that is why they are making~~ the same application before me because they never received any ruling. If it is in endowed, I take it that if you say, ~~the employee says, if the~~ employee's council says it is sixty percent, what that would mean then.

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that the other forty percent may very well relate to other points which were not raised before the previous chairperson, but be that as it may, I am going to have to rule on that whether it is sixty or hundred percent. Other than that, is there any other issue that I am leaving out?

MR FORD: From the employee's side, Mr Chairperson, if perhaps just your guidance is, if the employer does not comply with the time periods as agreed, can we then accept that the employer is not opposing the application set on paper, meaning, if by the by the 13th they have not filed the answering affidavit, can we then therefore conclude that you will not
10 allow them, they have waved the opportunity to do so, or is there condemnation for late filing?

CHAIRPERSON: Indulgence, we might be having an academic debate.

MR MOKHATLA: I find that decision very disingenuous. You sit for a whole month and you serve us a date forth an application and you want to enforce strict rules on us. Not necessarily that we are going to be late with the application, but you cannot do that. You are being disingenuous.

CHAIRPERSON: Alright. Anyway, I think I will, okay. Let me give you just this chance. [Intervenes]

MR FORD: I do not think my learned friend. I am saying that he has
20 requested an indulgence. I understood the position he was in. He has made a request. I am just saying that what if he does not complying with that request so that we may have guidance. There will be no need for us to file a replying affidavit on the 20th if there is no. [Intervenes]

CHAIRPERSON: I get where you are coming from, I just thought that perhaps the date was even, I mean, the date was not imposed.

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Mr Mokhatla raised, proposed the date ...[indistinct]. If he failed to comply with the very same date he proposed unless it was a date that was imposed by the chairperson which I never liked do to so it is highly unlikely, but, and we might be having an academic debate here but in the event, in the unlikely event that happen I would expect the employer's council to then write to me and copy Mr Ford as seeking an indulgence and indicating by when they want they want ...[intervenes]. .

Things happen in life, I mean, something might happen, he might get sick, he might get, whatever, and, but, all that matters is that I
 10 am alerted but in that correspondence that you are also copied so that it is not just me talking to the other side with, in the absence of the other side.

And then I do not think anyone would have a difficulty if that, if that situation we are to occur because the same way as you put it, Mr Ford, earlier on that these are internal proceedings and so that I know strict rules or whatever, but, be that as it may, we still have to, we still need guidance and also, keeping in mind the principle of expeditious resolution of labour disputes right, there is no debate because I would imagine that from where you are sitting, and I would imagine perhaps that
 20 is what would have informed your point of views.

Would that be, that would be that the employee maybe prejudiced if there is no response and perhaps it takes forever for the employer to file and so on and you would want the matter to be decided as if I mean the employer does not dispute what is contained in your application.

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But as I said, in the event that there is any foreseen delay and so, or an employer feels that they might not be in a position to file the, or the least I would expect from the employer would then to send, I mean to, to request an indulgence. They would not have any difficulty which, of course that indulgence would have to be within reasonable limits, for example, the employer cannot say, 'I am only in a position to file sometime in June.' That would not, you know, that would just defeat the entire purpose of having, of resolving the labour dispute expeditiously.

So other than that, are there any things that I am leaving out,
 10 or we, that is pretty much what the parties, I mean are we *ad idem* that that is what occurred today and that we can move forward?

MR MOKHATLA: Indeed, Chair.

MR FORD: Oh, I confirm that, Mr Chairperson. Just lastly before we adjourn, we have been informed that this matter as well as the matter pertaining to Robert McBride has been occupying a lot of media interest.

CHAIRPERSON: Ja.

MR FORD: I am informed that possibly at our next sitting there will be a formal application from one or two of the media houses to ask whether these proceedings, if media will be permitted. We hold no opinion either
 20 way in terms of whether they should or should not be. It is subject to your discretion. What I am saying is this hearing and proceedings have attracted a lot of media interest. Okay. Do you have any?

MR MOKHATLA: No.

CHAIRPERSON: We will just see, I mean, as it comes but thanks for letting me to that effect so that it does not catch me by surprise. Excuse

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me, and then obviously, I mean, one would have to cross that bridge when we reach it and see whether, I mean I know I said, I mean, to the extent that to your sorrow too, there is a relation between this matter and Mr McBride. That could be argued that it is a matter of public interest and perhaps the media, that is what they would seek to advance, that is the argument that they might seek to advance.

I will then on that date if that happens; find out from the parties, I mean, what are their views, whether they are opposed to that or whether they are not opposed and if I have to make a ruling, I might not
 10 even have to make a ruling if all parties say, 'No, it is fine.' Perhaps, subject to some conditions.

There are witnesses sometimes who are uncomfortable testifying whilst they, I mean, the cameras are on and so on. For whatever reason. It could be safety, it could be, whatever, but it – it – it creates some sort of discomfort with some witnesses.

So, but it is a point which ~~we will decide~~ at that point in time, is. You need to be premature at that ~~time to~~, you mean, look at it at this point in time but I thank you, Mr Ford for alerting me to that effect so that it does not come as a, as a surprise if and when it happens.

20 **MR FORD:** Thank you, Mr Chairperson. That is all for now.

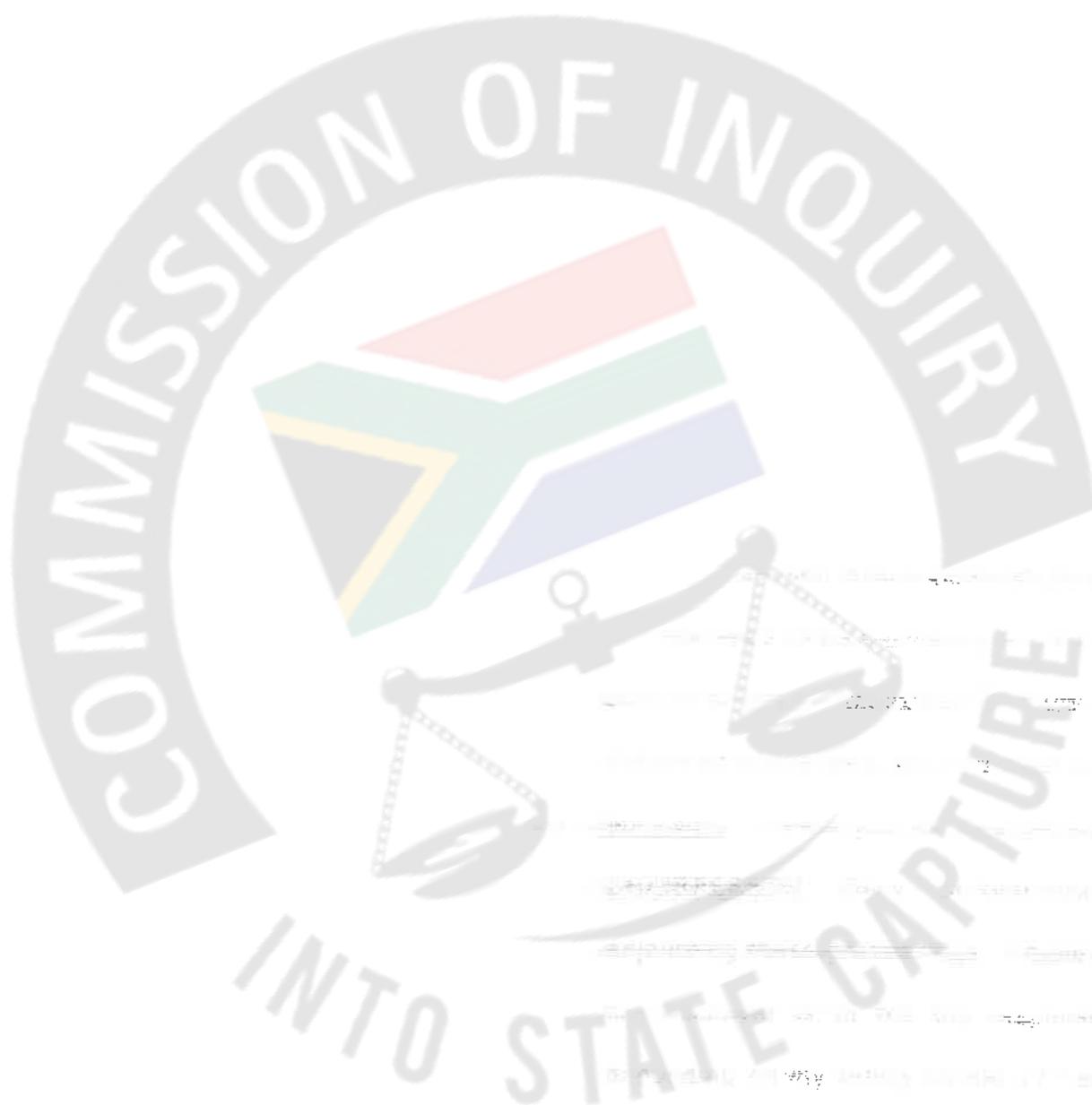
CHAIRPERSON: Okay. On that note, we are at the point where we are adjourning these proceedings. I have already outlined the dates on which the employer is to file his response and the reply if necessary and depending on my ruling on the 27th then we will know as to whether we will proceed with the hearing in the next seating or, or we, or we will not.

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So, at the, at this point in time I would like to adjourn the proceedings and thanks and thank the parties for coming and wish you a lovely weekend. Thank you.

HEARING ADJOURNS



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LCC

20 JUNE 2016

ON RECORD

PROCEEDINGS RESUME ON 20 JUNE 2016

CHAIRPERSON: Okay, we are on record. Good morning everyone. We have just done a round table introduction. Myself, My name is Mxolisi Zondo, just for the record, I am a Practicing Advocate in the Lower Johannesburg Bar. I have been appointed to preside over this presidency in respect of Mr Matthew Sesoko against IPID, and for the employee I have got Mr Ford. He is with Miss Cooper and the attorney for the employee is Mr Thabang Mathibe. And then we have the employee himself Mr Matthew Sesoko.

10 On the employer's side we have got Mr William Curry, and then we have got Mr Theo Mokhatla for the employer as well. And then we have got Mr Sam Paladi of the IPID. On the 3rd of June, I issued a ruling following an application by the employee to the effect that they wanted the proceedings, he wanted the proceedings stayed, that is these proceedings pending the outcome of Mr Robert McBride challenge of the constitutionality of section 6(3) and section 6(6) of the IPID Act which were upheld in the High Court but which are awaiting confirmation by the Concourt.

20 Submissions were made by all parties and then on the 3rd of June I then made my own ruling whereupon I dismissed the *point in limine* and I need not perhaps explain and go into detail because I would assume that everybody knows about the contents of that point and hence the pending application before me now which I was alerted to subsequent to my ruling that was on the week of the 6th, might have been 7th or the 8th, when it was brought to my attention that the employee intended

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challenging my ruling in the Labour Court because he was not happy with that ruling and his view the – the hearing would have to stay, pending the challenge into my ruling.

I then indicated to the parties via e-mail that unless the employer was in agreement with the employee, I was open to considering the proposal by the employee, but then and that if there was any opposition to that, then that employee would have to bring an application before me so that that point can be argued and I can then decide as to how we are going to proceed.

10 Then, it must have been on a Thursday or Friday when I received papers from the employee through his, I think it was through his e-mail rather, if I am not mistaken. Mr Matthew Sesoko, which was to the effect that an application to the Labour Court had been brought, and if I am not mistaken that application is to be heard tomorrow for I mean, for an interdict to interdict these proceedings going ahead pending the review application insofar as my ruling is concerned or pending the High Court challenge to the provisions of section 6(4) of the IPID Act which is to the effect whether the Acting Executive Director did have the authority to suspend and institute disciplinary proceedings against him.

20 Mr Sesoko saying that, the very person whom he replaced was challenging the constitutionality of such provisions of IPID Act and therefore his question being questioned as to his authority. Being questioned as to whether in fact did he have any authority I mean to start with. So it is so that then I am now sitting with that application which the employee is about to bring before me and the employer will then respond

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and he will be given the chance to reply, and I will then determine the issue.

So maybe at this point in time, and that is in this summation of events leading up to today. I have left anything which any party feels that is of importance, but in the absence thereof I am going then allow the, to allow Mr Ford to then address me on the issue of the application for the stay of proceedings pending the review application in respect of my ruling. Mr Ford?

MR FORD: Thank you Mr Chairperson. My Chairperson I must thank you
10 for outlining the background and I must admit it is quite accurate with the only exception being the manner in which the initial application for these tabled proceedings was brought.

CHAIRPERSON: Yes.

MR FORD: Which has also formed the basis of the review application.

CHAIRPERSON: Yes

MR FORD: But before I test – touch on that Mr Chairperson, there are two, the application, I am not asking you to read through it, I just wanted you to noted, noted that there is such an application.

CHAIRPERSON: Yes.

20 **MR FORD:** This is the application in respect of challenging the constitutionality of section 6(4) within the context as you have described earlier, and that case number has been enrolled as 47691 [intervenes] as to

CHAIRPERSON: 47691?

MR FORD: Of 2016.

CHAIRPERSON: The Labour Court application or the High Court

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application?

MR FORD: This is the High Court [intervenes].

CHAIRPERSON: Oh, the High Court application. The one in respect of 64. Shall we call it the High Court application?

MR FORD: The High Court application.

CHAIRPERSON: Okay.

MR FORD: This High Court application is now alive and will in due course obviously be determined. So that is the first thing. The second application is the application before the Labour Court. That application is
10 brought in two parts. Part A deals with:

- a) Urgency;
- b) The stay of the Proceedings.

Part B deals with the review of your - your ruling. You would have noted that no relief is sought against you personally.

CHAIRPERSON: Unless for some strange reason I decide to oppose it.

MR FORD: Stranger things have happened. So as it is that application is to be heard before the Labour Court tomorrow at two p.m.

So the arguments that I am going to be advancing is in part -
excepting that the Labour Court application will heard tomorrow so what
20 we have said in, there was a letter dated the 7th, I think it was only
served or a copy of that e-mailed to the employer and yourself on the 8th.
In that letter, and the subsequent letter it was made clear that in the
event that the Labour Court dismiss our application the hearing will
simply continue. In the event that the Labour Court believes that there is
merit in our application or that - that we have set out the basis for which

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the stayed application not to be granted then it speaks for itself that the hearing will then not continue. So, in essence that there is the interim – interim relief and then the interim relief, for lack of a better expression. The interim – interim relief that we asking that these proceedings for today and tomorrow be stayed pending the determination of the Labour Court application.

The Labour Court will then deal with this matter tomorrow. It can only, there is only one of two possible outcomes in that application. 1.

The Labour Court may perhaps first deal with the procedural
 10 issue. The Labour Court may feel that the respondent be granted additional further time to file their responding papers, their answering affidavit, which we have not received, my attorney had not alerted me to that. If that be the case then it would appear that the Labour Court application may only be heard on Thursday so in the interim for this period, pending the actual hearing of the Labour Court application, that the proceedings for this week will most probably be interrupted.

The further point we are making Mr Chairperson out of – out of, more out
 of practicality is the fact that the employer intends to call, I suppose, a
 number of witnesses. So do the employee. So even if this hearing was
 20 to start it is highly unlikely that the hearing would be finalised in this
 week. I cannot speak for what normally happens but insofar as the
 applicant position is concerned and the number of witness that we have to
 testify, it is unlikely that the hearing will proceed.
 So in any – any event the hearing will be part-heard.. So for – for us the
 sensible thing to do will be to – to, and this is – I am advancing the

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applicants position, the employees position would be to say there is a Labour Court application.

That application is being heard tomorrow in one way or the other. The Labour Court insofar as deciding on that application can do one of two things. It may dismiss the application, or it may grant the application as requested or with conditions. If the Labour Court dismisses the application then in fact, we find ourselves back here, possibly Wednesday morning, possibly Friday morning.

In that event we would need to, and that when I say interim – interim
10 relief, we would need to have these proceedings continued at a different date other than this week. So that is the reference to interim – interim relief. The interim relief that is then sought in the Labour Court application is to say that...

CHAIRPERSON: Let us proceed ja.

MR FORD: Is to say that if the Labour Court finds in the applicants favour, then these proceedings will in any event not continue, and we we have a bit of difficulty in placing this application before you Mr Chairperson because you have already ruled on the stay application, so this is – this is, in our papers we refer to it as one last attempt.
20 You know, this is your eleventh-hour request for – for possibly a change in opinion and Mr Chairperson if you had read the the letter and beg reading it into the record for you, the letter dated the 8th, because the letter of the 8th and the letter of the 10th deals conclusively with the position that the applicant wish to set out. And in essence what the applicant said in that letter is the following:

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"We refer to the above matter and specifically the ruling handed down by the Chairperson on the 3rd of June 2016. We bring it to your attention,"

And I do not think you need to make notes of this Mr Chairman, I am just going to read it for the record so:

"We bring it to your attention since these proceedings are extensively instituted under your authority and is addressed to Mr Kgomanyane. That although the Disciplinary Code does not make for provision for the matter to be determined under the papers only, the Chairperson notwithstanding elected to render a written ruling on submissions only."

10 And that as I said, that is the basis for the review application.

"This conduct has taken us by surprise or into the fact that the employee through his legal representative noted the desire to make a raw representation. We disagree with both the procedure called by the Chairperson of the hearing and the consequence outcome of his decision. Our client is entitled to take the conduct of the Chairperson as well as his findings on your review. We will also as part of the review application to be filed in the labour convening application in section 6(4) of the IPID Act declared unconstitutional. We will obviously set out our grounds for reviewing our papers which will be served on yourselves in due course."

20 In view of our attitude herein and the fact that the disciplinary hearing against our client is set out for the hearing on the 20 June 2016. We enquire herewith whether both the Chairperson and the employer intent on proceeding with the matter base as provisionally scheduled or whether you would be in agreement to stay the disciplinary hearing pending our application to the Labour Court. We would appreciate receiving your

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response herein and by no later than Friday, 10 June 2016, otherwise we would have no option but to bring an urgent application for an order for the continuation of this."

And the respondent replied, the employer replied to that letter, in essence stating the following by way of summary. We are happy for the proceedings to stay if the Chairperson grants the stay that we are asking for. So the ball is squarely back into your court, Mr Chairman and – and you would have read in the Labour Court papers where you are quoted as having stated in your ruling that Mr Sesoko's point has merit. Your only
 10 concern was the forum in [intervenes].

CHAIRPERSON: Sorry, can I just correct you on that one, because I read that line. I never said Mr Sesoko's point has got merit, I said he may – may – may not be without merit. May not be without merit. I have never said it as a matter of fact that Mr Sesoko's point has merit. So I thought perhaps I should distinguish that one, but – but I do not know maybe from where you are sitting it might sound the same but as the author that is not what I had in mind, that is not what I was conveying that Mr Sesoko's point as a sort of fact has merit. I think if I wanted to say so I would have said so, that it has got merit. I was very cautious in
 20 the way I put my statement when I said it may not be without merit, in fact I could have even said it may not be entirely without merit. There are, could be other ways of putting it but I just wanted to make sure that we do not read into my ruling what I did not say.

MR FORD: No I understand that, but the [intervenes]

CHAIRPERSON: But I understand you could – you could give it your

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own interpretation, that I understand.

MR FORD: Correct. And the reason, and tomorrow in the Labour Court application as to what was stated in there will be placed before a judge to determine. As a teacher formally, an a English major teacher, I am going to suggest that the interpretation was – that the interpretation could only have been that there is merit. So – so that is where we find ourselves Mr Chairperson.

So, in essence we are asking for – for you to grant us interim – interim for purposes of allowing the Labour Court application to go through. I
10 mean no harm will be served by either party, not continuing with the hearing this week, not at all, in essence it will effectively allow the parties to then go to the Labour Court so in essence that the hearing would be delayed by another day

The Labour Court is a Court of equity and fairness, is also a Court that renders ruling very quickly, we may very well get an *ex tempore* judgment on the day which places the parties in a position to determine, to
continue with the hearing alternatively to stay the proceedings. So that is
the interim – interim.

And – and when, if the Labour Court, and I maybe repeating myself in
20 conclusion, if the Labour Court decides there is simply no basis for
urgency or for warranting the stay. Then we back before you
Mr Chairperson and all we do is myself and Mr Mokhatla will sit, ~~because~~ is that
Mr Mokhatla is busy till the end of November, then we will sit and we will
prepare dates and we will set out dates whether it be five days or eight
days or ten days then we will be able to then do the hearing. Then

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nobody is prejudiced in the process, but it would be immensely prejudicial for the employee to continue with the hearing, just tomorrow to be told in the Labour Court, if things go the way we anticipate it will go, that in fact the stay was, is – is warranted.

That is in essence is where we find ourselves Mr Chairperson. So, the sensible thing to do would be to await the decision in the Labour Court. Unless my attorney wishes me to address you in anything else?

CHAIRPERSON: No.

MR FORD: Those are my submissions.

10 **CHAIRPERSON:** Mr McCurry?

MR McCURRY: Chairperson Mr Mokhatla is going to...

CHAIRPERSON: Oh okay.

MR MOKHATLA: Thanks Chair. You gave us your ruling on or about 3 June if I am not mistaken.

CHAIRPERSON: Yes.

MR MOKHATLA: From 3 June up until 16 June, that is a period of about thirteen days in which nothing was done by the employee, you know, only to launch an urgent application at the Labour Court.

20 This is clearly solely for the purpose of frustrating the continuation of proceedings today, because if these were clear intentions, this application would have the section 6(4) of the IPID, declared unconstitutional could have been done a long time ago. In fact the very same employee has been singing about it as far back as I remember from January 2016, that he intends launching this application to declare section 6(4) unconstitutional and nothing has been done about it.

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So, what happens is, they will sing about bringing an application to declare section 6(4) unconstitutional and they will do nothing about it.

They will only come to the hearing, they will apply, they will raise points *in lumine* and if it does not go their way he will also then start the song of declaring the unconstitutionality of section 6(4).

And mind you, you were the second Chairperson to dismiss their points *in lumine*. The first Chairperson was Advocate Mchana, and he wrote if I am not mistaken it was early this year if I am not mistaken, or sometime last
 10 year that the points have no merit. The same ruling. Then it was a threat that they will go to Court, but nothing has happened. The long and short of what I am saying is look, the employer is immensely prejudiced by this drawn out proceedings.

The employee has been on suspension since from last year and these proceedings are now, it is a year now since they have been dragging. If there is anybody who is prejudiced, it is the employer because Mr Sesoko is sitting at home, doing nothing, at the expense of the taxpayers. He is avoiding at all costs to face the consequences of this disciplinary enquiry. so, it is also not correct that we said that we are not, we are happy with
 20 the stay unless that you rule otherwise. I think that is a decent general thing because ...[intervenes].

CHAIRPERSON: Yes, yes.

MR MOKHATLA: Because cannot make a criminal matter that we do not concern, but however you are more than welcome to bring an application before the Chairperson. If he rules that the matter then stays, so be it we

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will abide by it, but if he rules that the matter should proceed, you should be ready and proceed with the matter. So, the application that is pending before Court is to have this particular enquiry stayed.

So, for you, for us to consent to the – to the stay, it will be pre-empting what the Labour Court is going to rule. In fact, for us going there, the Labour Court and say yes we have consented it is just like them judgment, just like that.

So, we are steadfastly refusing a stay. Let the Labour Court rule that the proceedings stay, or they continue.

10 **CHAIRPERSON:** Yes.

MR MOKHATLA: So it is my submission that this application is very very disingenuous. If they are saying, he is saying in any event that the matter is not going to finish in this week then why do we not proceed and see where we go pending your application before the Labour Court today as well as the other days, because in any event the matter is not going to finish so, what is stopping the applicant, the employee from proceeding today while we still await the outcome of the Labour Court application?

I do not see there being any prejudice in continuing today while we still waiting today for the outcome of the Labour Court application.

20 And the other thing we are quite perturbed about, is the filing of the application even before approaching Chairperson, you know, it is like, it gives a sense that the Chairperson is going to rule. You know, it is very disingenuous. I think they could have they should have waited for you to make a ruling about this thing.

And also why do you file an application on a Tuesday when the hearing is

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set down to start on a Monday, and you state in your papers that the hearing is set down to proceed from the 21st of which that is not true. The proceedings are starting today. Its – it's with all, with the greatest of respect I think the employee is more than *mala fides* in this application. He could have at least brought the application immediately after the 3rd, after your ruling, then we would have known by now whether or not the enquiry is starting, now what he does, he waits for the eleventh hour. He creates his own urgency. Those are our submissions. No you know we – we, and I am also advised you know, we have got a witness who has been

10 going, returning for the third time and that particular witness is also here today, because what was said is that after the ruling the matter is going to proceed on the 20th.

This dates were agreed to by the parties. It was something else if the application was launched immediately after that. Do not wait and then he also set it down for the second day once the proceedings have already commenced. This is clearly disingenuous on the part of the employee.

We submit that this application today for stay has no merit and has to be dismissed. In any event you have already ruled against the application for staying. So, this is only the third, well that I know of the third time

20 that a Chairperson rule on this application for stay.

The agreement last time was for the matter to proceed and not for the re-arguing of stay applications. When they agreed they accepted that they are going to proceed today. This was, this, the dates were collaborated between the employer as well as the employee for the matter to proceed.

MR FORD: Thank you Chair.

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CHAIRPERSON: It was agreed depending on my ruling first.

MR MOKHATLA: Depending on your ruling, correct Chair. Depending on your ruling, if you rule, you upheld their points then that will be the end of the matter. If you dismiss the points the matter proceeds. That was the conditions.

CHAIRPERSON: Mr Ford any reply?

MR FORD: Ja, thanks, thanks Mr Chairperson. Mr Chairperson in essence Mr, the – the application before Mr Mtshali were point *in limine*, that dealt not only, it dealt with Mr Mtshali's authority, dealt with his
10 appointment, it dealt with the [intervenes].

CHAIRPERSON: section 6(4)

MR FORD: It did in part deal with the fact that an opinion is pending at section 6(4). I am not sure that my learned friend is aware of that application that was brought but that was the contents.

It was not agreed. In that application was stated that the employee is awaiting legal opinion in terms of whether or not to join the proceedings with Mr McBride, alternatively to consider instituting any application that was the context and Mr Mtshali did rule on that but subsequently there too Advocate Msindo another application was brought
20 which was a lot more detailed insofar as the issues that were concerned and when we speak about prejudice we make it clear that the employee was to pay for that application being brought. Mr Msindo then upped and left no not even an explanation as to why other than saying for personal reasons he is no longer continuing.

MR MOKHATLA: When you say he upped, sorry to interrupt you. When

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you say he upped and left it is like rather like I am sitting right now just I stand up from my chair, I am trying to picture this. For me, that will be dramatic. You just get up and leave.

MR FORD: It was quite shocking to us. Because, so it is not as if the employee that waited until the eleventh hour. So, we must – we must – must look at the date Chairperson. Your ruling comes on the 3rd of June, that is a Friday. Then you got two days in-between the Saturday and a Sunday then it brings us to the 6th. The Monday the sixth the seventh a letter sent to the employer to be drafted and sent to the employer. The employer's asked to give us a reply [intervenes].

CHAIRPERSON: Before you – before you advance, I mean your argument on that point, let me just say it upfront. I am not with Mr Mokhatla on that point. I do not think that any of that you could have been expected to have brought the application earlier than you did.

Given further to you, you also addressed a letter wanting or requesting the Chairperson and the other party to indicate as to whether they be amendable to a stay, failing which will go to the Labour Court. I think I am with you there so perhaps you do not need to dwell on that one. Ja.

MR FORD: Ja. So what we saying when you stated that the hearing will continue on the 21st it is within the context of the fact that today will be used in order to address you on interim – interim relief if I can use that expression.

CHAIRPERSON: I am hearing about it for the first time in this phrase interim interim. But it is okay. Ja.

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MR FORD: So in essence what we did set up in the letter that the final letter on the 10th is exactly that.

CHAIRPERSON: Ja.

MR FORD: So, I am not sure whether you have seen the letter that employer sent it deals with exactly that to say if the Chairperson or the Labour Court finds that we got no merit, then we are back here. It is not like we are frustrating the proceedings as my learned colleague suggests. One must understand the following, Mr Chairperson if the employer the employer's bill for these proceedings is paid for by me and my
10 Mr Thabang and by Mr Mokhatle and by [intervenes].

MR MOKHATLA: No. No.

MR FORD: That is the truth. The employer's bill is paid for by the taxpayer.

CHAIRPERSON: Oh okay. So, Mr McCurry do you withdraw your supposed objection because you are a taxpayer are you not?

MR MCCURRY: Well, I do not know ~~on the basis of some people do not~~ pay tax.

MR MOKHATLA: But is it not that an ~~exception to the rule?~~

MR FORD: So, Mr Mokhari is withdrawing his statement? So Mr Chair
20 that is where we are at and I think ~~the spirit that exists in this room is not~~ one trying to frustrate the other party, ~~they are simply saying there is a~~ process on the go, the argument that ~~the employer will may very well be~~ determined as valid by the – by the Labour Court and we could find ourselves back here. So, in essence ~~what we could do is let us assume~~ in the employer's favour that the matter will be dismissed. ~~Then we can~~

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set down dates now for the continuation finalization of the hearing.

There is simply no prejudice for the employer and that is – that is what we the employee is tendering. The employee cannot be more candid than that saying I am going to the Labour Court tomorrow, if the Labour Court decides against me, here are the dates, we have agreed we will continue on those dates.

CHAIRPERSON: Okay.

MR MOKHATLA: So, I see that each time we come here we must set new dates.

10 **CHAIRPERSON:** So, Mr Ford are you – are you done with this proceeding?

MR FORD: I am done, thank you, Mr Chair.

CHAIRPERSON: Alright. Just want you to address me on the issue of prejudice which was raised by the employer. The employer says that the employer is prejudiced because it has been over a year now and Mr Sesoko is sitting at home and ~~it marked this point when Mr Theo Mokhatla was making submissions which I found quite persuasive and I have already told you which of his consent in find persuasive. And that is why the application could have been brought earlier. We have – we have~~
20 dealt with that already.

We need not detain ourselves any longer. ~~But the issue of prejudice is one of the points which I would like you to address on me and I think you have touched on a bit when you said that you and Mr Thabang you forgot me and Mr Mokhari are paying for these proceedings that is taxpayers money.~~

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Now is it not really a valid point that the employer is being prejudice because if an employee is sitting at home and not rendering their services to their employer and yet the employer continues to pay the employee through taxpayers money. Is the employer as a state in this case not being prejudiced, in fact is the public not being prejudiced, those who, would those put it this way , people out there who pay tax be happy that they continue to fund these protracted proceedings and are and they do not feel prejudiced, or how they react, were they to, where this is brought to their attention as a public to say do you know that this hearing that

10 keeps on dragging for whatever reason are whether there is merit or no merit and that you are actually paying for those proceedings each time they I mean they have to be postponed.

Do you think the public would take kindly to that? Do you do you not think that the employer might have a point in saying that there is prejudice and the employee is the employer is being prejudiced by these protracted nature of these proceedings.

MR FORD: Mr Chairperson I am going to answer your question in the following manner, when one looks at the whole concept of fairness and equity insofar as the prejudice that the parties are likely to [indistinct] One must consider the following; you have an employee who is accused with McBride and Mr Innocent Khuba at the time. We know now Mr Khuba's matter is no longer proceeding. To have altered a report that is a fundamental attack on their credibility and integrity as officers within IPID. Now there is one thing and in tomorrow's argument we will quote extensively from the judgment in *McBride versus the Minister* with

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the Labour Court held that whilst it is the employer's duty to discipline and it is prerogative, it is an unassailable prerogative but in lawfulness and fairness must accompany that prerogative.

Now on the one hand as you got it quite rightly saying the employer is stating that it would be prejudice but the prejudice on the part of the employee is far worse. The employee is a single person in this matter in the sense that he has to finally fund his own legal bills and he has to challenge what he fundamentally believes is a miscarriage of justice in the manner in which the proceedings have been instituted.

- 10 So we are saying on a substantive level I am going to be able to challenge these proceedings. Procedurally we have a problem in the sense that we are saying that the Minister's involvement in this insofar as the appointment of Mr Khomonyane and Mr Khomoyane's independence in instituting these proceedings is questionable.

So in the one hand so they may very well be prejudiced for the employer but there is also prejudice for the employee and the question is who suffers more?

- CHAIRPERSON:** So in other words there is a balance of harm how is the employee prejudiced, if you can just address me on that and you may have touched on it a bit but I want you to expand.
- 20

MR FORD: I think the employees prejudice at least on three levels:

1. In these proceedings you know you have never found a dentist extracting his own tooth or a brain surgeon or neurosurgeon doing his own brain operations, we have never experienced that. So you cannot have an employee go through a disciplinary hearing when

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the employer is represented by two counsel, one is senior a very season senior counsel who appears on television regularly [intervenes]

CHAIRPERSON: When you were not in the room and you were reading the record yes later you will see who is this counsel, sorry.

MR FORD: And as much as we have had a light-hearted moment I must explain, it is like David going up against Goliath and took out Goliath's teeth. That is already prejudicial for the employee. He has to pay for his own legal fees. He is living under a cloud and that cloud has now been
10 extended to say that not only did we charge him internally, we have also now charged him criminally for his conduct.

So in the eyes, his reputation is at an all-time low at the moment, so the reputational damage to him is severe. And – he is not, and at no point is he trying to run away from facing a disciplinary hearing as my learned friend seem to suggest. He is not running away. He is simply saying it would – it would and this is going to be part of the argument tomorrow. It would make sense for the employee to say look, now that we know the Minister cannot discipline Mr McBride, we waiting confirmation from the
20 see what Parliament will do insofar as McBride is concerned.

If Parliament says well we charging McBride and the – the we endorse the appointment of Mr Khomonyane, if that does happen, Mr Sesoko is more than willing to continue with the hearing. [Intervenes].

CHAIRPERSON: But the employer then says that what the employee is simply doing is buying time and this is in the employers opposing papers,

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that the employee is simply buying time for Mr McBride to – to, I mean to get back from suspension, and because they were acting in concert they would hope that one – one of his own is back at the helm then these proceedings will be discontinued, but you, what do you say to that?

I think because along the way, same lines is to say the employee the, what the employers, the ...[indistinct] of the employer's submission is that, all the employee is doing is to frustrate this proceedings, to make sure that they do not, they do not take place because otherwise if he was fined with these proceedings then should have just let the proceedings
10 take their own course.

MR FORD: I can understand the submission and we have not seen the opposable papers yet. And I can understand that position, but what – what we saying [intervenes].

CHAIRPERSON: No – no I mean apposing papers in the, I mean the [cross-speaking]

MR FORD: If, in the story of the stay

CHAIRPERSON: For me, yes.

MR FORD: So in essence, what we – we – our response to that is, the employee has made it clear on a number of instances and under oath
20 in the Labour Court proceedings that I want to go through a disciplinary hearing. You – you, it – it is not a situation where I am saying I am doing everything not to go he says I want to – I want to, but in order to assist the process going forward Mr Chairperson this is what the employee is saying at this point in time, he is saying the application before the Labour Court can only result in one of two outcomes tomorrow.

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1. The Labour Court agrees that the hearing proceedings be stayed.
2. The Labour Court said there is no basis for – for the proceedings to stay.

That decision we will only know by tomorrow evening. That brings us to Wednesday morning. We back before you Wednesday morning. It is highly unlikely that only on the strength of determining the application in favour of the employer that the matter will continue beyond Friday. So that is where we are saying, if the Labour Court finds against us we are
 10 still committed to continuing with the process. We will agree to dates now.

CHAIRPERSON: The employer also says in fact, he – he I mean he expands on your point. The employer says that the very fact that you are submitting that the proceedings will take more than a week, then there should not be a problem proceeding with the proceedings now because in any event by the time even if the Labour Court were to rule tomorrow or Wednesday be it, or be it Thursday, that ruling will come whilst we are, during the course of the proceedings and so that fact alone what you – what you – the submission that you have made that the proceedings will
 20 more likely take more than a week, that on its own goes to show there is no reason for these presidents to stay for your interim interim to be granted pending the application because in any event these proceedings are not going to finish today or tomorrow, what do you say to that?

MR FORD: The – the difficulty with that Mr Chairperson is the following
 The employee must pay my day fee, today, and my attorney. The

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difficulty is we will now continue with a hearing which may very well be stopped tomorrow. What benefit would it have been for a witness it have been for a witness to be examined on a matter that is in any event not proceeding or possibly not proceeding? So why, why would we ...[intervenes].

CHAIRPERSON: Okay. Sorry.

MR FORD: Why would we then need to start with a process which may very well be interrupted in a day or two?

CHAIRPERSON: But are we not pre-empting?

10 **MR FORD:** We are.

CHAIRPERSON: But are we not pre-empting the Labour Court judgment order if we say today okay no it is fine we staying, giving the interim interim pending the Labour Court, are we not already saying that when this is a forgone conclusion that the Labour Court is going to grant an order to stay?

MR FORD: Not at all. I think what we doing is we doing exactly the opposite by continuing we saying the Labour Court will not grant the order, so – so that is almost a flip-side of a centre-coin argument is in its – it is a catch twenty-two. If you are proceeding are you so confident that the Labour Court will not rule in our favour? If we not proceeding are we so confident that the Labour Court will rule, argue in our favour?

20 I am saying neither view is necessarily correct. I am saying a sensible approach is to simply say we do not in our estimation of the – of the submissions before you, say that if you were to grant us this interim interim that it means that the Labour Court will agree with us. Or give

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credence to the fact that you have already now given us interim and therefore suggests that the proceedings should be stayed.

Not at all. That is not our argument, our argument is a sensible practical approach. You cannot have a witness stand, be on the stand, cross-examined just to later discover that it was not necessary for him to have done so. Mr Sesoko has just asked me to bring this to your attention. If we proceed it may very well mean that we are allowing a process to continue which the Labour Court may say, under the circumstances the matter should not proceed.

10 **CHAIRPERSON:** Okay. Are those the submissions?

MR FORD: Those are the submissions Chair.

MR MOKHATLA: You know maybe to assist if you can allow me Chairperson. Just a perspective on that application which is before the Labour Court, and I am not suggesting for a moment that the Chairperson should second guess that application, but just to look at it objectively.

1. You are not taking issue with his appointment as he is sitting here Chair.
 2. He is sitting as an independent Chairperson.
 3. Nobody knows whether he is going to find Mr Sesoko guilty or
- 20 acquit him.

So just on those three of them, they have already provided Mr Sesoko with the guarantees that he is before the Chairperson who is required to only listen to the evidence and rule in accordance to the evidence.

If there is no evidence they will simply acquit him, but if for whatever reason he does not acquit Mr Sesoko, he finds him guilty. For

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Mr Sesoko it is not the end of the world, because he still has those remedies which are applicable in the Labour Law. Bargaining Council and all of these different things and insofar as me being an experienced lawyer whatever and so on, the protection is that we are both appearing before an independent Chairperson who is a specialist in Labour who has a duty to ensure that the interest of the employee are taken care off because at the end of the day you must conduct the proceedings fairly and equitably, so that is the protection.

So as long as you are not challenging his authority to sit then I
 10 do not see the relevance of the Labour Court application of tomorrow, because if you wanted the application of tomorrow to interdict these proceedings then you ought to have known that you are sitting with a ruling here from him, which effectively says that these proceedings are continuing. Then for you to then start writing letters to him and say that you must assure us that you are not going to continue and so on, it is not the correct way to go.

Once we are sitting with the ruling, we said the proceedings are going to proceed. Then you go and interdict and you arbitrate into a
 interdict that are about preventing that that is about to happen. Not
 20 about that which has already started or that which is past, so I would have expected him to have been in Court last week.

Not to ask the Chairperson, not to ask the employer, are you going to proceed and so on, but the ruling was very clear that the points
 in *lumine* have been removed, so that is the technicality that you are facing with, but I think the other protection that you have is that as you

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have put it out, these proceedings are likely to prolong.

So, if then today we start, we will proceed tomorrow, for whatever reason there is some judge who sees law differently tomorrow and he grants an interdict, then we stop. I am not going to defy a Court Order of course, but I cannot see a situation where the Chairperson has to interdict himself in the face of his own ruling that he has given to the parties that the proceedings must then stop. So – so really then I mean my view is that Mr Sesoko has enough protection on the things that I have raised in this issue.

10 And look what I am saying, look at the very same section because it, nobody is reading it, section 6(4) that you say that you want verdict unconstitutional. I mean this section is very simple, it says:

"When the Executive Director is unable to perform the functions of office or during a vacancy in the Directorate, the Minister may designate another person to act as the Executive Director until – until the Executive Director returns, to perform the functions of office or the vacancy is filled,"

So we know as a matter of fact Mr McBride is who is still the Executive Director, he cannot perform the functions because he is on suspension.

20 So, then section 6(4) kicks in because the Minister cannot leave the vacancy, I mean he cannot leave things that are unattended. He must appoint somebody, but of course you have the right to challenge it in the court, you can consult and so on, but that cannot be the reason to stop the hearing because as a matter of fact the Minister has appointed somebody to act and that decision remains lawful, you cannot say that is unlawful and you

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are going to disregard it, you know the grant, I mean a judgment of the SCA makes it very clear, so – so those are the things I mean the Chairperson is faced with, so I do not know.

CHAIRPERSON: Mr Ford, I am going to allow you to speak unconventionally because we were supposed to have the last say, but Mr McCurry has had a second bite at the cherry, I am going to allow you to – to reply for the last time before I make my ruling.

MR FORD: My attorney asked for an opportunity just to consult Chairperson, may I just have two to three minutes.

10 **CHAIRPERSON:** Yes that is fine, that is fine. We will just stand down for five minutes.

HEARING ADJOURNS

HEARING CONTINUES

MR FORD: Thank you for the adjournment Mr Chairperson.

CHAIRPERSON: Yes.

20 **MR FORD:** Mr Chairperson my attorney is requesting that the commencement of the proceedings you required as to the status of every person present, we have since been joined by another gentleman. My attorney just wanted to know.

CHAIRPERSON: It seems to be mysterious.

MR FORD: Ja.

CHAIRPERSON: Oh sorry, he is heading a Corporate Services. That place that on record. Sorry just hold on. You said your name is?

MR MATHOBELA: My name is Mofede Mathobela, I am the Head of

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Corporate Services.

CHAIRPERSON: You said Corporate Services.

MR MATHOBELA: Head Corporate Services.

CHAIRPERSON: Head Corporate Services?

MR MATHOBELA: Ja.

CHAIRPERSON: Okay that is that is fine. Shall we then proceed Mr Ford?

MR FORD: Thank you Mr Chairperson, one does not know the extent to which my learned friend Mr Mokhatla what happened prior to us appearing
10 in front of you insofar as why this application was not brought at the time earlier than when we bring it now, we have already earlier eluded to it, but I just want to give you context that on the 8th of June you have sent an e-mail and you quoted, copied myself, Mr Thabang, you Mr Paladi in which you made the following point in which you said:

“Dear Colleagues, I hereby acknowledge receipt of the letter from the employees attorneys to the effect that the proceedings schedule for the 20 June 2016 be stayed pending a review application in respect of my ruling handed down on the 3rd, Friday the 3rd. To the extent that the parties are in agreement in other words if there is no opposition from the
20 employer then I am willing to consider such request. However should there be any opposition that would mean the parties will have to argue the matter before me on the 20th through oral submissions where after I will make my ruling, in my premises I need an indication from the employees representatives by close of business tomorrow stating whether they are opposed to the employees request signed by yourself.”

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So, we could therefore not in the light of the parties have rushed off to Court, when – when – when there is an opportunity for us to still address the Chairperson. That is the first issues. The second issue Mr Chairperson [intervenes].

CHAIRPERSON: So in other words you are saying that I mean they could have argued that he did have an authentic remedy that was agreed before the Chairperson that then he jumped the gun?

MR FORD: Exactly. Then the second issue Mr Chairperson is the interpretation around section 6(4). Mr Mokari holds a particular
10 interpretation, we hold a different interpretation. His interpretation was saying that the Minister and I am not sure whether it is necessarily the right place to bring the argument before you but I just in – in into [intervenes].

CHAIRPERSON: I understand it to be in passing.

MR FORD: So in passing our comment is the following, you cannot have the very head of IPID being assigned by the Minister when there is such a direct correlation between that person and the Minister in an instance where that position must be independently so we filed our 16(a) Notices and we will see who is going to be interested in coming on board.
20 So in that particular instance what we saying is the Executive Director whether he is acting or whether he is a permanent appointee have exactly the same executing powers. It is not reduced by virtue of the person acting. And if an acting person has the same executive powers, and an Executive Director has exactly the same executive powers, but the Executive Director is appointed by Parliament, then in order to ensure

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that independence it does not make sense that the Minister can then assign that person who would then compromise that question of independence that is sought insofar as section 6(1) is concerned, and that is really where the constitutional issue comes up.

The third issue Mr Chairperson is what my attorney shared with me is, it really seems a bit, it defeats, it is self-defeating to run two parallel processes where we stop – start – stop – stop – start. We very happy to start knowing this is the position that the Labour Court has confirmed, as opposed to starting and possibly stopping be, it just makes much more
10 sense to say there is an application. That application is being heard literally within a day from now.

The employers witness may very well still be examined during that time, but it makes sense to say this application is being heard tomorrow. Let the Labour Court tell us. If the Labour Court says look do not continue with the hearing then thankfully the witness would not have to go through all that time and preparation and be examined or if the Labour Court says no, you can continue with the hearing then we start from base one. And that is our submissions Mr Chairperson.

20

RULING

Okay, I have heard both parties on this application for a stay of proceedings which is of course similar to the one which has been brought before which was in relation to this day of proceedings pending the determination of the constitutional challenge in the McBride matter; and in the application I have already ruled in my ruling dated 3 June 2016,

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that I was not persuaded that there is a *nexus* between Mr Sesoko's matter and that of Mr McBride.

I did elude as in passing and this was an orbital if I should emphasize that Mr Sesoko's point may not be without merit, however it was being raised before an inappropriate forum, and in saying so, and if I need to really emphasize that point, I will then in no way stating an actual fact that had, that his point had merit, I do not even have that authority I mean – I mean to rule insofar as the validity of that point and not another Court, which is the High Court in this case before which this application
 10 has been brought, challenging section 6(4) of the IPID Act, and that is the appropriate forum.

So even, I mean for what I say I mean it carries, it carries no weight. It is of irrelevance, I have already alluded to that in passing, and in a way expressing a view that Mr Sesoko's point did deserve audience and that is why I – I had even gone to the extent of saying that if the parties wanted to supplement their ~~submissions they were more than~~ welcome to do so, and I understand that one of the points that has been taken on review which is part(b) of Mr Sesoko's application at the Labour Court, it is my refusal to allow parties to submit oral arguments, to argue
 20 the matter orally before me.

I still do not know what difference that would have made, whether the parties, I mean if we are saying that parties are confined with, I mean to what is in their papers as whether there was anything extra that could have been advised, but in any event, in order to cure for, I mean forever avoid that could have existed did in my e-mail when I

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was giving further directives. I did allude to the fact that parties, I mean the employee, was at liberty to supplement its submissions and to the extent that he felt that he may not have adequately addressed all the points in his, I mean his application, and that he would have to do so before the employer responds, and that was not done.

So I took it then that there was the employee, felt no need to supplement. Then I might not understand then that what difference what, I mean it would have made to then argue the matter orally before me. For me it seemed, and it still seems as elevating form above substance, because when all is said and done what you look at is substance. If at 10 the – at the end of the day the employee would have advanced all their, all his points either on paper or orally. What matters is whether the message had – message has been signed and understood, and so the employee did have that liberty to supplement his papers, he opted in that to do so.

So I do not really think whether that point as to whether the matter was, I did not allow parties to argue the matter orally before me whether it has merit but perhaps the Court will see things differently, I do not know. As for the way things are done, the employee does say in his 20 papers that there is no provision within the regulations or within the IPID Act as to how the proceedings insofar as the points *in limine* ought to be connected, whether it should be affidavit or by submission, but I did allude to this again. For me again it is an elevation of form above substance because in substance is where each party had advanced its case to the satisfaction and to its own satisfaction and whether it is under

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oath or whether submissions, then ordinarily these issues of points in lumina in my experience are dealt by way of submissions, but I did not want to limit the employee if they felt, if the employee felt that he wanted to an affidavit. For me again, that would be I mean form of substance. What mattered at the end of the day was whether the employee had advanced his case.

Turning to the issue before me now, I am not convinced that the employee, if these proceedings were to continue today that the employee stands to suffer any prejudice, in fact I find persuasion on the employers point that to have an employee who has been sitting at home for over a
 10 year are being paid by, with taxpayers money and the hearing keeps on, I mean retracting, it is undesirable.

And this is more so because as much as the employee could say he is more prejudiced when regard is had, to the resources that he has had to, I mean to employer, I mean when you measure that against those of the employer, Mr Ford mentioned that the employer, I mean has got within his armoury to Council including a Senior Council seasoned
 who is well experienced, and whilst on the other side the employee is like a David facing a Goliath with teeth.

20 Now but my view is what was pointed out by Mr McCurry, holds water, and that is if you, let us give a situation where you appear in Court, and you are a litigant who is unrepresented, let us take it to the extremes against someone who is represented and with, by even two or three Senior Council, it does not go it is not a forgone conclusion. It does not goes without saying therefore the one who is represented by

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seasoned Senior Counsel therefore they are going to be victorious, they going to get the order even if on the facts of the case, the Court is not persuaded, in fact you find that under those circumstances the Court is more on guard because it wants to make sure that it protects the weak and the vulnerable and it will therefore in fact act over the protective, in favour of the one who seems to have, who does not seem to have protection.

So perhaps that whatever concern that may exist insofar as the playing fields not being levelled, if it really, if that really makes any
 10 difference, if it does detract from the substance as you, and namely whether Mr Sesoko is guilty or not because I mean one should not assume that it is a forgone conclusion that Mr Sesoko is going to be found guilty, I do not even know whether the evidence that is going to be presented by the employer is going to prove on a balance or probabilities that Mr Sesoko did alter that report or whether he did take part in that – in that, in the altering, in the alleged altering of the report.

So perhaps it is more of prejudging what the decision of the
 Chairperson would be. I do not think, I think in fact the appointment of
 an independent Chairperson, and who, I mean who is so schooled in
 20 labour law, would in way, go a long way to cure that, whatever defect, if
 you may call it a defect, to say that the playing fields are not level. I
 understand that perhaps Mr Sesoko would have preferred also to appoint
 a senior counsel of equal measure to Mr William McCurry under normal
 circumstances, but given the fact that he has got to pay from his own
 pocket, and unlike the employer who pays with taxpayers money, I mean

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perhaps is not able to do that. I understand that, and that point has merit because one cannot ignore, one cannot turn a blind eye to the fact that in any disciplinary hearing, in any labour dispute, the employee is always on the weaker side, and that is why as the Chairperson you have got to be on guard, be forever on guard to ensure that any prejudice does not occur.

And having said so, when one has regard to what I have already stated before and in my ruling insofar as the stay of proceedings is concerned, the principle of expeditious resolution of labour disputes, what we are, I am being asked to do, just goes against that and I am not
 10 persuaded that it is in the interest of expeditious resolution of labour disputes that I allow these proceedings to be stayed, pending the Labour Court order, which we do not know which way it is going to go as if to then pre-empt how it is going to go, in fact as Mr Ford did point out, these proceedings may take well over a week.

Then if that is the case it then makes sense that we start earnestly because then time is, time maybe of the essence to ensure that if for instance the Court comes back and dismisses Mr Sesoko's points, then I mean then we would have utilised or I mean today or tomorrow and
 20 we – we do not really have to again sit back and set other dates which could be, and we just know the, I do not know the Council's availabilities, and could also infringe on my availability as well. So for that matter, for that reason I cannot think that it orders well for me to then say, no, even though I do not know how the Labour Court is going to rule tomorrow, that I should therefore say no, we nevertheless stay.

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A situation which I would prefer is one which we start with the proceedings and then in the absence of the Court order, either way then we will proceed, however if along the way there comes a Court order that says stop, I respect the rule of law. I have got no reason to defy the Court order. The employee can rest assure that these, if these proceedings are not about to finish today, or tomorrow, or Wednesday for that matter, at the time the order comes, if it is in his favour, then the proceedings I mean will stop.

I understand Mr Ford's point which is to the effect that it might amount to
 10 a waste of time to start these proceedings and only for the Court to give an order to say the proceedings should stop. That could very well be the case but perhaps it is in the interest of ensuring that whilst we do not know how the Court is going to decide, we expedite these proceedings which have already protracted thus far.

I think that Mr Ford's point is outweighed by the principle of expeditious resolution of labour disputes.

I think it is imperative that we use whatever time we have now because
 dates have been set, and it is always difficult to find further dates, and
 for which dates will be mutually convenient for all parties and for that
 20 reason I will be very slow to easily or readily I mean putting the matter on
 hold which could mean that even if the court were to dismiss Mr Sesoko's
 point and then we reconvene on Wednesday already we are left with three
 days and in the fourth view the matter is not going to finish in any event
 then we are having to look at other dates which could be further in the
 future and whilst the employer is being prejudiced is paying Mr Sesoko's

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salary and it just runs against the expeditious resolution of Labour disputes.

So in my view it is important as much as it the Court might come back and say we I mean they uphold they grant Mr Sesoko's application. But I suppose it just the risk one would be willing to take.

I would rather start this proceeding and see how far we go and then in the absence of any court order cause at this point in time there is none that is before me that is precluding me from going ahead with the proceedings so for that reason I am not inclined to grant this day of proceedings.

10 What I have stated extemporarily it is not or rather my ruling here is not limited to what I have stated in the extemporarily I reserve the right to expand more on my ruling at a later stage should it be necessary.

But for now I would imagine that what I have said does suffice, but, if parties want a ruling in writing I am more than willing to do that ruling in writing. If only to amplify what I have already said extemporarily.

So in short I, my ruling is to the effect of that we proceed as planned and then in that case in fact Parties would recall that in my ruling I had further given directives as to the exchange of bar documents and so on
20 and if there is any need to supplement whatever I am not too sure to what extent that is that has been done I mean the judging by the fact that there is an application that has been brought to the Labour Court. But those are two, those are two processes, which ought not to be confused. And for that reason I would at this point perhaps pause and then enquire from the parties as to their state of readiness to proceed with the matter, if we

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need to stand down for about 30 minutes or an hour that can be done. I do not have a problem with that. But, and also to, I would like Parties to address me if there is a common ...[indistinct] or there is or – or – or what is the status of the matter.

MR MOKHATLA: Thank you very much, Chairperson. We are ready to start with this hearing from the employer's side. As you have indicated in your ruling that we should give the employee's legal representatives a bundle by Friday the 10 June 2016. We have confirmed that there has been an exchange of bundles which was much earlier than the 10 June 10 2016, am I right?

MR FORD: Ja.

MR MOKHATLA: And so the employee's legal representatives do have the bundle. The only bundle that has to be made available to yourself as the Chairperson and also one which will be used by the witness, so if we can just adjourn for ten minutes so that we sort out then those two bundles, and otherwise then we can start so that the employee can plead

CHAIRPERSON: Mr Ford?

MR FORD: Chairperson before I respond to my learned friend, we obviously respect your ruling. The difficulty that we have is that the Labour Court matter is continuing tomorrow, I am not so sure whether you 20 saying we are not allowed to go to the Labour Court tomorrow and – and what – what, or am I understanding you to say that we proceed today and that you not allowing us to leave the room to go to the Labour Court tomorrow, or did that, I just want clarity, are we, are you saying you not preventing us, because we do not want to find ourselves in a situation

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where we go to the Labour Court, and the hearing continues in our absence. I just want clarity on that aspect of your ruling.

CHAIRPERSON: On the contrary, I mean I am not saying that, that I am not allowing you guys to go to I mean the Labour Court and I will, and I will never say that I mean of course I mean you have to go to the Labour Court and represent your Client. I am saying, we can proceed now and then what we are raising could be a matter of practicalities that press parties could work on as to, as of tomorrow, whether we proceed today and then say at four o'clock we adjourn, and then we stand down for
10 tomorrow until Wednesday, then the parties, I do not have, I do not see myself having to make a ruling on that one,

I think those are issues of practicality that parties as colleagues can then work -then work around and then be communicated, but I am quite flexible on that one. I do not want also a situation where I would not want a situation where once the employee is in the Labour Court addressing the Labour Court and the matter is proceeding but as far as I also, I have heard the matter is proceeding at 14H00 in the Labour Court. So as I am saying it is a matter of practicality where then we can start for instance now and then adjourn at 16H00 and then start in the morning
20 and then adjourn at some point and then you go to the Labour Court and the matter stands down whilst the application is being moved in the Labour Court or what have you but I am saying, I am - I am putting this on the table that let us explore that one [intervenes]:

MR CURRY: Chairperson you are able to make that ruling.

MR MOKHATLA: Well from our side we have no difficulty with that, I see

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mean with the proposal that is made by the Chairperson, but the fact of the matter is that the ruling, we should start and we are ready to start and let us see how far we go, and then let us see whether we can work out what time we can start tomorrow, but of course we agree with the Chairperson that we would also like a situation where then the employee has to be at the Labour Court at two o'clock that we say that we are starting, and then we just proceed ourselves here, so we can arrange in such a way that maybe tomorrow we can start at nine o'clock in the morning and we adjourn at eleven-thirty.

10 We can work out those _____ and we do not have any problems with that, I mean the people who is supposed to be complaining is us who do not even have, I mean we have not even filed an affidavit yet so it is us who will be saying that but then when do we get the time, but then we have to make sure that we you know allocate time outside these proceedings, we cannot say to the Chairperson that adjourn the proceedings and allow then us to go and draft ourselves an affidavit.

MR FORD: I understand that Mr Chairman:

CHAIRPERSON: I am happy to for instance, I am happy to mean depending on whether we are starting at eight or eight-thirty or nine o'clock I am happy to stand down the proceedings, say maybe two or three hours before the Labour Court application and then after, I mean and then we, I – I – I doubt any papers will be served in resuming after the, after the order tomorrow then we could resume on Wednesday. [intervenes]

MR MOKHATLA: Depending on the outcome.

CHAIRPERSON: Depending on the outcome of course if the order says:

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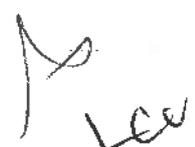
no I mean we stop then, I mean then I say we are not coming back. But I am happy to afford the employee that time, as I say, as I said two to three hours before even the application and it goes without saying that when the application is being heard, these proceedings will not be going on because we would want it to wait what then the Labour Court says because you cannot be in two places at the same time so because you cannot be in two places at the same time then it follows that then we have to adjourn whilst you are I mean you are in the Labour Court.

MR FORD: If I may Mr Chairperson and in respect, perhaps just to try
 10 and stress the issue of practicality is the following, this morning it took me literally an one hour and thirty minutes to get here and I explained you what my difficulty was and Johannesburg and Pretoria roads are very unpredictable as we all know It would be an irresponsible thing to do of a party that knows he needs to be at the Labour Court and still continue with, so what I am asking for is more out of a sense of practicality.

We respect your ruling that the hearing is continuing so we will start today like you have now indicated but let us be allowed then tomorrow to go to the Labour Court and not have the rush again to come here and not paying attention you know because in our minds we have urgent application that we going to be arguing in literally another hour
 20 [intervenes].

CHAIRPERSON: It causes anxiety.

MR FORD: And it is – and I would never have placed my learned friend in that position, nor would I expect him to put me in that position where you cannot pay particular attention as counsel there is a duty on you to



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be present in your client's matter.

CHAIRPERSON: Ja.

MR FORD: I think it would be a disservice and – and I think as Council we need to accept that there are circumstances at time where we must be a bit more lenient with one another to accommodate one another. If – if the foot was in, the shoe was in the other foot I would have gladly have agreed with my learned friend that we not continue tomorrow and to make sure they are ready and prepared for the Labour Court application, as opposed to expecting them to be here and there and not present
10 [intervenues].

MR MOKHATLA: Ja, Ja look, I mean, I think what we have done already I think that we have shown that we are very sensible under normal circumstances we are simply going to say that there is a ruling of the Chairperson and so the matter is proceeding, even two o'clock it is proceeding, your client then must ensure he gets counsel who must be there, you must do the same or your attorney then can proceed you, but why I am looking at that, you see we are being sensible, you see we cannot adjourn earlier, but the issue of traffic really then nobody can use it as an excuse in Johannesburg or Pretoria because we know that we live in that
20 type of a city and we just have to come earlier, but then about tomorrow it may depend on your attitude about the witness we are calling tomorrow, because the witness that is going to be available tomorrow, I mean today's witness is Mr Moseng, let me just sort out so that you know who we are calling and then our next witness is going to be Mr Judae who drafted who prepared the Workmen's report but Mr Judae is simply going

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to come and confirm this report. If you Client is happy to say that he accepts that the report then comes from Workmen's, it was prepared by him, then it is fine, then we have no issue with that, I mean if you do not want to cross examine him or whatever, because it is simply his report and then we do not have to call him, and then our 3rd witness then will be Ma'am Bheki and then from there then that will be our case. So that gives you an idea of, and – and we are not intending to call Mam'Bheki tomorrow [intervenes].

CHAIRPERSON: Can we do this, sorry Mr Ford, can we do this, can we
10 in the interest of time, can we then proceed as I have ruled, so we stand
down for ten minutes in the order if, in order to make the file available for
the Chairperson, and then at the end of the proceedings today let us
revisit this issue then as to what is going to happen tomorrow, are you
happy to do that?

MR FORD: I am happy to do that Mr Chairman. Obviously we are going
to need time to consult with, I am not sure whether this is an opportune
time to take the lunch break possibly Mr Chair, it is now almost one-thirty.

MR MOKHATLA: So maybe then we take break now and resume at?

CHAIRPERSON: It is twelve-thirty so perhaps we resume at half past
20 two? Would that be fine?

MR FORD: Yes.

CHAIRPERSON: Thanks for that suggestion I think it made sense.

MR MOKHATLA: Well I think subject to, let us maybe check with my
witness if we are not constraining him but otherwise, I am fine.
[Intervenes].

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CHAIRPERSON: Maybe you just want to persuade the witness just to accommodate us I mean I think what Mr Ford is saying makes a lot of sense, ja, ja.

MR MOKHATLA: Okay. Thank you. I do not know, are you buying food for us? [Intervenes].

CHAIRPERSON: Or can we then go off record here.

MR MOKHATLA: Okay, alright it is fine.

HEARING ADJOURNS

HEARING RESUMES

10 **MR FORD:** Chairperson said we will discuss ... (intervenes)

CHAIRPERSON: We will revisit it after- once we are done for today once- at the time we adjourn, ja.

MR MOKHATLA: Ja.

MR FORD: Mr Chairperson.

CHAIRPERSON: Resumption of a hearing today is the 20th of June 2016.

This is a hearing in respect of Mr Matthews Sesoko. Who is currently on suspension and before we adjourned I had just made a ruling on the point, I believe it was in relation to this day which I need not repeat as everything was on record. And so, before Mr Mokhatla goes on to call his
 20 first witness as he has indicated to me that they would wish to make opening statements which should they would give synopsis of the charges case.

And at this point I need to also warn the employee that you do not need to give an opening statement. You do not need- you have a right to reserve your defence. If you do not wish to state the basis of

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your defence that is absolutely your ultimate right. And you may choose either to make an appeal statement through your counsel or you may choose to reserve your right and you are not compelled to disclose the basis of your defence. So, at this point I will then hand over to Mr Mokhatla to address me with the opening statement.

MR MOKHATLA: Thank you very much Chairperson. We have put before you a bundle of documents in an arch lever file. If you can just open it. I assume that everybody has that bundle. It has got an index. You will see that item 2 is a charge sheet it says Mr Matthews Sesoko page A3 to A4.

10 So, when we turn to that page which is a charge sheet. This is a charge that has been preferred against Mr Sesoko but I need to ... (intervenes)

CHAIRPERSON: Sorry man. I am sorry to interrupt you. Just before your opening statement, this is my omission. If you can just read- I do not know if you can find out from counsel for Mr Sesoko, is it necessary for the charge to be read out for the record before you can indicate whether Mr- how he says he is going to plead. Because it is important ... (intervenes)

MR FORD: We do not have a problem with the charge being read out.

CHAIRPERSON: So, it does not have to be read out?

20 **MR FORD:** It can be read out just so that it is on the record if you ... (intervenes)

CHAIRPERSON: Do you insist that- ja, I mean of course ... (intervenes)

MR FORD: I am taking instruction.

MR MOKHATLA: Well I think because it is short, it is not long, then I think it is better to read it out.

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CHAIRPERSON: Just for the record. Are you happy to indicate his plea or would you want him ... (intervenes)?

MR FORD: Ja, I will indicate. I will indicate his plea.

CHAIRPERSON: Okay alright. Okay so you can go on.

MR MOKHATLA: Okay, thank you. As you can see at page A3 the independent Police Investigative Directorate, the Directorate as the employer has preferred charges against Mr Innocent Khuba as the first employee and Matthews Sesoko as a second employee subsequent to them being charged together the proceedings was separated and Mr
10 Khuba's hearing preceded separately from that of Sesoko but they faced the same or similar charge. It is only one charge, charge 1 which reads as follows;

You Mr Sesoko, the second employee, you are currently- and there you see that it says, the Head of Investigations IP dealing in Limpopo, if you can just delete that. And say you are currently the Chief Director and Information Management.

CHAIRPERSON: Director?

MR MOKHATLA: Chief Director Information Management.

CHAIRPERSON: Mr Ford, are you fine with that?

20 **MR FORD:** Yes, we are. Okay.

MR MOKHATLA: During 2012. Oh okay. So, it is during 2012, and then insert the following immediately after the comma: you provided legal assistance in the matter.

So that is now the continuation of what is written there.

CHAIRPERSON: So as oppose to you, you are appointed as lead

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investigator. You are inserting you provided legal assistance in the matter relating to illegal rendition.

MR MOKHATLA: That is right. Yes, in the matter relating to the illegal rendition of Zimbabwean Nationals by certain members of the Directorate for priority crimes investigation which occurred during November 2010 and January 2011. The investigation was concluded on or about January 2014. And then you insert the following; immediately after January 2014 a final and you delete and you submitted a final investigation report.

MR FORD: Wait I am lost Chair. I am lost.

10 **CHAIRPERSON:** Ja.

MR MOKHATLA: It is – so it is going to read as follows;

The investigation was concluded on or about January 2014 and a final investigation report was submitted to the National Prosecuting Authority for a decision.

So, we delete, you submitted a final ... (intervenes)

CHAIRPERSON: So it now reads;

The investigation was concluded on ~~or about~~ January 2014 and a final investigation report was submitted to ~~the National Prosecuting Authority~~ for a decision.

20 **MR MOKHATLA:** That is right.

CHAIRPERSON: That is right.

MR MOKHATLA: Yes.

CHAIRPERSON: Okay.

MR MOKHATLA: In submitting the said report to the National Prosecuting Authority ... (intervenes)

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CHAIRPERSON: Yes.**MR FORD:** Chair, can I suggest we stand down. It appears ...
(intervenes)**CHAIRPERSON:** I think so.**UNIDENTIFIED SPEAKER:** Because we are getting confused now.**CHAIRPERSON:** Yes, I think so until we are there is clarity. Ja right.
Can I suggest that we just take a moment to stand down until there is a
clarity so that we do not stop start stop start.**MR MOKHATLA:** Yes Chair. Okay, thank you. Just two minutes.10 **CHAIRPERSON:** Pause.**HEARING ADJOURNS****HEARING RESUMES****CHAIRPERSON:** Just put our phones on silent.**MR MOKHATLA:** Thank you Chairperson. Thank you for the indulgence
Chairperson. So we corrected this. It is because of it was two
employees charged with the same offence and then you end up with
people doing cut and paste.**CHAIRPERSON:** Ja which make it all the more imperative for the charge
to be read into the record.20 **MR MOKHATLA:** That is right; ja. So immediately after NPA for a
decision, then that is full stop. And you delete the rest up to the end of
that paragraph which start with, in submitting the said report to the
National Prosecuting Authority.**CHAIRPERSON:** So that is deleted.**MR MOKHATLA:** That is deleted because you accept that the report was

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submitted by Khuba and not by Sesoko.

CHAIRPERSON: Okay. So, it is common cause that the report was submitted by Mr Khuba ... (intervenes)

MR MOKHATLA: To the NPA, that is right ja.

CHAIRPERSON: The NPA, okay.

MR MOKHATLA: That is right, ja.

CHAIRPERSON: Mr Ford.

MR FORD: So that is deleting from?

MR MOKHATLA: In submitting report, you delete all the way to the end
10 of that paragraph.

CHAIRPERSON: Ja.

MR FORD: Okay. And the paragraph end at?

MR MOKHATLA: Decision.

MR FORD: At prosecuting?

MR MOKHATLA: Yes, that is right. That is where it ends so you delete all that, ja.

MR FORD: Decision to prosecute.

MR MOKHATLA: That is right. So, ~~paragraph two then is going to read~~
as follows; Notwithstanding that a final report was submitted to the NPA,
20 which the NPA subsequently ~~referred to the~~ Director of Public
Prosecutions South Gauteng Advocate Chauke.

CHAIRPERSON: Yes.

MR MOKHATLA: And then it must now read as follows; For a decision, the docket was retrieved... (intervenes)

MR FORD: Which the NPA,?

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MR MOKHATLA: For a decision, the docket was retrieved from the NPA South Gauteng by IPID.

MR FORD: Mr Chairperson, I am struggling to follow.

MR MOKHATLA: So, you delete you are accompanied by Angus, you delete all that up to the end of the paragraph so that is deleted.

CHAIRPERSON: And you said, for a decision.

MR MOKHATLA: For a decision, the docket was retrieved from NPA South Gauteng by IPID. And then paragraph three remains as it is because then the actual charge is paragraph three as is.

10 **CHAIRPERSON:** Okay so paragraph 2 will now read; Notwithstanding that you ... (intervenes)

MR MOKHATLA: That a.

CHAIRPERSON: Oh, that a final report.

MR MOKHATLA: Ja so you delete you, you had submitted there.

CHAIRPERSON: Notwithstanding that a final report to the NPA which ... (intervenes)

MR MOKHATLA: No, a final report was submitted to the NPA.

CHAIRPERSON: Okay.

MR MOKHATLA: So insert, was submitted.

20 **CHAIRPERSON:** To the NPA which the NPA subsequently referred to the Director of Public Prosecutions South Gauteng Advocate Chauke. And then you say; For a decision, the docket was retrieved from the NPA ... (intervenes)

MR MOKHATLA: South Gauteng ... (intervenes)

MR FORD: It does not make sense Chair. I must confess:

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CHAIRPERSON: It does not sound right, ja. Try and construct it again.

MR MOKHATLA: For a decision, let us say the docket was subsequently and in less ... (intervenes)

CHAIRPERSON: For a decision and the docket was subsequently retrieved from NPA South Gauteng. Is that right?

MR MOKHATLA: Ja. The docket was subsequently retrieved or collected from the NPA South Gauteng by IPID.

CHAIRPERSON: So instead of comma after decision been take and the docket.

10 **MR MOKHATLA:** Ja and the docket, ja that is right.

CHAIRPERSON: So that it creates; Notwithstanding a final report- Notwithstanding that a final report was submitted to the NPA which the NPA subsequently referred to the Director Prosecution South Gauteng Advocate Chauke for a decision ... (intervenes)

MR MOKHATLA: Then okay, I think let us do it this way.

CHAIRPERSON: Ja.

MR MOKHATLA: Ja, then for a decision, IPID subsequently collected the docket from the NPA South Gauteng. (intervenes)

MR FORD: Chair, may I make a suggestion?

20 **CHAIRPERSON:** Ja.

MR FORD: If it is possible. I am not sure whether there are secretarial services available. If somebody can just simply read the thing up, I do not want to find myself in a position where I incorrectly took down a note which was read out. So that we are all on the same page. This is actually the charge.

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It will make my life easier and it will make your life easier as well. Alternatively, I can type it out here now and we all have a similar document to work from. I am more than happy for Mr Mokabe to stand over my shoulder and I can just type it out.

MR MOKHATLA: Ja but that is the last part. I mean that is the last part. Obviously, they were intending that these corrections then will then be typed and submitted tomorrow. But you can do that if you then- if you can ... (intervenes)

MR FORD: Ja I prefer that. So if we can go back to charge 1?

10 **CHAIRPERSON:** Ja it is fine. So let us finish paragraph 2.

MR FORD: Ja.

MR MOKHATLA: So it is; Notwithstanding that a final report was submitted to the NPA which the NPA subsequently referred to the Director of Public Prosecutions South Gauteng Advocate Chauke. For a decision, ... (intervenes)

CHAIRPERSON: Yes.

MR MOKHATLA: IPID- now let us put it that way because I mean in case didn't so- IPID subsequently collected the docket from NPA South Gauteng. IPID subsequently collected the docket from NPA South
20 Gauteng.

CHAIRPERSON: Which is a new word corrected as opposed to retrieved?

MR MOKHATLA: Ja.

CHAIRPERSON: Ja.

MR MOKHATLA: Yes ja, so collected then it becomes much clearer.

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CHAIRPERSON: Okay alright. Are you fine with that? Is it clearer ...
(intervenes)?

MR FORD: Ja.

MR MOKHATLA: And then you can type it for us.

MR FORD: Okay.

MR MOKHATLA: Ja.

MR FORD: So I am going to type charge 1 or paragraph 1 rather of
charge 1. It is reading- you can just read this back to me. In fact, I will
read it to you.

10 **MR MOKHATLA:** Who is faster between the two?

UNKNOWN SPEAKER: I think we pass our watch ... (intervenes)

MR FORD: I am just not sure whether the remainder of the charge is also
still going to be reading out.

MR MOKHATLA: Yes, I am going to read out, yes.

MR FORD: Read out.

CHAIRPERSON: We're on record again, you can go ahead.

MR MOKHATLA: Thank you. So paragraph 3 of the charge reads as follows; You, Khuba and McBride altered the report which had been
handed over to NPA and deleted information incriminating Lieutenant
20 General Anwa Dramat, the former National Head of the DPCI and also via
the Probational Head of the DPCI Gauteng from the report in order to
reach a conclusion that Dramat and Sibiya had been exonerated by IPID,
when you ought to have known that the final IPID report January 2014
recommended that Dramat and Sibiya be criminally charged.

4. Altering the report of January 2014, you and Khuba have made

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yourselves guilty of dishonesty and defeating the ends of justice.

So that is the charge sheet Chairperson. If the employee can plead to the charge.

MR FORD: Chairperson my attorney ask an opportunity to explain and said given the alteration that has now taken place, we obviously only found out from now. We can just take time to explain the extended alteration ... (intervenes)

CHAIRPERSON: The employee understands the charge itself.

MR FORD: Okay.

10 **CHAIRPERSON:** So shall we stand down for what say?

MR FORD: Not more than 10 minutes.

CHAIRPERSON: 5 minutes.

MR FORD: Ja, not more than that.

CHAIRPERSON: It will be fine. What is the time now, quarter past, so should we reconvene at 25 past?

MR FORD: Yes, that would be fine.

CHAIRPERSON: Okay.

MR FORD: Thank you Mr Chiar.

CHAIRPERSON: Ja alright. Okay

20 **HEARING ADJOURNS**

HEARING RESUMES

MR MOKHATLA: Thank you. Yes, I understand. The employee (intervenes)

CHAIRPERSON: So, the charge have now been read what the case are, alterations given the- and the- Mr Ford had asked for some few minutes in

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order to explain it to the employee so that he understands the charge altered against him. Mr Ford.

MR FORD: Thank you Chair. I have taken the employee to just talk him through the charges. He expressed concern and I must submit I will support that concern. He stating that this charge has changed now but from paragraph 3 and 4, is altogether new. The concern is does paragraph 1 form part of the charge and if it does then it is a new charge all together. And paragraph 1 would appear in the charge sheet that was presented and indicated that he was appointed as the Lead Investigator in
 10 the matter and now it is claimed that he provided legal assistance for the first time that he hears that.

So, whereas we prepared to render a defence to the charge in so far as the one that is preferred the (indistinct) to do the altered the report. But now he is being charged with- if you can take charge 1 is, it complies paragraph 1, 2, 3 and 4. It is for the first time that he learns today that he provided legal assistance in the matter relating to the illegal rendition of Zimbabweans. Now whilst he respects the employers right to alter charge sheets it must do so by giving the employee sufficient notice so that the employee can (indistinct) it now.
 20 Because had he known that this is now the new charge, he would wanted have asked particulars such as, when did he provided legal assistance, who did he provided that legal assistance to? That is for the first time that the employee in these proceedings now in the last half an hour heard today that he had been providing legal assistance in the matter related to the illegal rendition.

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In so far as paragraph 2 of the charge sheet, the employee is now asking, what is it that he ostensibly have done wrong in relation to charge 2 or paragraph 2 of charge 1? Is he alleged to be guilty that IPID subsequently collected the docket? Is it that the report was submitted to the NPA? Or that the report was submitted- referred to the Director of Prosecutions Gauteng? What- he is asking what is it that he did wrong there? How can he plea to something when he is not clear what has he done wrong because this is all part of charge 1?

Charge 3, he says that is the charge that was preferred against him, charge 3. So, his question is rightly so, what is- what am I being charged for?

CHAIRPERSON: When I asked and I will give Mr Mokabe a chance to respond. When I asked as we were going through the alterations and subject to an altered correction, I did want clarification as to whether charge 3 was the gravamen of the charge against Mr Sesoko and I heard Mr Mokhatla say that is the gravamen. ~~That is in fact, that is the charge.~~ So, by that I understand anything else to be- could be way of background, I do not know. I'm going to give Mr Mokhatla a chance to respond now.

MR MOKHATLA: Yes.

20 **CHAIRPERSON:** Because for me the ~~(indistinct)~~ ought to be prejudice whether there is any prejudice. If there is and element or material change to the charge which it then results in the employee being prejudiced. And if any alterations do not go into the heart of the charge which I take it to be charge 3 to paragraph 3 which is the charge. If it does not go into that I am not sure if one could say there is any

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prejudice. But I am going to allow Mr Mokabe to this point.

MR MOKHATLA: Then Chairperson I am now concerned. We are trying to accommodate the employee but it is clear what the employee now wants. Is that there must not be any evidence led today and that is wrong. I think I must put it very clearly. It is absolutely wrong. He has made the request that he wants to leave early and whilst he is busy then bringing this charge of the applications, then how is he going to leave early then? Because then we have a witness here who has been here the whole day and it would be unacceptable that this witness must then be
10 sent home then today when he has wasted then the whole day here.

I mean this- there is one charge here. Can you look at page A3 Chairperson, as to why now all of a sudden, the employee wants to pretend as if he is confused. There is only one charge. There is charge 1 and paragraph 1 and 2 are simply then an arrangement of the background and charge really is here in paragraph 3. So, it only one charge. And where is the prejudice because what the employee is supposed to do now is to plead is, he- plead guilty or not guilty. That is simply then what he has to do. Then from there it is up to us to lead evidence which will support then the charge as it appears in paragraph 3.

20 Either then we have submitted sufficient evidence or we have not. And that witness is not coming to talk about then these other things. So I mean Chairperson we have reached a stage where the employee has to plead guilty or not guilty and the rule is that if an employee or an accused person refuses to enter a plea that the Chairperson simply enters a plea of not guilty on behalf of the witness- then I mean the accused person.

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and from there the proceedings continue.

MR FORD: Chair, I do not think and I must explain to Mr Mokabe we are exceptionally thankful for the indulgence but the question is it is not the employee who came in here and altered documentation, it is not the employee. It is (indistinct) Mr Chairperson.

CHAIRPERSON: Ja.

MR FORD: It is the employers legal counsel that came and changed documents. It was never presented that paragraph 1 and paragraph 2 is only for background purposes. It was not- this is not how you read it
10 because it says charge 1, paragraph 1, paragraph 2, paragraph 3, paragraph 4. So, the only other way to me is that this paragraph 1, 2, 3 and 4 constitutes in its entirety charge 1 against the employee. I would be very happy if Mr Mokabe says we should actually just delete paragraph 1, delete paragraph 2 and stick with paragraph 3 and 4. No problem.

MR MOKHATLA: 3 and 4 are the charges, 1 and 2 is the background. That ... (Intervenes)

MR FORD: But then it should not be part of the charge.

CHAIRPERSON: My concern remains the same, whether any material alteration to the background goes to the heart of the charge which is for
20 me paragraph 3.

MR FORD: Okay.

CHAIRPERSON: And if it- and if in your view it does not go to the heart of the charge itself, paragraph 3, then my question would be, where is prejudice?

MR FORD: Okay. Forgive me Mr Chairperson- I wanted to say

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commissioner. When you look at paragraph 1 it says; you provided legal assistance in the matter relating to illegal rendition. And then when you read that with paragraph 3 it says; you altered report. Meaning you altered the report in relation to the illegal assistance that you have given. That is the only way in which- because if it is. The question is this, if paragraph 2- 1 and 2 are not material, then let us simply delete them. If the employer says fine Mr Ford, let us delete paragraph 1 and 2, we will be very thankful.

MR MOKHATLA: Chairperson why is it prejudice that- either he provided
10 legal assistance or he did not provide it. So, is it prejudice really?

CHAIRPERSON: I think what we are dealing with in so far as 1 and 2 it is a matter for evidence. And as long as the employee understands the charge which is on paragraph 3, for me from where I am sitting there is no prejudice and it had certainly not been shown to me that prejudice exist. Because unless the main, the heart of the charge which is paragraph 3, had been altered, then- obviously- that would mean an amendment to the charge.

Now but in the absence thereof I ~~do not see any prejudice.~~ I mean obviously I do not wave the employee feels that- it is up to the employer
20 to lead evidence to prove the background that they are alluding to in paragraph 1 and 2. And then all those ~~are then~~ leading to the conclusion on paragraph 3 and 4 which for me, ~~3 and 4 they are the gravamen of the charge and have not been altered.~~

MR FORD: Chairperson, I agree with you. This is the context. You are asking and Mr Mokabe is insisting ~~that the employee must plead to the~~

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charge.

CHAIRPERSON: Yes.

MR FORD: But now charge 1 comprises 4 paragraphs. That is charge 1. At no- Chairperson you are the only person in this room that says the charge is actually only 3 and 4. You are the only person that says that.

MR MOKHATLA: That is a charge. Yes, I am telling you that it is the charge. So, can we ask the employee then to charge- the charge is 3 and 4. That is what I am saying. Because I have told him but he is saying that it is only you Chairperson who is saying that the charge is 3 and 4.
10 But I said it initially that that is the charge, 3 and 4. So they must leave it to you Chairperson to actually the- I mean decide whether this employee is going to plead or not. Because we cannot be detained by this type of arguments which then the employee has to plead first.

MR FORD: The employee ... (intervenes)

MR MOKHATLA: And he must be allowed to then, is he plead or not? That is what I need to know.

MR FORD: Sorry Mr Mokabe, the employee wants to plead, Mr Chair, he really really wants to. Accept that Mr Chairman through you if the employee says paragraph 1 of charge 1, he do not need to plead to
20 because this is not the charge it is simply background. Paragraph 2, he do not need to plead because this does not form part of the charge, it is simply background. Paragraph 3 and 4, that is the charge. That he is prepared to plead to.

MR MOKHATLA: That too is fine.

CHAIRPERSON: The mechanics- is that what you say?

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MR MOKHATLA: No, it is fine. If that is then how you he wants to plead then there is no problem. As long as we know he is pleading guilty or not guilty. That is what we want to know.

MR FORD: So, we will be happy to do that charge- and the record will reflect that paragraph 1 and paragraph 2 does not form part of the charge. Paragraph 3 and paragraph 4 is what the charge is about.

CHAIRPERSON: But those- the employer may lead that as part of his own evidence but that does not form part of the charge. Is that what you are saying?

10 **MR FORD:** No, the employer- why would the employer need to lead evidence to something that therefore in the charge?

CHAIRPERSON: The employer.

MR FORD: Why would he because ... (Intervenes)

CHAIRPERSON: That is their prerogative I mean if they- if that is a build up to their case. It is their prerogative is it not.

MR FORD: But Mr Chairperson, the principle of legality is he must charge me for something that I have ~~done wrong~~. And in this particular instance the employer is saying you have ~~done nothing wrong~~ in terms of paragraph 1 and paragraph 2, they are simply for background. There is
20 no need to lead evidence, there is ~~nothing wrong~~.

MR MOKHATLA: That is why I am saying Chairperson; he can plead the way he wants to plead.

CHAIRPERSON: Yes.

MR MOKHATLA: As long as it is understood whether he is pleading guilty or not guilty. That is all.

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MR FORD: Okay. Alright. So, in essence the plea for the employee is the following; The employee subject to your direction does not need to plead to paragraph 1 or paragraph 2 to the charge sheet because as Mr Mokabe has correctly pointed out this have been included simply for purposes of background.

CHAIRPERSON: Ja.

MR FORD: The charge- charge 1 commences on paragraph 3 and continues on paragraph 4.

CHAIRPERSON: So, this is how it is unto him with the exception of
10 paragraph 1 and 2 of the charge sheet. The employee pleads not guilty to the charge sheet.

MR FORD: Ja which paragraph 1 and 2 as Mr Mokabe had indicated, it only refers to background.

CHAIRPERSON: I thought I had approached that when I said with the exception of paragraphs 1 and 2 ... (intervenes)

MR FORD: Yes.

CHAIRPERSON: The employee pleads not guilty to the charge sheet.

MR FORD: Ja. Further to that Mr Chairperson, the employee's plea is a provisional plea of guilty on the basis that ... (intervenes)

20 **MR SESOKO:** Not guilty.

MR FORD: Not guilty. Forgive me.

MR SESOKO: I want to go home.

MR FORD: Forgive me Mr Sesoko. It is a provisional plea of not guilty on the understanding that in participating in these proceedings, the employee is aware and all present are aware that the employee is

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challenging the legitimacy of these proceedings in other forum.

CHAIRPERSON: Okay. So, in other words the employee is participating in these proceedings, reserving his rights.

MR FORD: Okay.

CHAIRPERSON: Okay.

MR MOKHATLA: Thank you very much Chairperson. We are calling our first witness. That is Advocate Mosing.

CHAIRPERSON: Have you elected to forgo your opening address is in (indistinct)?

10 **MR MOKHATLA:** Then briefly Chairperson the opening address goes as follows. The employee Mr Sesoko who is employed by IPID is alleged to have altered a final investigation report which was prepared by Mr Khuba K-H-U-B-A who was at the time the Provisional Head of IPID in Limpopo. Mr Khuba had been appointed to investigate a matter relating to the Zimbabwean rendition which was alleged to have been committed by some senior officials within the HAWKS or DPCL.

In the course of his investigation Mr Khuba was assigned two persons to assist. The first person was from Crime Intelligence, that was Mr Moukangwe- I do not know how it is spelled. I think it is M-O-U-K-A-N-G-W-E but I will then I will check the spelling, to assist him as the co-investigator. The second person was assigned to him from the National Prosecuting Authority the NPA to guide the investigation because of the nature of the investigation and its complexity and that was Advocate Mosing.

So what happened was that Khuba will conduct the

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investigation but from time to time seek guidance from Advocate Mosing especially on the legal aspect of it. Because if the investigation leads to prosecution or a decision to prosecute, then there must be satisfaction that the investigation was done in accordance with the law. And the evidence collected will withstand scrutiny in the court of law. So Advocate Mosing is going to testify here to tell us about the role that he played and also at what stage he ended his role and which of the reports was a final report to him.

So what we are alleging is that Khuba prepared a report which
 10 was submitted by him to Advocate Mosing and once Advocate Mosing was satisfied that all the other things which were required to be done were done and with Khuba's understanding and agreement that report was regarded as a final report which Advocate Mosing submitted to the Director of Public Prosecutions South Gauteng for a decision on whether or not to prosecute. And that report was submitted to Advocate Mosing as a final report in January- so that report then the report which then was submitted to Advocate Mosing as the January 2014 report. And Advocate Mosing submitted that report to the Director of Public Prosecutions South
 15 Gauteng in February 2014 for a decision.

20 Then we will then also show that after the report was submitted to the Director of Public Prosecutions South Gauteng by Advocate Mosing as part of the docket for Advocate Chauke who is the Director of Public Prosecutions South Gauteng for a decision, IPID through its officials and one of them the evidence and if necessary will come with Angus and Khuba collected the report from Director of Public Prosecutions South

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Gauteng. Of course, then there is evidence to the fact that they were sent by Mr McBride to collect but that is not really an issue for purpose of this disciplinary enquiry.

All what you ought to know is that the report was collected with or the docket was collected from South Gauteng the Director of Public Prosecutions by IPID officials and that report was altered and a second report was prepared which exonerated Dramat and Sibiya and that report is called the March 2014 report. It is that report that we say that was intended to deliberately exonerate Dramat and Sibiya in the wrongdoing
 10 that the January 2014 report has already found that they have committed. And how that was done was by deleting incriminating information which was in the January report so that the March 2014 report appears to be saying that there is no evidence suggesting any wrong doing on the part of Dramat and Sibiya.

And we say that if that is correct that indeed they have done so, that is then the employee here Sesoko: We are not much concerned
 with Khuba, Khuba's hearing have been finalised. We know that he has
 been dismissed for this. So it is not an issue. We know that Mr McBride
 hearing was halted by the labour court painting the constitutional court
 20 challenge so we are not really much concerned about their conduct. We
 are concerned about the conduct of this employee now here. So, we say
 that his conduct in altering the report was amounted to defeating the ends
 of justice and also then he is guilty of dishonesty.

So that is then the line of argument that we are taking, but in
 substantiating this line of argument we are going to call witnesses and

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our first witness is going to be Advocate Mosing who is employed by the National Prosecuting Authority.

CHAIRPERSON: Yes.

MR MOKHATLA: Thank you Chairperson. So, can you call in the witness.

CHAIRPERSON: Okay.

MR MOKHATLA: Thank you.

CHAIRPERSON: Go and call the witness. Good afternoon sir.

ADV MOSING: Good afternoon.

10 **CHAIRPERSON:** How are you?

ADV MOSING: I am alright.

CHAIRPERSON: You have been called in here by the employer. Advocate Mokhatla is leading the evidence for the employer. You have been called in as a witness. Do you understand why you have been called in to these proceedings?

ADV MOSING: Yes, I do.

CHAIRPERSON: Do you consent to giving evidence before these proceedings?

ADV MOSING: I do.

20 **CHAIRPERSON:** Alright. Will you please then state your full names for the record.

ADV MOSING: It is Anthony Mosing.

CHAIRPERSON: Sorry, Anthony?

ADV MOSING: Anthony Mosing M-O-S-I-N-G.

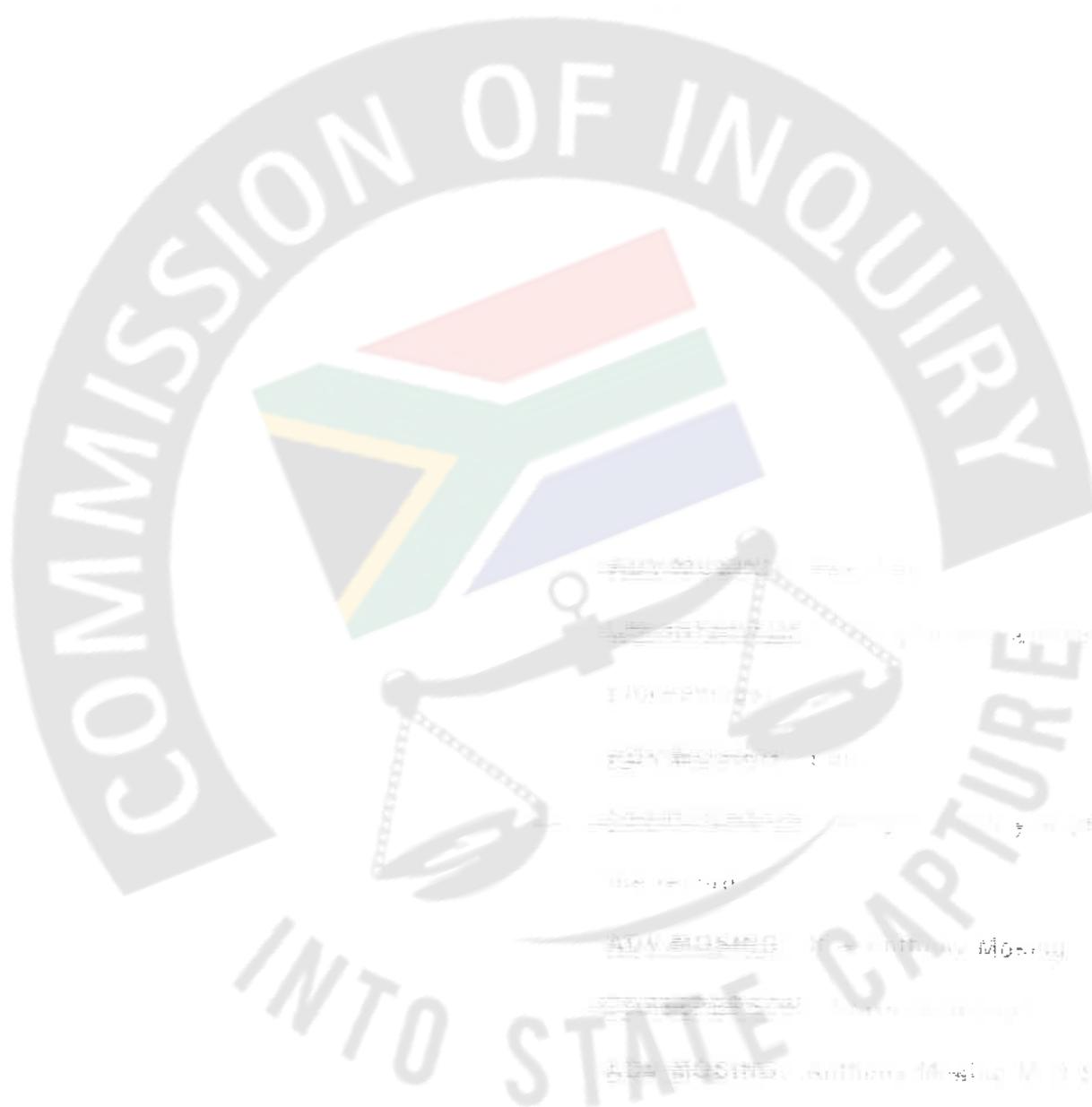
CHAIRPERSON: Okay alright. Mr Anthony Mosing do you have any

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objection in taking the oath?

ADV MOSING: I do not.



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CHAIRPERSON: Do you swear that the evidence you are about to give is the truth, the whole truth and nothing else but the truth?

ADV MOSING: Yes, I do.

ANTHONY MOSING (duly sworn, states)

CHAIRPERSON: You have been sworn in. Mr Mokabe, you can go ahead.

MR MOKHATLA: Thank you very much Chairperson. Mr Mosing, I understand that you are an admitted advocate, correct?

ADV MOSING: That is indeed correct.

10 **MR MOKHATLA:** Do you mind if I refer to you as Mister because normally if you refer to colleagues you just say Mister?

ADV MOSING: That is correct, thank you.

MR MOKHATLA: Thank you very much. You are employed by the National Prosecution Authority. Is that correct?

ADV MOSING: Yes, it is correct.

MR MOKHATLA: Can you explain to us in what capacity you are employed by the NPA?

20 **ADV MOSING:** I am a Senior Deputy Director of Public Prosecutions currently based in the NPS, National Prosecuting Services of the NPA at head office.

MR MOKHATLA: Yes. And generally, what are your duties on a daily basis, just briefly?

ADV MOSING: My duties include overseeing organised crime and ja, basically I am in charge of a group who is responsible for organised crime and other similar special projects.

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MR MOKHATLA: Yes. I am going to take you back to a matter in which I want to find out if you were involved in it and if you were, what role you played relating to the so called the illegal rendition of Zimbabwean Nationals. Does that ring a bell to you?

ADV MOSING: It does indeed.

MR MOKHATLA: Did you play any role in the investigation of this type of a matter?

ADV MOSING: Yes, I did.

MR MOKHATLA: More or less, which year was it? Do you still remember
10 the actual year when you came to have contact with this type of matter and having to play a role?

ADV MOSING: Speaking a little bit out of correction I think it was 2012 definitely the years 2013 and 2014.

MR MOKHATLA: Yes. And briefly what role were you called upon to play in the investigation of the rendition of the Zimbabwean Nationals?

ADV MOSING: I was requested by my supervisor to assist the Police on the investigation in terms of providing the necessary guidance especially given the fact that it was a high profile matter.

MR MOKHATLA: And who was the investigator that you were in contact
20 with you from time to time who was assigned to investigate this matter?

ADV MOSING: Initially the investigation to my understanding was done by a certain Mr Moukangwe, I am not sure of his rank, from the South African Police Services and not long thereafter Mr Khuba from IPID took over the investigations more primarily.

MR MOKHATLA: Yes. Now what was Mr Khuba supposed to do in so far

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as having to interact with you? Was he supposed to periodically speak to you and if so on what basis?

ADV MOSING: Yes. Just as with similar matters where as the Prosecution assist in the investigation were guidance. We met periodically with Mr Khuba and he would- there would be constant communication regarding the progress of the investigation.

MR MOKHATLA: Yes. Now in front of you then there is that file and that is a bundle of documents which I will like you to open and I will like you to go to page 1 which appears immediately after A10. Just immediately
10 after A10.

CHAIRPERSON: A10.

MR MOKHATLA: Yes A10. So that is page 1. Now this is a report if you can see there it is written there IPID at the top and then you see that there is Enquiry IH Khuba and then the date it says 2013/09/04 at page 1. Do you see that?

ADV MOSING: Yes, I do.

MR MOKHATLA: And then it is a bit of a lengthy report because it goes up to page 35. If you go to page 35 and then at page 35 it has got what is it ... (intervenes)

20 **ADV MOSING:** What isn't clear?

MR MOKHATLA: 35 if you can go there

CHAIRPERSON: It is page 35, it is just a. (intervenes)

MR MOKHATLA: This one.

CHAIRPERSON: It's at the wrong side of the investigation.

MR MOKHATLA: Oh, then sorry about that Chair. I think it was during

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the photocopy.

ADV MOSING: Yes.

MR MOKHATLA: So, at page 35 you can see there is a line and below it is MR HI Khuba Acting Provincial Head IPID Limpopo. Do you see that?

ADV MOSING: I see it.

MR MOKHATLA: So, the report is not signed. But then when you turn to page 34 just the page before. You see there it says recommendations. Do you see that

ADV MOSING: I do see it.

10 **MR MOKHATLA:** And it says; based on the valuable evidence the Independent Police Investigative Directorate recommends that Lieutenant General Dramat, Major General Sibiya provided his warning statement and submitted Lieutenant Colonel N Maluleke, Constable Gadebe, Captain SE Nkosi and Warrant Officer Makwe be charged criminally for kidnapping and defeating the ends of justice, assault and theft only applicable to Captain NL Maluleke, Warrant Officer Makwe, Constable PM Gadebe and Captain SE Nkosi.

Now I have said to you that this is a lengthy report but then I just want you to flip through it then a bit and then tell me whether you have seen this report before. You can just take a bit of time just to familiarise yourself with it.

20

ADV MOSING: This report I have had a chance to flip through it. It does appear to be familiar.

MR MOKHATLA: Yes. So, was or let me say that did Khuba prepare any report which he submitted to you at any stage when you were guiding the

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investigation?

ADV MOSING: Yes, Mr Khuba did prepare a report which were understood to be the conclusion of the investigation so that he could refer the matter for decision to the relevant Prosecuting Authority.

MR MOKHATLA: Yes.

ADV MOSING: There were maybe one, two or three- maybe one or two what I would call drafts and then there was final one which was then submitted on about January 2014.

MR MOKHATLA: So that then was the final one?

10 **ADV MOSING:** As far as my colleague and I who was assisting in the investigation was concerned referring to William Moeletsi and Mr Khuba, that was the final report.

MR MOKHATLA: So, the three of you then you were clear in your minds in your agreement that that was the final report, the January one.

ADV MOSING: That is indeed so. Of course, we anticipated that the person tasked or ceased with it, taking a decision may request further or additional evidence. But as far as we were concerned up to the end but the work that was done up to that stage that was the final report with recommendations.

20 **MR MOKHATLA:** So, the person then who sits with the decision now you will be talking of now then are the person now within the NPA now about whether to prosecute or not.

ADV MOSING: Yes. I think the matter was to be decided upon by the Director of Public Prosecutions for South Gauteng which is Johannesburg.

MR MOKHATLA: Now then the report I have you to page 34 where the

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recommendation is. Will that be the one that you say was the final report according to the three of you?

ADV MOSING: Yes, indeed it does appear to be what the recommendations were.

MR MOKHATLA: Now page ... (intervenes)

CHAIRPERSON: Sorry, when you say there was three of you, that was you, Mr Khuba and who?

ADV MOSING: I said Advocate Moeletsi ... (intervenes)

MR MOKHATLA: Dealing with ... (intervenes)

10 **ADV MOSING:** He is a colleague that was working with me on this matter.

CHAIRPERSON: Okay.

MR MOKHATLA: Now when you look at page 35, Khuba did not sign that report. Do you know if- have you see the signed one?

ADV MOSING: I do have a copy of a signed one.

MR MOKHATLA: Yes. Chairperson, in fact then we do have a signed one. So, I did not take note that they did not put the one which is not signed but we will make sure that we make the signed one available.

CHAIRPERSON: Okay.

20 **MR MOKHATLA:** Now you say that you then referred it to DPP South Gauteng. I will like you to turn to page 281. That is now the last document on that file, the very last one.

ADV MOSING: Sorry I should turn to were?

MR MOKHATLA: 281.

ADV MOSING: It is 263.

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MR MOKHATLA: I think you do not got everything. It seems as if then yours is the same Chairperson because they were copied almost at the same time. What is the last page of your file?

CHAIRPERSON: 281.

MR MOKHATLA: Oh 281.

CHAIRPERSON: Ja.

MR MOKHATLA: Okay alright. Then where is yours, can you give the witness please the thing. Okay so then this- then that letter, 281. So that is an internal memorandum. I will like you to look at that
10 memorandum or that document and tell me if you recognise it.

ADV MOSING: Yes, I do recognise the document.

MR MOKHATLA: Who was the author of this memorandum?

ADV MOSING: I was the author.

MR MOKHATLA: Can you read the contents- well to whom was this addressed to?

ADV MOSING: It was address to ~~Advocate AM Chauke who is the~~ Director Public Prosecutor South Gauteng.

MR MOKHATLA: Yes. And what is the date of that memo?

ADV MOSING: 14 February 2014.

20 **MR MOKHATLA:** And can you just read paragraph 1 for us of that memo?

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

1 x A Section of docket.

1 x B Section of docket.

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1 x Forensic report of retrieved computer documents and emails.

1 x AVL analysis.

2 x Cell phone data of various cell phones.

1 x copies of (indistinct) case dockets.

MR MOKHATLA: Yes. So then at the bottom then it is your name there?

ADV MOSING: Indeed.

MR MOKHATLA: Okay.

ADV MOSING: And my signature.

MR MOKHATLA: And your signature. Now I will like to take you to page
10 70- not 70, just a moment. At page 36. After that then there is a problem
with these files.

CHAIRPERSON: I do not have 36.

MR MOKHATLA: I think what has happened is that ... (intervenes)

CHAIRPERSON: It is 35 and then it jumps to 70.

MR MOKHATLA: I think that that is how my file is. I think you were
using my files when you were making copies, is it not so?

UNIDENTIFIED SPEAKER: Mm.

MR MOKHATLA: Ja, you are using my file so it means that it has skipped
the entire report that I wanted to refer this witness to. Because it starts
20 from page 36 to page 69. Ja, so this entire report, ja we make
(intervenes)

CHAIRPERSON: Let us stand down for the time being. We will be more attentive and further

MR MOKHATLA: There are things ... (intervenes)

HEARING ADJOURN

HEARING RESUME



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A MOSING

CHAIRPERSON: Can we get that on record, is that okay?

MR MOKHATLA: Thank you Chairperson. Mr Mosing I was referring you to page 36 of the bundle. Are you at page 36?

ADV MOSING: Yes, I am.

MR MOKHATLA: So, there is a report there, you can see there it is IPID and then Case Investigative Report Complainant Identification and so on. And then there is also a lengthy report, can you go to page 69?

ADV MOSING: Yes, I am there.

MR MOKHATLA: Now 69 you can see that it has Recommendation and
10 paragraph 8 it says; Based on the available evidence the independent
Police Investigative Directorate recommends that no charges should be
brought against Lieutenant General Dramat and Major General Sibiya.
The investigation established that there is no prima facie case against
them. However, with regard to Lieutenant Colonel N Maluleka there is a
prima facie case to sustain charges of kidnapping and defeating the ends
of justice.

And then you can see that ~~there is a signature there~~ above the
name Khuba. And then there is also ~~Sesoko and then a signature there~~
and there is also McBride at the bottom. ~~Then signature and the date 9~~
20 April 2014 signed by Mc Bride. ~~18 March 2014 signed by Sesoko.~~ Do you
see that?

ADV MOSING: I do see that.

MR MOKHATLA: Have you see this report before?

ADV MOSING: I am not too sure ~~whether it is the same report I am~~
thinking of. I was showed a report ~~... (intervenes) ...~~

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MR MOKHATLA: Or maybe let me rephrase the question. Did you play any role like you did with regard to the one that I referred you to earlier? Did you play any role in this report?

ADV MOSING: No, none whatsoever.

MR MOKHATLA: None whatsoever.

ADV MOSING: Yes. If you will allow me to elaborate it.

MR MOKHATLA: Yes sure.

ADV MOSING: Clearly the report is dated 18 March and as you have seen with the previous document you referred me to my memo to the
10 Director of South Gauteng.

MR MOKHATLA: Yes.

ADV MOSING: By then the matter had been already referred to the DPP in South Gauteng so I had no further involvement in the matter.

MR MOKHATLA: Okay thank you. Thank you, Chairperson, I have no further questions.

CHAIRPERSON: Any cross-examination Mr Ford?

MR FORD: Ja Chairperson it is now 15:30. Mr Mosing's evidence in chief took the better part of just an hour. I am not so sure whether it would be a good thing to stand down his cross-examination until
20 Wednesday morning as opposed to starting now and be left with 15 minutes. I did ask my learned friend earlier for an indulgence to go 15:45.

CHAIRPERSON: The time that it took Mr Mosing to give evidence in chief were relatively a short time and if you take away the fact that at some point we had to stand down and (indistinct) So I will because we are

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standing down completely tomorrow my view would be that maybe we should start with cross-examination and then from where I am looking, we will resume on Wednesday. It is not a right thing to say, let us just stand down altogether because in my view there is nothing wrong but his evidence was quite short. Ja it felt like ... (intervenes)

MR MOKHATLA: Not an hour. It is actually then we were supposed to start at an hour ago but there was a problem. So, his evidence actually there it was 20 minutes.

CHAIRPERSON: Actually, I mean we could have started now but seeing
10 that you have asked to be excused by a quarter too. So, this time that you are arguing now, we could be using it for you to cross-examine the witness Mr Ford.

MR FORD: I am still taking instruction from my attorney. Mr Chairperson I am in an invidious position because my attorney says he would have liked to have given me specific instructions prior to commencing with the cross-examination and it would almost appear if I am appearing to be ungrateful for the indulgence. And I am very grateful for the indulgence. But I also do not want to be seen by you and my learned friend as being it is really an invidious position to be placed in.

20 **MR MOKHATLA:** Can we check with Mr Mosing because we know that he is also a busy prosecutor. He's availability really. We wasted his entire day so Mr Mosing ... (intervenes)

CHAIRPERSON: Can we just go off record for now.

MR MOKHATLA: That I am arguing good points.

HEARING ADJOURNED

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A MOSING

HEARING RESUMES

CHAIRPERSON: Thank you, we just are off the record Mr Mosing is still under oath and he is still giving evidence. He had just finished giving evidence in Chief and he was due to be cross-examined by Mr Ford. Mr Ford had earlier requested to be released earlier at 15:45 because of other commitments and we had agreed to that. In seeing that perhaps this will- no purpose will be set between now and quarter to which is almost quarter to anyway. We then agreed to stand down until Wednesday on condition that we start at 8 o'clock and Mr Mosing has
10 agreed to be- to make himself available for an hour.

And we will just have to- therefore so agreed that we have to be particular about things and we may have to slot in another witness in between. If at 9 o'clock Mr Mosing is not done on Wednesday, another witness could be then slotted in and then Mr Mosing could rejoin us after 14:00 if he did not finish earlier.

Of course, only properly that there is no court order from the labour court to the effect that the proceedings be stayed depending review. As of now the proceedings are adjourned. Tomorrow there will be no proceedings. As parties would be attending to the labour court
20 application and proceedings will then resume on Wednesday on the 22nd at 8 o'clock. Thank you.

MR FORD: Thank you Chairperson.

MR MOKHATLA: Thank you very much Chairperson.

CHAIRPERSON: And Mr Mosing ... (intervenes)

HEARING ADJOURNS TO 22 JUNE 2016

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A MOSING

PROCEEDINGS RESUME ON 22 JUNE 2016

CHAIRPERSON: Good morning everyone. This is a resumption of the hearing in respect of Mr Matthews Sesoko. The hearing having adjourned on Monday at 20 to or quarter to four. And not proceeding yesterday because the employee had been given a chance to do an application in labour court to be added to these proceedings. And so, the hearing at the labour court will be heard tomorrow at 10:00 for some reason which have not been explained. So, it is not yet ready to lead into these proceedings. The matter could not proceed yesterday.

10 And when we adjourned on Monday Mr Mosing was just finished his evidence in chief and was about to be cross-examined by Mr Ford. I wish to remind you Mr Mosing that you are still under your oath. And please anything that you want to say to be something that you know that it is binding on your conscience- it is binding on your conscience of course. It is in this point in time that I hand over to you Mr Ford for cross-examination.

MR FORD: Thank you Mr Chairperson. Advocate Mosing you indicated on Monday that your availability would only be from about 8 o'clock this morning until about 9 o'clock because you have another commitment commencing at 10:00. Are you still ... (intervenes)?

20

ADV MOSING: Ja, that is still the case.

MR FORD: It is still the case. Okay. And then you also indicated that there may be a possibility that by 1 o'clock you may be done. Is there any further feedback to whether you would still be available at 13:00 or not?

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ADV MOSING: Yes, I think- there is no feedback but the position is still as it was on Monday so as soon as I am done there I can around 1 o'clock, I am just estimating the time that it will be- that I will be finished there. But I think it is safe to say around 1 o'clock.

MR FORD: Okay.

ADV MOSING: Ja.

MR FORD: Now in your evidence in chief on Monday you confirmed that you are the Senior Director of Public Prosecutions and that you are based at head office.

10 **ADV MOSING:** Ja, Senior Deputy Director.

MR FORD: Senior Deputy Director.

ADV MOSING: Yes.

MR FORD: And for how long have you been in that position?

ADV MOSING: I have been a Deputy Director since 1999, a Senior Deputy sometime between that time and to date. I cannot really remember the date.

MR FORD: And have you always been in the employ of the NPA?

ADV MOSING: Yes, since 2001.

MR FORD: And before that?

20 **ADV MOSING:** I was an Article (indistinct) attorney.

MR FORD: Now since 2001 ... (intervenes)

ADV MOSING: Sorry, did I say 2001? ... And then

MR FORD: Ja.

ADV MOSING: I am sorry Chair, it's a bit long- it has taken me very long. I mean it is 1991, sorry.

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A MOSING

MR FORD: 1991.

ADV MOSING: Yes.

MR FORD: Since 1991?

ADV MOSING: Yes not 2001.

MR FORD: So that spans close to 25 years in the service of the NPA?

ADV MOSING: That is correct yes.

MR FORD: And there is a inter relation or inter dependent between the NPA and the SAPS? You work closely together.

ADV MOSING: Yes. We have always worked closely together particularly
10 in specialist crime areas such as organised crime.

MR FORD: Good. Now given your experience within the NPA you would therefore be very well versed with the structure of the SAPS.

ADV MOSING: Ja to some extend yes for whatever it is necessary for.

MR FORD: Yes.

ADV MOSING: For the work that you do yes. One would research and study of course your Act.

MR FORD: Now I am going to set out for you some of the units within the SAPS and there is context and we will get to that.

ADV MOSING: Okay.

20 **MR FORD:** Within the NPS you would effectively have four divisions or section, the one is crime intelligence, detective services, crime prevention and a number of specialised units. Such as the directory? proprietary crimes etcetera. Would I be correct in making that?

ADV MOSING: Ja I think so far.

MR FORD: Ja. Now the section of the division crime intelligence, that

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section is not responsible for conducting investigations. Am I correct?

ADV MOSING: As far as I know yes.

MR FORD: And when you testified yesterday you mentioned that General or Colonel, I think Moukangwe in your evidence in chief. Do you recall?

ADV MOSING: Yes, I do.

MR FORD: And you confirmed in your evidence in chief that you were requested by your supervisor to assist in the rendition investigation.

ADV MOSING: Yes, that is correct.

MR FORD: Now Colonel Moukanwe he works in- so the testimony will go
10 as in his section crime intelligence, he is from crime intelligence.

ADV MOSING: Well I am not sure about that but I know Colonel Moukanwe from previous experience. Then he was a detective.

MR FORD: Now we will get back to that shortly. Your supervisor at the time of the rendition investigation was that John Jiba?

ADV MOSING: Advocate.

MR FORD: Advocate.

ADV MOSING: At the time I was working within the office of the NDPP to distinguish that between- from other business units- the entire head office
20 is actually the office of the NPP- in terms of the NPP Act. But he was the Acting National Director and at the time it was Advocate Jiba and I reported to him, yes.

MR FORD: Now there is a bundle of documents been handed to you specialised units

CHAIRPERSON: Can I reference to the employee's bundle.

MR FORD: Ja the employee's bundle. **ADV MOSING:** As far as I know so far.

CHAIRPERSON: Shall I mark it B then?

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A MOSING

MR FORD: Thank you Mr Chairperson.

CHAIRPERSON: Exhibit B.

ADV MOSING: Yes.

MR FORD: Now all the documents in front of you- do you want us to give you time just to look through the documents before we ask you questions in relation to those documents? Or have you seen them before?

ADV MOSING: No, I have not seen them. I was only shown this morning before we commenced. But it would depend on which document you want to ... (intervenes)

10 **MR FORD:** I am saying the entire document. At relevant times we will ask you specifically about a particular document and if needs be- you need time to go through the document Chairperson I think it will only be fair for us to allow Advocate Mosing to look at the document in question.

ADV MOSING: That is fine Chair.

CHAIRPERSON: Can I just go through it first or are- it will be okay.

ADV MOSING: I think we can proceed... (Intervenes) ...

CHAIRPERSON: Proceed ... (intervenes) ...

ADV MOSING: And when I need time ... (intervenes) ...

20 **CHAIRPERSON:** If you have difficulties then perhaps then we can give you 2 minutes and you will just go through the documents ...

ADV MOSING: Ja.

MR FORD: Now who was initially involved in the rendition investigation?

ADV MOSING: I have mentioned the initial investigator was to my understanding Moukangwe and he was always accompanied by another gentleman from which I understood to be from crime intelligence although

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I cannot recall his name. And not long after the investigation we got involved in investigations because myself and Advocate Moeletsi from the NPA side that I said. Then the IPID by way of Mr Khuba then got involved and took over the investigations basically.

MR FORD: When did you and Advocate Moeletsi from the NPA side get involved? Can you recall?

ADV MOSING: I could check, I am not exactly sure.

MR FORD: Just more or less, I will not hold you to it.

ADV MOSING: Ja I think- let me just make sure. When I look at the
10 memo's in the witness bundle. Ja, okay it would have been around the year 2013.

MR FORD: Around 2013.

ADV MOSING: Yes.

MR FORD: And do you recall how you were introduced to Mr Moukangwe?

ADV MOSING: Well I think I was called to a meeting of the Acting DPP, Advocate Jiba where these- I think it amongst Moukangwe was himself there. I am not sure who and whether the other gentlemen also were present but my understanding of that meeting was that they had come to
20 request assistance from the NPA in terms of their investigation that they were embarking on for the hearing. And I was assigned to assist of course together with my team. So, I opted to select Advocate Moeletsi to assist me given the sensitive nature of the investigations.

MR FORD: Now you have mentioned earlier that crime intelligence does not do investigations. On the understanding and our position will be in

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A MOSING

the evidence that we will lead is that Mr Moukangwe was working with the crime intelligence. Assuming for a moment that that postulation is correct. Would you not have found it strange that Moukangwe was involved in the investigation?

ADV MOSING: Well look I did not find it strange given the fact that I knew Mr Moukangwe was an experienced detective. Then he worked at the time that I knew him in somewhere around Mpumalanga because Mpumalanga fell under our jurisdiction here in Pretoria. And I think it a little at the time because the investigations were clearly conducted in a
 10 very sensitive manner. I gathered that he was seconded or specifically identified to do the investigation. I did not bother to enquire into the exact nitty gritty about where he is based and why is he particularly he is doing the investigation etcetera and things like that. But I knew he was an experienced detective so you could work with him in terms of how to do investigations.

MR FORD: And do you know why Khuba took over the investigation from Moukangwe?

ADV MOSING: Well I would like to think that it was due to our insistence because I felt that the IPID- that in a matter like this falls within their
 20 mandate and that also given I think at the time the allegations or rumours or whatever you want to call them that this investigation may be driven from crime intelligence side because of personal issues to people. I obviously felt strongly that IPID ought to be the leading investigators then if anything else because of their mandate firstly and also, I think the objectivity would have assisted in this to avoid any perceptions.



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A MOSING

MR FORD: Now did you voice those concerns at the point when you were introduced to the investigation or did you voice those concerns at any time thereafter?

ADV MOSING: Well not immediately but of course we looked at what was in the docket. There was already some investigation that have been conducted at the time when dockets were shown to us. We obviously peruse the dockets and we then- there was some investigations that we sought to be done.

But ja I think I realised that some of the witnesses also did who
10 are from crime intelligence, the Police members that were already- of whom statements were already taken. I think there were four if I am not mistaken. So, I have to say that it was roundabout that time after we have perused and some initial investigations was done. And also, at the time the investigations were not really progressing.

MR FORD: Now can you- you said you felt strongly that IPID should take over because this falls clearly within their mandate and for reasons pertaining to objectivity.

ADV MOSING: Ja.

MR FORD: And you said that Khuba also attended that meeting with Mr-
20 Advocate Jiba the Acting NDPP or was he not present?

ADV MOSING: No, Mr Khuba was not present during that initial phases. I had the things have said.

MR FORD: Okay.

ADV MOSING: He only got involved after some time.

MR FORD: How was he introduced to you? Can you recall?

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ADV MOSING: I cannot really recall but I think it was just he came a long with Mr Moukangwe because they were working together on the case when he got involved. And that was- we were introduced at IPID and he also then informed us that actually IPID had already been tasked with this investigation from the beginning by the then Minister of Police. So, they were already supposedly investigating the case. So, they were quite- it was a smooth. They just came in and then from there onwards he was driving the investigation.

MR FORD: Did you know Mr Khuba or was that the first time that you met
10 him?

ADV MOSING: That was- I just not speak under correction a bit. I think he mentioned later that he- we had met with regard to some other case but honestly, I did not even recall that he was part of a- some people from IPID that came to see the NPA also on another case.

MR FORD: Yes. Ja.

ADV MOSING: Ja then I- but I did not know him and such.

MR FORD: What do you know about IPID?

ADV MOSING: So, my understanding of it and I must be honest, I am not really because I have not dealt with IPID a lot at the time. Was it was a
20 follow up of the Independent Complaints Directory. It was previously established of which- of whom we used have to have quite a lot of work with as far as the NPA is concerned regarding letters emanating from where people are injured or killed or else in Police custody and so on. So that was my understanding. But when it think itself was established as such. I do not think I had much interaction with them.

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A MOSING

MR FORD: Now we are going to be speaking a lot about the January report in a minute as well as the March report. But before we get there, in the light of your involvement in this matter would you say there is a difference in concluding an investigation and the completion of a report? And if there is, what is that difference?

ADV MOSING: Can you just repeat the question again?

MR FORD: Would you say there is a difference between concluding and investigation and completing a report? And if there is, what is that difference? Let us just break it down. Now in your opinion is there a
10 difference between concluding and investigation and completion of a report?

ADV MOSING: Look for me a report is- especially we talking reports at the IPID.

MR FORD: Yes.

ADV MOSING: And or the Premiums Complaints Directorate. And I said my experience was also- and it is just from my experience not necessarily that that is what was the legal requirements for them.

MR FORD: Ja.

ADV MOSING: Was that whenever they draw dockets for decision after
20 they have concluded their investigations, there would be a report from them with a recommendation. That always used to be the case with the Independent- ICD right. So, in other words as far as they were concerned the investigations would have been done when the docket is handed over to the NPA with their recommendations. Unlike with other Police detectives where dockets would just come even while the investigation

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are still ongoing.

My experience was ICD which was a predecessor of IPID, the practice has always been that once the investigations are concluded they do a report with a summary of their evidence and they make a recommendation. Because often times there was a difference of let us say from the NPAs side in terms of what their recommendations were. They used to make it clear that our recommendations were X and the NPA is deciding Z for argument sake.

MR FORD: Thank you for the explanation. When the docket is presented
10 with the report, if I understand you correctly that you could always go back to check the details of the content of the report against what is contained in the docket.

ADV MOSING: I think that is the whole idea that there must be a report which summarises the evidence in the docket so that there are no issues later to say, there was supposed to be this evidence in the docket and this and that. So, you would check the report as opposed to the docket.

MR FORD: Now I want to make this point upfront now or we will come
back to it. So, assuming the docket is the file in front of you and report 1
says by way of an example, Advocate Ford must be charged. And report
20 2 says Advocate Ford must not be charged. And if there is a
differentiation between those two reports, one can always rely on what is
contend in the docket.

ADV MOSING: Of course, the docket is your primary evidence from which
you make your decision on. It is a recommendation remember. That
reports via IPID or ICD or wherever is merely a recommendation. Even

Handwritten signature and initials, possibly 'M' and 'LCV'.

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A MOSING

from detectives often times they would submit a docket with a report with their recommendation.

MR FORD: Ja.

ADV MOSING: So, it is not binding on the prospect of course. You have to look at the docket yourself to make a decision.

MR FORD: So, the prosecutor whether it is a national or provincial level it is not necessary to bound by the report. He needs to satisfy himself from the strength of the evidence contained in the docket whether or not the charge or charges are suspendible.

10 **ADV MOSING:** That is correct.

MR FORD: Now in your evidence in chief yesterday you testified about what we are going- also what this refer to is the so-called January report. And in respect thereof you mentioned that there were several trials. You said one, two or three trials. Do you recall in your evidence on Monday?

ADV MOSING: Yes, sir I did. I do recall.

MR FORD: Can you recall how many trials there were actually of that January report?

ADV MOSING: If the chair will allow me, I have got and brought some of parts of my file with me.

20 **MR FORD:** Absolutely.

ADV MOSING: So perhaps I can give it to you.

MR FORD: Chair can we just stand down for 5 minutes.

CHAIRPERSON: (Indistinct), it is not necessary.

ADV MOSING: I have at least two documents which I written a draft. The one is dated 22/10/2013.

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MR FORD: 22 October 2013.

ADV MOSING: That is correct.

MR FORD: And?

ADV MOSING: And the other one is dated 22/01/2014.

MR FORD: 2014.

ADV MOSING: Yes.

MR FORD: And the other one?

ADV MOSING: Then this is the one that is dated also 22/0/2014. And my recollection this is the report then that we regarded as the final report
10 before the matter was handed over to the DDP for decision.

MR FORD: Now so there are two report on the 22 of January 2014?

ADV MOSING: Ja.

MR FORD: One was a draft report and the other one was the final report.

ADV MOSING: That is correct.

MR FORD: Or what you refer to as the final report.

ADV MOSING: Ja.

MR FORD: Then there was also a report on 22 of October 2013.

ADV MOSING: That is correct.

MR FORD: Now what is the difference if any amongst those reports?

20 **ADV MOSING:** Let me- ja I can explain quickly because it is relatively simple. In October this was the first draft report Mr Khuba brought. You will see from this report it was the summary of the evidence in the docket for instance did not have the numbers of the statements as they were in the docket. Such as A1, A2. A1 is this person and A2 is this person and so on. So that was the first thing and some of the evidence was not

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included as well. Was sort of left out.

And I then returned it to him, the docket back to him with this report and advised him to say you must include the and you must deal with it in consequential order. A1 is this person, A2 is that and this is what they said. So that was the main thing that was outstanding on that report of October.

MR FORD: Yes. Advocate Mosing, you can carry on. Can I ask if we can get copies of that report?

ADV MOSING: They are available.

10 **CHAIRPERSON:** Are they not part of background of these reports?

MR FORD: No, those reports are not part of it.

ADV MOSING: You mean the drafts.

MR FORD: The drafts.

ADV MOSING: Okay.

CHAIRPERSON: Okay.

ADV MOSING: Yes.

MR FORD: At least then we can follow what you are saying
(intervenes)

ADV MOSING: Would you want to do that first?

20 **CHAIRPERSON:** It is fine. Proceed.

MR FORD: So, we will come back to the issue of the draft report. The last January report in your evidence in chief you said that in our mind that was a final report and that you took it to your seniors for a decision. Do you recall?

ADV MOSING: Ja let me- perhaps a final might be misleading as a word.

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What I mean is that is the report that pretty covered the entire evidence up to that stage and it was a complete report because it had recommendations.

So, the possibility always existed that the decision maker may ask of course for additional investigations which may cause the report to be amended or things like that. But as far as investigations were concerned and we were concerned it was a final report.

MR FORD: So, in so far as the investigations were concerned you considered it final.

10 **ADV MOSING:** Ja.

MR FORD: And you said we, is that now yourself, Mr Khuba.

ADV MOSING: Yes.

MR FORD: And?

ADV MOSING: And Advocate Moeletsi.

MR FORD: Why did you though take that report to your seniors?

ADV MOSING: Remember this investigation I was instructed, tasked to assist because the- I have to report to my seniors.

MR FORD: Ja.

ADV MOSING: That is a given.

20 **MR FORD:** Would it be fair to conclude that you did so in order to

observe the hierarchy in the reporting structure given or given you an instruction and you gave feedback to those who gave you the instruction

ADV MOSING: Ja, I think it is a bit of both. But remember now would have given an instruction cease the investigation? so the investigations was no completed and we reported by way of the IPID report what is the

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contained within the investigation.

MR FORD: Yes.

ADV MOSING: And by whether or not the matter is- can be referred for decision.

MR FORD: Yes.

ADV MOSING: The relevance.

MR FORD: Now do you know the reporting structure within IPID?

ADV MOSING: I am not too familiar, 100% familiar with the IPID structure.

10 **MR FORD:** Would you though in the sense accept that in the same way as the reporting structures observed in and you having complied with the request of your seniors to do an investigation and to give you the file-escalating it to them that that same sort of structure ought to be observed within IPID.

ADV MOSING: As far as I was concerned the investigations- there were constant reporting from the investigator to his superiors.

MR FORD: Do you know this for a fact or is it (intervenes)

ADV MOSING: Yes. I know that because Mr Sesoko was one of his superiors that Mr Khuba always mention that he was reporting to him, 20 that is the impression we got. As well as also that the (intervenes)

MR FORD: So, you say specifically that was the impression you got but did you have independent verification that that was in fact the case.

ADV MOSING: There was nothing else that wanted to do the opposite.

MR FORD: Ja.

ADV MOSING: Because at some point as you know Mr Sesoko attended

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anything with Mr Khuba with us.

MR FORD: When was that?

ADV MOSING: I do not have the date exactly.

MR FORD: Where did that meeting took place?

ADV MOSING: It took place at the Petroport Total Charge on the N1- I think it is N1, just outside Doornpoort.

MR FORD: And you say you cannot recall who attended that meeting.

ADV MOSING: No, no, I can recall.

CHAIRPERSON: He said he cannot recall the date.

10 **MR FORD:** I am asking did you say you cannot recall when- who attended the meeting? I am not talking about the date. I am asking a different question.

ADV MOSING: I have never said that. I do not recall that.

MR FORD: No, I am asking the question. I can just ask the question, who attended?

ADV MOSING: Ja I said Mr Sesoko.

MR FORD: As well as?

ADV MOSING: And Mr Khuba.

MR FORD: Okay.

20 **ADV MOSING:** And it was myself and Moeletsi as well.

CHAIRPERSON: Where was this meeting?

ADV MOSING: It is at the Petroport Total Garage.

CHAIRPERSON: Total Garage.

ADV MOSING: Just outside Doornpoort on the N1.

MR FORD: Okay. But I need to take an instruction on that meeting and

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the context for it. But I am going to move on- I will come back to that. So, there is now two issues that were going back to that. You have got a time constraint. You are looking frantically at your watch.

ADV MOSING: I noticed now it is already 9 o'clock. Chair?

CHAIRPERSON: Okay alright.

MR FORD: Can you give us another 15 minutes possibly? Is it possible?

ADV MOSING: Okay ja. But then definitely because then I will have to- I do not know how the traffic is, I have to be in Groenkloof. Okay, now I am looking at 10 so we can go for another 15 minutes.

10 **MR FORD:** Now it is only Mr Khuba's signature that appears on the January report.

ADV MOSING: Yes.

MR FORD: Considering your involvement on the January report. Why did you not sign the January report?

ADV MOSING: No, no, that is an IPID report not- I am not part of IPID.

MR FORD: Now does the signature of Mr Khubo on that report rendered the report a final report?

20 **ADV MOSING:** Well he was legally speaking whether their Act provides for final report or not, I am not sure but it does not really- the signature does not render it the report final. It is the fact that the investigations were concluded to the point where a decision could be made in our assessment.

MR FORD: The signature does not render the report final, that is your answer. It is the fact that the investigation was concluded that renders the report final.

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ADV MOSING: No, I do not- that is why I said earlier maybe the use of the word final is bad for it. It what can be misconstrued.

MR FORD: So, are you effectively saying that the January report was not the final report?

ADV MOSING: Remember I said that the investigations or the case was now to be referred to a decision maker who was the DPP. And that the possibility existed that the DPP may call for further and additional and evidence for that. So that could entail that the report will may be amended or if there were any additional investigations done. But in our
10 view, there was nothing much outstanding.

MR FORD: Okay.

ADV MOSING: So, we rendered it done.

CHAIRPERSON: Thank you so much for the copies.

MR FORD: Now when you participate in investigations such as the one with Advocate Mosing, did you involve in- in essence you said it is an IPID investigation, it is an IPID report. Would it not be important for a person involved in such an investigation to familiarise him or herself with the standard operating procedures of the division or the section or the unit who is responsible for that report?
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20 **ADV MOSING:** I think maybe you perhaps misunderstand my involvement in the investigation. We are guiding the investigations. I am not conducting the investigations. So, I am and still remain the prosecutor and merely giving guidance in terms of what is required. It is not a question of me being involved in conducting the investigation. the investigation was

MR FORD: I understand.

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ADV MOSING: Okay.

MR FORD: Whilst giving guidance through that in how the investigation are to be done, is it not important however therefore to know what the specific requirements and regulations dictating in so far as the manner in which investigations are to be done with (indistinct)?

ADV MOSING: Well there was no need as far we were concerned to question the manner in which investigations were done. And it was done as any normal investigation we encountered.

MR FORD: Now you can go straight to the January report in fact all the
10 reports, whether it is the March report, the January report, October report, Draft report. Those are IPID reports, it is not a NPA report, it is not a crime intelligence report, it is not HAWKS report. It is an IPID report.

ADV MOSING: It clearly shows on the face of the document. On the letterhead or the face IPID.

MR FORD: Ja. Now if it is an IPID report then that report must comply with IPID regulations. Is it fair to conclude?

ADV MOSING: It is fair to conclude, yes.

MR FORD: And now are you familiar with the IPID regulations in respect
20 of investigations and reporting?

ADV MOSING: No.

MR FORD: Not at all?

ADV MOSING: Not at all.

MR FORD: Now the IPID regulations has specific reference when it comes to referral of recommendation on the NPA. Are you aware of that?

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ADV MOSING: Well like I said it is a practice that I think was then. I never bothered whether it is the case or not.

MR FORD: You say you never bothered to do research to see whether it is the case or not?

ADV MOSING: No.

MR FORD: I am going to refer you to two regulations, regulation 5 and regulation 7 and I am going to demonstrate to you that the manner in which the January report was compiled lacks compliance with the regulation 5 and regulation 7.

10 Now regulation 5, you will see the bundle in front of you. I should find the page for you quickly Chairperson.

CHAIRPERSON: Bundle B?

MR FORD: That would be Bundle B. It commences on page 21 of Bundle B. And the relevant regulation that I refer you to is found on page 27. Now I am going to give you an opportunity to just to look at page 27. We are going to look at sub regulation paragraph 5 sub 3. It reads as follows, page 27;

20 An investigated designated ~~in terms of sub regulation 2~~ must as soon as is practicable but within 24 hours of designation do a number of things, right.

Then I want you to turn to ~~paragraph sub paragraph sub sub G~~ which you will find on page 28.

In the case of an offence contemplated ~~in paragraph C of sub regulation 2~~, if this have not been done so.

And I will ask you to flip over to page 29 and read sub

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regulation J. I, sorry it is I, I said it was J. Page 29, it reads as follows; After collecting all the evidence, statements, 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 for of such member.

So, you see what this regulation is saying Advocate Mosing?

10 At the point when all the evidence have been collected after the investigation has been done that that report must go to either one of two places either to the Executive Director or to the Provincial Head.

ADV MOSING: Ja.

MR FORD: That report cannot be referred to the NPA but by those two individuals.

ADV MOSING: Can you perhaps- sorry if I am asking you question (intervenes)

MR FORD: No, you can.

ADV MOSING: I agree with your reading of this regulation. I am just - I
20 actually I have not as I have said made a study of this regulation. So I am not sure in terms of what provisions then is the report referred to the NPA. If there is such a provision? Maybe one needs to read that as well.

MR FORD: The provision is contained in the Act if you can find it if you turn to page 5 of the IPID Act and look specifically at section 7-sub 2 E. I am going to ask you, do you have it in front of you?



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ADV MOSING: Yes, I do.

MR FORD: Section 7 sub 3 E. If you can just read into the record E numeral 1?

ADV MOSING: All it says;

An Executive Director must give guidelines with regard to the investigation and management of cases by officials within respect of Provincial Officers.

MR FORD: Correct. And read sub 4.

ADV MOSING: The Executive Director must refer criminal offences, reveal as a result from investigation to the National Prosecuting Authority for criminal prosecution and notify the Minister of such referral.

MR FORD: Okay. Now you are not the Executive Director of IPID, am I correct?

ADV MOSING: I am definitely not.

MR FORD: Good. I did not mean it facetiously or- so you cannot refer a report or conclude and investigation to the NDPP for purposes of prosecution? It falls outside your scope.

ADV MOSING: I am part of the NDPP's office, so a report if it is referred to the NPA, it refers to me.

MR FORD: It refers to you. You cannot refer a report to yourself?

ADV MOSING: I do not do the investigations, I am not part of IPID, I have said it already.

MR FORD: Yes.

ADV MOSING: So, there is no ways that you think that question can say I am the director of IPID.

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MR FORD: Ja.

ADV MOSING: Okay.

MR FORD: Good. That is just the context of where regulation 5. No turn to regulation 7. And I know we are scraping the barrel with your time Advocate Mosing but ... (intervenes)

ADV MOSING: Ja just keep time. I really have to otherwise I will have to skip other counsel meetings and I would not like to do that. So courteous.

MR FORD: If you can wrap up. Mr Chairperson, I am not so sure
10 whether we should then stand down until 1 o'clock as Advocate Mosing is only going to be back by 1 o'clock.

CHAIRPERSON: I can imagine it must be, because he must be quite anxious.

ADV MOSING: Ja.

MR FORD: Ja.

CHAIRPERSON: So, we cannot do that. Even if (indistinct)

MR FORD: But thank you for the indulgence Advocate Mosing.

CHAIRPERSON: Advocate Mosing, you are released. Please let me just
thank you for your time again is it after 13:00?

20 **ADV MOSING:** Ja, after 13:00.

CHAIRPERSON: Soon after I will appreciate it definitely of course; but investigations mean so we are in your hands now.

ADV MOSING: As soon as I am done I will come back.

CHAIRPERSON: Okay thanks. Thank you very much.

ADV MOSING: Thank you sir. Do I- can I take this with me or?

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A MOSING

MR FORD: Ja.**MR MOKHATLA:** Ja, you can take it with you.**CHAIRPERSON:** You can take it.**MR FORD:** I am not so sure whether the witness manual must go with because is it not that you are going to call another witness?**MR MOKHATLA:** Today?**MR FORD:** Today.**CHAIRPERSON:** Not.**MR FORD:** Should we not rather hold on to the witness bundle?10 **MR MOKHATLA:** You want me to go- no, I think it should be all.**CHAIRPERSON:** That is fine.**ADV MOSING:** Thank you Chair.**MR MOKHATLA:** I think this one then the one that you ... (intervenes)**CHAIRPERSON:** Oh, we are still on record.**MR MOKHATLA:** Also, the documents, further documents that you maybe have.**CHAIRPERSON:** Thank you. It has come to the time that we have to adjourn again. Mr Mosing having- had to go and attend to other prior commitments.

20 It seems that we have to adjourn for the day seeing that parties are agreed that it would not make a difference to wait until 13:00. And then tomorrow there is that labour court application that is being brought by the employee.

We are not going to be sitting tomorrow so we are reconvening on Friday at 10 o'clock. Friday is the 24th of June 2016 and we shallM
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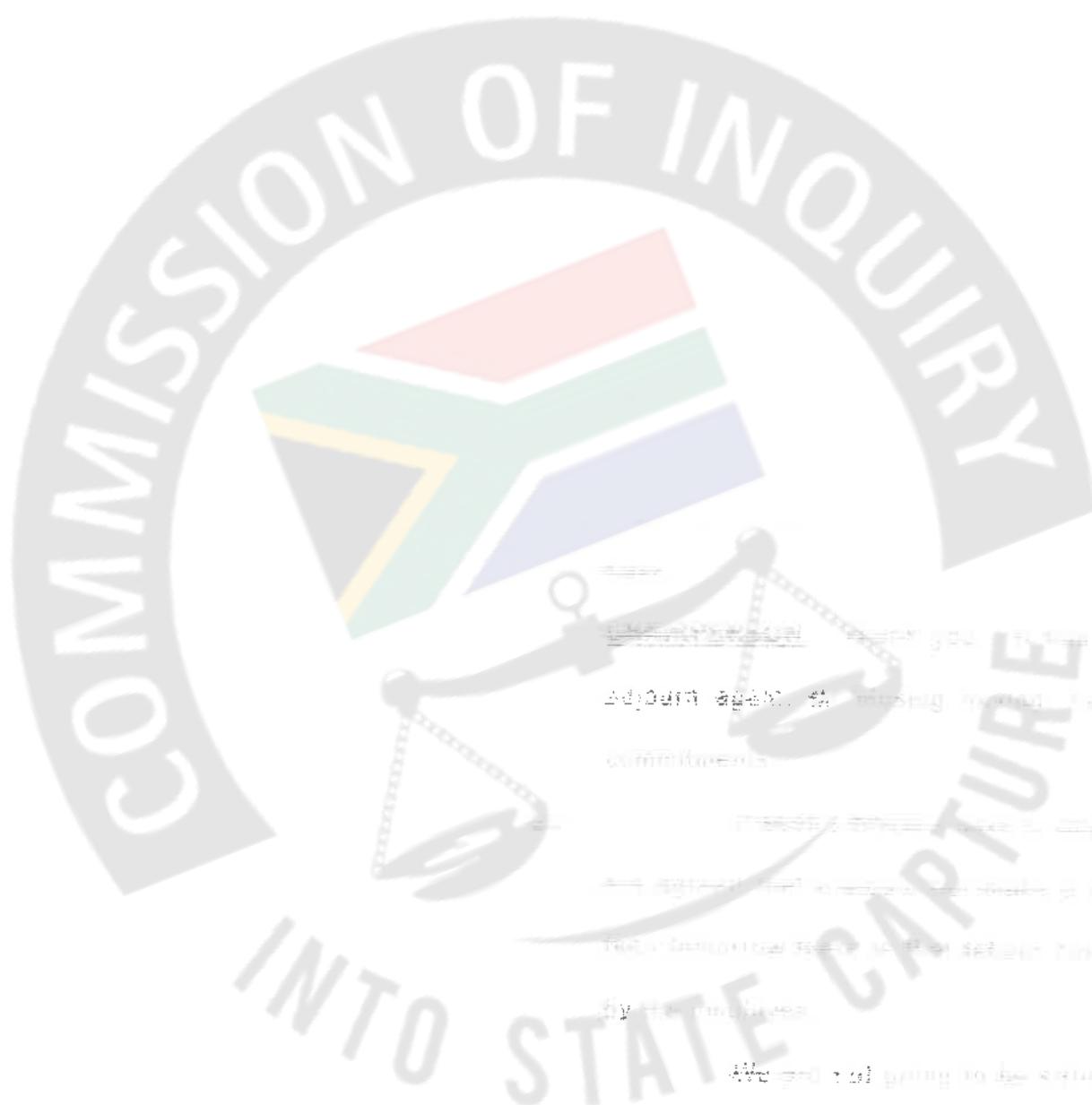
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reconvene at 10 o'clock on Friday. Thank you.

MR FORD: Thank you Chair.

MR MOKHATLA: Thank you Chair.

ENQUIRY ADJOURNS TO 24 JUNE 2016



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A MOSING

PROCEEDINGS RESUME ON 25 JULY 2016

CHAIRPERSON: Good morning everybody. We are running somewhat behind schedule but in any event, we are now ... we are now able to resume these proceeding had adjourned after ... an ... an application had been made to the Labour Court. Thereafter following of ... subsequent to the court order I then fixed to the dates as the Chairperson owing to the fact that the matter has ... already has ... I mean has been going on for quite some time. In view of the fact that labour disputes by their very nature ought to be dissolved expeditiously hence ... it is interesting that

10 this dispute is resolved as speedily as possible but also balancing that with the employees right to a fair hearing which I would imagine that one always keeps in mind in any ruling that they make or nay conduct as to the further conduct of the proceedings.

So when we adjourned last time Mr Mosing who was under cross-examination and I just want to remind you Advocate Mosing that you are still under your formal oath, I am not going to swear you ... swear you in again you are still under your formal oath. Mr Ford? is going to proceed to cross-examination you again. Once he is done Mr Mokhatla on my right is going to re-examine you. At this content in time, I think I

20 should just hand over to Mr Ford. Mr Ford?

MR FORD: Thank you Mr Chairperson. Mr Chairperson before we start just two brief things from us. One is apologies first and foremost for the fact that I arrived late traffic was not easy flowing. Secondly, I misread your email just think that we are starting at ten and not at nine. So I tender my heartfelt apologies for that omission.

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CHAIRPERSON: No I have already indicated to ... I mean to your attorney early on I do not even recall if I did specify that the hearing will start at ten. So to ... I mean to the extent that you were not here at nine I do take full responsibility for that.

MR FORD: Okay that is fine.

CHAIRPERSON: It is just the ten thereafter that you can apologise for but anything before I take full responsibility for.

MR FORD: Thank you. Then ... thank you for that Chairperson. Then the ... the bundles of document you would recall that in addition to the
10 bundles that we got ... we have got the employers bundle ... employees bundle. Firstly the employers bundle as bundle ... I am not sure what you marked them as Chairperson?

CHAIRPERSON: I think the employer's bundle we marked it as A.

MR FORD: Ja.

CHAIRPERSON: And the employee's bundle is marked with ... I mean we marked as B, and ja, hence you see the ~~A2, A1, A2~~ I think that is A ... it is bundle A ... the employers bundle the thick one and then the employee's bundle which was quite thin.

MR FORD: Is bundle B?

20 **CHAIRPERSON:** Is bundle B, yes.

MR FORD: Right. Then I just want to make sure that the two ... the document that I am going to be referring to in that ... before we get there there was another set of documents handed up to you. A copy of a document that we received from Captain Dinozi referred to as 'draft report'

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CHAIRPERSON: Yes.

MR FORD: In fact, there were two copies handed ... I am not so sure whether those should be marked respectively as Annexure C and D?

CHAIRPERSON: Yes, I have got three copies here. Mr Mosing can you just remind us what were ... do you remember the sequence of these when you spoke to these documents?

MR MOSING: Yes thank you Chair I am not too sure what ... maybe but if I can perhaps just have a look at the documents?

CHAIRPERSON: This is what I was given I remember I think what was
10 contained in the bundle may not have been signed or something that ought to make sense or that you referred to.

MR MOSING: Ja.

CHAIRPERSON: Copies were made and I think I had ... I was given three copies. Not sure exactly of what.

MR MOSING: Let me see.

CHAIRPERSON: But you can be able to identify and ... Some kind of way ... you can assist yes, please. The copies, the drafts I mean would be ... the copies which were made which were not I think on the part of the bundle.

MR MOSING: Ja I think two drafts were submitted to bundle to

20 **CHAIRPERSON:** Oh only two? ... to bundle to

MR MOSING: Yes. ... to bundle to

MR FORD: Ja, if I may assist Chairperson? #The first draft would be ... received as date 22nd October 2013.

MR MOSING: Yes. ... to bundle to

MR FORD: Then there is another one that says 22nd January 2014.

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CHAIRPERSON: Okay just hold on. So you say the first one is dated 22nd October 2013?

MR FORD: 2013.

CHAIRPERSON: Yes, okay and then?

MR FORD: And the second one is 22nd January 2014.

CHAIRPERSON: 22nd January ... yes. Right.

MR FORD: I only need to refer to these bundles ... [intervened].

CHAIRPERSON: So were there the trust so shall we just say the first one which is 22nd October 2013 that is bundle C. Then the one for 22 January
10 2014 is bundle D. Everybody covered?

MR FORD: Ja. then there is an additional document Chairperson I am not sure whether you have received a copy, it is called 'supporting affidavit Innocent Mokoba' and I just want to make sure that ... that a copy was in fact handed up to you. We have ... I have got one copy here. Have you got two copies? I am not sure whether you did receive a copy of it Chairperson?

CHAIRPERSON: No.

MR MOKHATLA: No we did not.

CHAIRPERSON: Are you going to be referring Mr Mosing to that
20 affidavit?

MR FORD: I am going to be referring him to that particular to this affidavit and the witness will be coming to testify about it.

CHAIRPERSON: Okay.

MR MOKHATLA: But why do you not give this in time? I mean now you are ambushing us with this document. Remember there was a ruling that-

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documents have to be exchanged by a certain period? And you never did that. The last time you were here you were handing out documents piecemeal.

CHAIRPERSON: Do you ... are you happy to quickly make copies of that?

MR FORD: [Indistinct 00:08:08].

CHAIRPERSON: Say what? Can you just give the lady so that she can just quickly make those copies?

MR FORD: Ja.

CHAIRPERSON: If they are going to be rely in so far as Mr Mosing's
10 cross-examination. In the meantime perhaps if there are questions which
are outside the affidavit we can continue with cross-examination.

MR FORD: We can continue with that, that is fine.

CHAIRPERSON: Any other document perhaps that you feel that that you
think contributes ... sorry, just a second ... it might be ... it might be
worthwhile to have it copied at this point so that we do not stop-start,
stop-start.

MR FORD: Thank you, Chairperson, ~~I just want to~~ [intervened].

MR MOKHATLA: Chairperson I ~~am going to hand over to you this~~
document it is an application by the applicant before the High Court.

20 **CHAIRPERSON:** Yes.

MR MOKHATLA: We also ... they have that copy so it is not something
that it is a surprise document, in time.

CHAIRPERSON: Mr FORD this document do you have any objection in?

MR FORD: No, no objection.

CHAIRPERSON: Fine, shall we mark is E, letter E?

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MR MOKHATLA: That is correct.

MR FORD: I will do that Chairperson.

CHAIRPERSON: So it is fine it can go in there.

MALE SPEAKER: Sorry Chairperson which one is that?

MR MOKHATLA: It is a High Court application.

MALE SPEAKER: High Court application oh okay.

CHAIRPERSON: Mr Ford you may proceed with your cross-examination.

CROSS-EXAMINATION BY MR FORD (continue): We stopped the last time on the question of what happened before the January report. I specifically asked you the question regarding the status of the January
10 report and that it was a final report, do you recall?

MR MOSING: Well maybe Chair if counsel can actually specify which annexure ... with what is marked because there are two that are marked January.

MR FORD: Is the January 22 ... [intervened].

CHAIRPERSON: So in that case, it would be bundle D? Is that alright this one?

MR FORD: No it would be the January 22 ... [intervened].

CHAIRPERSON: One the 22 January 2014?

20 **MR FORD:** Ja, it is the January report in the respondent's bundle it is dated 22 January 2014 but it is not the one written draft it is the one that is actually in the ... in the ... respondent's bundle.

CHAIRPERSON: So it is in this bundle?

MR MOKHATLA: No the big one.

MR FORD: No in the big bundle.

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CHAIRPERSON: Oh the big one okay.

MR FORD: Ja.

CHAIRPERSON: Alright.

MR MOKHATLA: It is page 1.

MR FORD: Page 1, it commences on page 1 of that big bundle.

MR MOSING: Last time there was a [Indistinct 00:11:09] bundle I am not sure if it whether it is'...[intervened].

MR FORD: I am sorry Advocate?

MR MOSING: It was copies of documents that was meant for the witness.

10 **CHAIRPERSON:** Yes, where is the witness's bundle Mr Mokhatla do you know?

MR MOATLA: I need to ask the employer because I think it was a long time ago.

CHAIRPERSON: Alright.

MR FORD: Chairperson can we just stand down just so that we can locate the witness bundles?

CHAIRPERSON: Alright.

MR MOKHATLA: He can use mine it is fine so that we do not waste time.

CHAIRPERSON: That is fine. Can you just use this one?

20 **MR MOSING:** Ja okay.

CHAIRPERSON: Alright. So ... there is the page 1, Yes?

MR FORD: Ja. Now that is the document that I am going to be referring to ...[intervened].

CHAIRPERSON: So that is page 1 of bundle A?

MR FORD: Ja, that is the January 2014 report.

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CHAIRPERSON: Yes?

MR FORD: The copy in the file is unsigned but we have seen the signed one.

MR MOSING: Then it is correct.

MR FORD: Now, you indicated previously that the use fund report is unfortunate, that reference to a final report is unfortunate but that it must mean that the investigation was complete?

MR MOSING: Yes, Chair, as I indicated during my evidence-in-chief and cross-examination previously as far as we were concerned, you know, the
 10 investigations had been finalised to the point where the matter could be referred to Director of Public Prosecutions for a decision to be made. I did mention that the possibility was always there that the person who will make the decision may call for further additional investigations but as far as the investigation was concerned it was ... it had been finalised.

MR FORD: Ja, so the investigation may have been finalised but the report ... the reference in the report as a final report is a bit misleading?

MR MOSING: Well what I tried to convey was that a final by final it meant that it could not be amended by additional ~~by additional~~ information after any additional investigations that could have been called,
 20 for by the relevant director. In that sense that you know, 'final' could be misleading.

MR FORD: Ja.

MR MOSING: So in other words, if 'final' was meant to mean that the report could not be supplemented by the additional evidence that may be called for by the director then I found the word 'final' might have ... could

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be misleading.

MR FORD: Now in your previous testimony I think we have confirmed the following in so far as the report is concerned that it is an IPID report?

MR MOSING: Indeed.

MR FORD: We have also confirmed that the only person that could refer the matter for prosecution to the Director of Public Prosecution is, in fact, the Executive Director? I have taken you to the section in the Act. We can go back there if you need me to?

MR MOSING: No, no I do recall you referring me to that relevant section.

10 But as I have indicated as far as I was concerned the matter was being investigated officially by the IPID and their report was an official report from IPID.

MR FORD: Now just to confirm that it is an IPID report and effectively IPID has the final say on that report and what happens to that report?

MR MOSING: I am not sure I follow that question?

MR FORD: In the sense that once the report is concluded it is not a member of the NPA, or not a member of the South African Police Services, or the DPI that can make any decision in respect of that report. As to what happens after the final, the report has been finalised, the prerogative falls completely within the responsibility of the Executive
20 Direct nobody else.

MR MOSING: Sorry Chair I still do not get the question clearly.

MR FORD: Okay let me ... It is only the Executive Director in as far as the law provides for it that can allow for a report to be submitted for purposes of prosecution?

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CHAIRPERSON: Are you putting that to the ...

MR FORD: I am putting it to the witness.

CHAIRPERSON: And you want to hear his reaction? Do you understand that the way Mr Ford is putting it to you?

MR MOSING: Yes I understand the submission?

CHAIRPERSON: What do you want ... do you have any reaction to that?

MR MOSING: Ja ... I cannot comment on that. I mean that is a ... a ... Mr Ford's submission.

CHAIRPERSON: Okay.

10 **MR MOSING:** Ja.

MR FORD: No it is not my submission it is the law, it is the legal position.

CHAIRPERSON: I suppose we can be content with the fact that the witness is unable to ... I mean react to that.

MR FORD: Okay, that is fine.

CHAIRPERSON: Let us just leave it at that ja.

MR MOSING: I do not suppose Chair that Mr Ford wants me to enter into legal argument with him on this and that is why I say I would not take the submission any further.

20 **CHAIRPERSON:** Cannot ... we can move on.

MR FORD: Thank you. Now the Executive Director Mr Robert McBride and Mr Sesoko, in particular, have been charged for altering the January 2014 report, are you aware of the charges against them Advocate MOSING?

MR MOSING: No Chair I am not aware of the precise nature of the

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charges.

MR FORD: I take it you do for me is we have already dealt with the fact that there were different drafts of that report and that there word 'final report' is misleading. I would like you to look at bundle C that we referred to which is the January report.

CHAIRPERSON: The 22 October.

MR FORD: The October report 2013.

CHAIRPERSON: Hmm (positive).

MR FORD: I would like you to explain to the Chairperson what was your
10 involvement in the compilation of this report.

MR MOSING: Cahir as indicated my view this was just a draft, it was not the final ... it was not a report it was just a draft of the eventual report. It was compiled as you can see more or less around 22 October 2013. This was a draft that was submitted to us as is. I had ... [intervened].

MR FORD: Who submitted the draft?

MR MOSING: The Investigating Officer Mr Khuba.

MR FORD: Mr Khuba?

MR MOSING: Yes. I had no involvement in the compilation of the particular draft.

20 **MR FORD:** When did you for the first time see the recommendations in this report? Is it when you saw the report for the first time?

MR MOSING: First time I saw the report and its contents was when it was submitted.

MR FORD: For this report?

MR MOSING: This draft yes.

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MR FORD: Okay, what were the concerns that you held about the 2013, October 2013 report?

MR MOSING: Sorry just repeat it?

MR FORD: What were the concerns that you held in respect to the October 2013 report?

MR MOSING: Well I ... informed Mr Khuba that the report in my view is lacking in some respects. First of all, I think the report did not refer to the, you know, the statements, the numbering of the statements as in the docket. When it referred to the witnesses, for instance, it referred to Mr
10 Shepard Chuma, if you look at page 2 of the report under 'available evidence' but he did not more specifically indicate that Mr Chuma's ... it is A1 or which statement precisely is referred to in the docket.

MR FORD: Ja?

MR MOSING: Because the reason was that the witness, some of the witnesses had made more than one statement in the docket and I ... I felt that it could be enhanced by being more specific as far as the numbering is concerned.

MR FORD: Any other concerns you held?

MR MOSING: Maybe the word 'concerns' is not really appropriate there
20 were no concerns as such. These were just my advices to Mr Khuba upon reading the report.

MR FORD: Yes.

MR MOSING: Ja. Let me just page through. Ja, also because of the fact that this ... the report did not deal with the evidence in sequence as contained in the docket. There were statements that were also not

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referred to or evidence that was not referred to that, in this report that was in the docket.

MR FORD: Okay.

MR MOSING: So I felt that that could be a misleading to the person who eventually has to read the report.

MR FORD: If you turn to page 17 of that report of bundle C you made annotations the questioning or the checking the question of facts.

CHAIRPERSON: Page?

MR FORD: Page 17 of bundle C.

10 **CHAIRPERSON:** Okay. 1-7.

MR FORD: Or first let me ask you the handwritten annotations that appear on the page does that come from you?

MR MOSING: Yes this are indeed my copies, my annotations.

MR FORD: Okay, why did you write 'facts'??

MR MOSING: Maybe ... look as I was reading the report these were just my own thoughts, my own observations.

MR FORD: Share those observations.

20 **MR MOSING:** Yes okay I will try ~~just give me a chance~~. You must remember these were .. I tried to ~~yes remember exactly and be more~~ specific as I can. I felt ... maybe perhaps here I was saying that he needed to put facts surrounding what is contained in that paragraph. For instance, the last sentence says: ~~MR FORD:~~ "The majority of these cases could not be closed in the system because of non-procedural case disposal." ~~the report did not deal with the ev~~ So there I was pointing out to him that he needed to perhaps be more

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factual about that assertion. Do you want me to carry on to the other annotations?

MR FORD: Then the next annotation on paragraph 5.2 you have written what appears to be the word 'authenticity'?

MR MOSING: Yes.

MR FORD: Do you see that?

MR MOSING: Yes I do see that.

MR FORD: What was your concern about authenticity?

MR MOSING: I think there ... reference is made to a report which was
10 apparently a copy of a report, so perhaps it was just along the lines of saying that we need to ... we need to deal with the ... actually the authenticity of that particular report.

MR FORD: If you turn to the next page, page 18, of that same bundle you ... you made a note in the margin on the right hand side of that page on the unnumbered paragraph 5 where it commences with the letters in bold: 'Letter to stakeholders date 12th August 2012'

MR MOSING: Mm-hmm (positive).

MR FORD: Then at the bottom section of that paragraph you wrote the word 'opinion'. Why was that necessary?

20 **MR MOSING:** Okay, I am just trying to read the paragraph concerned and you will see that I underlined the sentence from ... other letters about the rest of Zimbabwe nationals ... national in connection with the murder of the Zimbabwean police... refers to the cooperation agreed during the same meeting" well I felt this is the ...[intervened]

CHAIRPERSON: If I could just interject? Sorry, Mr. Ford the same Mr Ford

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can you just take me into your confidence?

MR FORD: Ja.

CHAIRPERSON: What is the relevance of these questions where are we going with them? How is it going to assist us?

MR FORD: Chairperson you would recall the applicant, the employees at this have been charged and face the possibility of being dismissed for altering a report.

CHAIRPERSON: Yes.

MR FORD: Right now I am going to show ...[intervened].

10 **CHAIRPERSON:** Is that not a factual enquiry whether or not he did that or did not? Is it not a factual enquiry?

MR FORD: A factual enquiry, sorry Mr Chairperson?

CHAIRPERSON: Is it not a factual enquiry as to whether the employees did alter a report? Is that not the question to be answered whether as a fact did he alter the report and was that ... and did that ... if so did that act amount to misconduct?

MR FORD: Yes.

CHAIRPERSON: Am I right or am I lying?

20 **MR FORD:** I am going to answer you in both instances. What we are demonstrating here is the involvement of Advocate Mosj in so far as the alteration of this report is concerned. Right?

CHAIRPERSON: Okay.

MR FORD: We are going to demonstrate that the employee did not alter any report. What did happen was there was an interaction based on the information that was presented saying you cannot draw the inferences

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that you have drawn to arrive at the conclusion that you arriving at. Not that there was an alteration of a report.

CHAIRPERSON: Okay.

MR FORD: So all that I want to demonstrate herein that even Advocate Mosi in his involvement with Mr Khuba had led him, Khuba, to make certain changes to certain documents.

CHAIRPERSON: Okay, I am with you.

MR FORD: What will happen after this is we will actually go and look where the, after the October 2013 annotations whether or not that then
10 comes through in the January report?

CHAIRPERSON: Yes, okay thank you. Some kind of ... is there any follow up question or remark after my interjection?

MR MOKHATLA: Look I think you have posed an opposite question. Mr Ford's questioning is leading us astray we need to focus not necessarily to say that I am the meeting here. If we are to deal with alteration on the report, the report, which the employer allege that it was altered, it is the January report which the employer submits "it is the final report". Maybe we should limit our self to that particular report instead of starting with what is not in dispute that it was a draft. It is not going to help us
20 because it is common cause that it was a draft and therefore it was subject to alterations at a later stage. We should then be focusing on the one which is a cause of action which is the January report.

MR FORD: Mr Chairperson I am ... that is the context in which ... sure that there, in fact, was an alteration of this report and eventually which led to the changes in the January report.

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CHAIRPERSON: Proceed Mr Ford.

MR FORD: Now I am going to [Indistinct 00:29:51] Advocate Mosi and not take you through all ... all the issues that you raised in here and then we will move on to the January report shortly." Now ...

MR MOSING: I am sorry Chair the last question that was posed I have not yet answered so I am not sure whether we are leaving that part in the light of the discussion.

CHAIRPERSON: It is up to Mr Ford.

MR FORD: No we are quite happy witness that.

10 **CHAIRPERSON:** To move on.

MR FORD: We can move to the January report.

CHAIRPERSON: Okay so we are going to move on to the January report.

MR FORD: Now in essence in so far as the January report is concerned, Advocate Mosi, it suggested that the three individuals Khuba, McBride, and Sesoko had altered the January report significantly in one respect that they altered the recommendation in so far as whether or not there should be ... whether General Anwar Dramat and General Sibiyah should be subjected to criminal prosecution. Do you recall?

MR MOSING: I take note yes, thank you.

20 **MR FORD:** Ja. Now if a person other than Sesoko or McBride also came to the conclusion Advocate Mosi that in fact there is no basis for criminal prosecution against General Ahmad Dramat and Sibiyah then that person would invariably be guilty of the same offence that Sekoko and McBride and Khuba are alleged to have committed?

MR MOSING: Chair I am not too sure what the question is actually posed.

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in a direct way ... in a probing fashion it sounds like. Maybe I am going to ask you to clarify exactly the question.

MR FORD: Sure.

CHAIRPERSON: Just rephrase the question, Mr Ford.

MR FORD: Yes sir. According to the employer, the fact that there was a recommendation that there should not be criminal prosecution against Generals Dramat and Sibiya was the major issue in so far as the alteration, the alleged alteration of the report is conferenced and that is why they are charged? So that is the first portion of the question.

10 **CHAIRPERSON:** Yes.

MR FORD: If there is any other person that arrived exactly the same conclusion should that person also not have been charged?

CHAIRPERSON: No I think this question is too wide. If you mean any other person it could be any other person on the street. Maybe you need to focus your question on the parties involved in the particular disciplinary.

MR MOKHATLA: I think it is going to be unfair to the witness to expect him to answer that.

CHAIRPERSON: Unfair yes.

20 **MR FORD:** It goes without saying that ~~he~~ [intervened].

MR MOKHATLA: I think specify ... I think try and specify. I think I get where you are going but in order to get an answer that will be well informed from the witness, you might as well just trying to maybe just-

MR FORD: I accept that but respectfully we cannot talk about people outside we are speaking about people within PID, people within the NPA,

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that is where we are talking about.

CHAIRPERSON: Okay ... please refer to ... repeat your question.

MR FORD: Mr Sesoko, Mr MacBride, and Mr Khuba

CHAIRPERSON: Yes?

MR FORD: Are charged for the altering of the January report.

CHAIRPERSON: Yes that is the gravamen of the charge.

MR FORD: Ja, in so far as it related to recommendations of criminal prosecution.

CHAIRPERSON: Yes.

10 **MR FORD:** Against Generals Dramat and Sibiya.

CHAIRPERSON: that is right.

MR FORD: That is the recommendation.

CHAIRPERSON: Yes. Carry on.

MR FORD: That recommendation comes on the strength of the reports and the factual evidence before them and they assessed that.

CHAIRPERSON: Okay.

20 **MR FORD:** If there is another person within IPID, within the NPA, that separate to them concluded exactly the same that there is no basis for criminal prosecution against either of those gentlemen is that person then not in effect also guilty of what Sesoko, McBride, and Kube are charged for? I am dealing with a consistency error.

CHAIRPERSON: Are you ... is that not then a matter for argument?

MR FORD: No it is not. I want Mr ... Advocate Mosing opinion answer to it.

MR MOKHATLA: Leave it is it fine, let him answer.

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CHAIRPERSON: Mr MOSING are you comfortable answering that question?

MR MOSING: No Chair I am not comfortable because clearly the question is argumentative and it is calling for an opinion from my side. I have already indicated that the precise nature of the charges I have not seen, I am not party to the drafting of the charges exactly. I am trying my best to obviously assist this hearing.

MR FORD: Ja.

MR MOSING: But in order that I will not necessarily want to not give an
10 opinion or version. But the question is posed in a ... really in an argumentative way. That is why I was calling for it to be ... [intervened].

MR FORD: Let me make it ... [intervened].

MR MOSING: Be specific and rephrase in a specific manner so that I can answer.

MR FORD: Let me make it a bit more specific Advocate Mosing. Did you not in fact conclude that there is no basis for criminal prosecution against General Sibiya? Which is different to the recommendation that there should be criminal prosecution against Mr. General Sibiya.

CHAIRPERSON: I think that is a through question.

20 **MR MOSING:** Yes. Chair, I did not conclude there is no basis for criminal prosecution against Mr Sibiya. My view of reading the evidence at that stage and it is something I indicated internally in a memo to the Director of Public Prosecutions who was ultimately to take the decision was that as far as I was concerned, and I say 'I' but I am also speaking to my colleague Advocate Moeletsi who was assisting me on the matter that,



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the evidence did not categorically point to Mr Sibiya. Or sufficient enough in our opinion for him to be charged for the alleged offence. Though there was quite a bit of evidence that ... or mentioning Mr Sibiya in particular as being present during the arrest of the Zimbabwean national. But we were not satisfied that the evidence ... the investigation at that point in time had elicited enough to be able to can charge him for those charges.

MR FORD: See here, here is our difficulty. Firstly I am going to spend quite a bit of this morning, possibly into this afternoon, with the
10 conclusions around General Sibiya. Depending on your availability tomorrow the entire day spend the evidence around Anwar Dramat. But today Sibiya. This is the point. The January report is dated the 22nd of January 2014. Your recommendation, your conclusions in so far as the fact there is no basis for criminal prosecution against General Sibiya is dated in February 2014. After your recommendation of criminal prosecution against Sibiya. So it could not have been ~~as it could~~ ~~as it did~~ did it? you follow what I am saying?

CHAIRPERSON: No, no, I am not following!

MR FORD: Okay let me take you to the exact documents. Firstly what is
20 the date of the January report?

MR MOSING: It is 22 January 2014

MR FORD: 22 January 2014. Now I would like you to turn with me to
bundle B page 70.

CHAIRPERSON: To what the employees bundle, ja?

MR MOKHATLA: No it is this one.

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MR FORD: No in fact it commences ... forgive me Advocate Mosing it commences on page 58.

MR MOKHATLA: It is this one.

CHAIRPERSON: Page?

MR FORD: It is in the applicant's bundle ... in the employee's bundle.

CHAIRPERSON: Yes?

MR FORD: Page 58.

CHAIRPERSON: Okay. Yes.

MR FORD: Do you have the document in front of you?

10 **MR MOSING:** Yes I do.

MR FORD: Please can you identify the document for me first before I ask you questions about it?

MR MOSING: You are referring to a document that is called an internal memorandum on the letterhead of the office of the National Director of Public Prosecutions.

MR FORD: Who is the author of this document?

MR MOSING: Myself and Advocate Moeletsi.

MR FORD: Okay what was your and Advocate Moeletsi's involvement in the January report?

20 **MR MOSING:** Okay are you referring to some other document?

MR FORD: No the January ... what is your involvement in the January report?

MR MOSING: January? Sorry Chair now you have to take me back you have referred me to another document.

MR FORD: No so I am asking you to [intervened].

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MR MOSING: So I am going back to the January report?

MR FORD: So what I am asking you to do Advocate Mosi is two things, I would like you to keep this document open. I am just rounding for you to contextualise your and Mr Moeletsi's involvement in the January report.

MR MOSING: Chair so I will need to take again from where we ended when we were discussing the draft.

CHAIRPERSON: Yes.

MR MOSING: The one of October 2013. As indicated I had advised Mr Khuba on some observations that I had made. Some of which were ... I
10 had made annotations but I am not even sure that I pointed out to him all my ... those were just my thinkings my observations.

MR FORD: Yes.

MR MOSING: Some of them, of course, I did convey particularly the issue of the numbering of the evidence.

MR FORD: Ja.

MR MOSING: And include which ~~was then~~ was he submitted to us a document which is also called 'Draft' ~~it is also dated 22 January 2014.~~

MR FORD: Yes.

MR MOSING: Whereas you will notice ~~from this report~~ again the
20 numbering of the evidence was ~~not done.~~ And there was ~~still some~~ other stuff he wanted to add.

MR FORD: No that is fine. So ...[intervened].

MR MOSING: So you want now me ~~to come to the~~ actual finding of what we termed as a final report?

MR FORD: Ja.

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MR MOSING: January 2014?

MR FORD: I accept, all of us accept that we talk when we speak about final report we speak about "final report".

MR MOSING: Yes.

MR FORD: Ja, so if you turn to page 34 then of the bundle ... the employer's bundle, not the employee's bundle, the employer's bundle is the thicker bundle on your left hand side. When you turn to 'recommendation' the section dealing with recommendation on page 34.

MR MOSING: Is that of the report?

10 **MR FORD:** Yes.

MR MOSING: Of ...

CHAIRPERSON: Thank you.

MR FORD: No, no you were at the right bundle.

CHAIRPERSON: Is it bundle A?

MR FORD: Ja.

CHAIRPERSON: So switch.

MR FORD: Page 34, bundle A.

CHAIRPERSON: Page 34, just ... by this 34 that is right.

MR MOSING: Yes, okay.

20 **CHAIRPERSON:** Yes?

MR FORD: Now I am going to read to you the recommendation on page 34. For purposes of the record, I am going to read out loud. It says the following:

"Recommendation – based on the available evidence the Independent Police Investigative Directorate recommends that Lieutenant-General

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Dramat, Major-General Sibiya (provided his warning statement is submitted), Lieutenant-Colonel Maluleke, Constable Radebe, Captain SE Nkosi, and Warrant Office Makue be charged criminally for kidnapping, defeating the ends of justice, assault and theft (only applicable to Captain [sic] Maluleke, Warrant Officer Makue, Constable PM Radebe, and Captain SE Nkosi)."

Do you see that?

MR MOSING: Yes I see. I see that here.

MR FORD: Now this report was either seen by you on or before the 22nd
10 of January 2014, am I correct?

MR MOSING: On or before? Chair actually (laugh) and I will not do this to create confusion but the document that I have apart from the one in the bundle.

CHAIRPERSON: Yes.

MR MOSING: The one that I refer to when we ... evidence-in-chief which was signed by Mr Khuba ... [intervened]

CHAIRPERSON: But remember what bundle?

MR MOSING: I think it is number D of **CHAIRPERSON:** Page 34 just by this of that

MR MOKHATLA: It is D.

20 **CHAIRPERSON:** D?

MR MOSING: Is it D.

CHAIRPERSON: Sorry we are on bundle D which is dated 22nd January
2014?

MR MOSING: Indeed.

CHAIRPERSON: It is the one that is signed as oppose:

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MR MOSING: The one that is signed.

CHAIRPERSON: As opposed to the one that is unsigned which is by [Indistinct 00:44:58].

MR MOSING: Thank you Chair.

CHAIRPERSON: Mr Ford are you following?

MR FORD: Ja, I am I just want to locate my copy.

CHAIRPERSON: Okay.

MR FORD: Is this my copy? Ja.

CHAIRPERSON: Yes?

10 **MR FORD:** I am with you Advocate.

MR MOSING: And the ... what I want to point out is that you will see from the signed on the recommendations part.

MR FORD: Ja.

MR MOSING: Where it speaks just after Major-General Sibiya in the one you read there is a bracket and then it says 'Provided his warning statement is submitted', right?

MR FORD: Ja.

MR MOSING: Whereas the one that is signed does not have that line brackets.

20 **MR FORD:** Oh I see what you are saying. I see what you are saying.

MR MOSING: So what I am trying to perhaps say is that the reports firstly they are not exactly entirely the same. The one that I have and of which I have this copy which is signed, which I regard as the signed report.

MR FORD: Okay.

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MR MOSING: "The final report that was submitted to us".

MR FORD: No fair enough I accept that.

MR MOSING: That is why ... this one where it says: 'provided his warning statement is submitted' I do not recall seeing that part.

MR FORD: Okay, that is fine.

MR MOSING: It might be again a draft that Mr Khuba had whilst preparing this final.

MR FORD: Okay, we are working then of bundle D for purposes of the final report?

10 **MR MOSING:** Thank you.

MR FORD: Now in bundle D I have read that recommendation which is effectively work-for-word the same but for the section in brackets that is omitted.

MR MOSING: Right.

MR FORD: So by way of repetition you would have seen this report either before or on the 22nd of January 2014? Is that fair to conclude?

MR MOSING: If perhaps we say before this will be the draft that is also dated 22 January 2014, I think it is marked C now.

MR FORD: No I am speaking about bundle D.

20 **MR MOSING:** Yes, no, no I am saying ~~that~~

MR FORD: Ja.

MR MOSING: Because you asked me I would have seen it before or ~~is that the same~~ I am saying if I had seen it before it would have been in this draft which ~~was~~ which was dated 22 January 2014.

MR FORD: Yes.

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MR MOSING: Right? Because the two reports are dated the same day. In other words, the one that says draft and the one that is ... was final. They dated the same day but if you ask me if I have seen this recommendation in the final report before 22 January, I say I would have seen it on or about 22 January.

MR FORD: Yes.

MR MOSING: When this draft report dated 22 January 2014 was submitted to me.

MR FORD: Okay. Three weeks later ... you were happy with the
10 recommendations set out here am I correct?

MR MOSING: Well ... to put it like this Chair the issue of Major-General Sibiya, and that is what the question is alluding to, that was the IPID's recommendation that there is enough evidence to charge him. Ours ... I differed slightly from that, okay? Though I did not dispute it with the Investigating Officer. I wrote in an internal memorandum to the Director of Public Prosecutions in South Gauteng that we are not satisfied that the evidence is sufficient at this point in time to charge him. Not to say there is no evidence whatsoever or that he is completely exonerated but at that stage, the evidence did not ... in our view was not sufficient to charge
20 him.

MR FORD: At which stage?

MR MOSING: At the stage when this report was ... the final report was done and we ... when we handed, in other words, the matter over for decision.

MR FORD: Okay, here is my question Advocate Mosing you gave

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guidance in respect of this matter.

MR MOSING: Yes.

MR FORD: So I find it remarkable, to say the least, that on a report dated the 22nd of January you agree completely that there is basis for criminal prosecution against Major-General Sibiya. Yet in an internal memo hardly three weeks later you said there is not enough evidence for criminal prosecution against.

MR MOSING: No Chair, I think Mr Ford is reading things into ... I am not sure where he get that from.

10 **CHAIRPERSON:** [Indistinct 00:49:57].

MR MOSING: I have never said I agreed 100% with the recommendation that Major-General Sibiya should be charged.

MR FORD: Okay, look fair enough you did not say that.

MR MOSING: I did not say that and to show that I did not say that in an internal memorandum where the report and the investigations are handed over to the ... I did state that we were not entirely satisfied that the evidence was sufficient to charge him.

MR FORD: But why does that not ... why did you not state it in this report? Why is it not stated in this report?

20 **MR MOSING:** No, no, Mr Ford this is not my report.

CHAIRPERSON: But is this not IPID report? [Indistinct 00:50:34].

MR FORD: There we go, we are getting to it that it is an IPID report and it says here ... when you just ... based on the available evidence IPID recommends. And we get to the point that IPID, in fact, did not recommend because this was not a final report. The final report in our

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version comes in March when it is signed off by McBride, Sesoko, and Khuba.

CHAIRPERSON: But do you accept Mr Ford that to the extent that the witness ... I mean he is not the author of report, this is IPID report. He cannot be held accountable for whatever is written there. Whether what was said there and so on so, for instance, you could be right in saying he never said or indicated at any point that he agreed 100% that Messers Sibiya, Dramat, and Khuba Maluleke ought to be charged. Perhaps that will explain why in his own opinion, in the internal memorandum which
10 have taken to even in bundle B Mr Mosing did, do write if I am correct. That is why in his memorandum three weeks later or so he expresses, for want of a better word, reservations about if it is sufficiency of evidence so far as criminal prosecution is concerned. Am I right Mr Mosing?

MR MOSING: That is indeed correct Chair and ...[intervened].

MR FORD: No let us just assume ... follow that trend on what the Chairperson explained. Let us assume for a moment that your reason in so far as ... we are just looking at Sibiya, is led to you saying I, we do not believe that there is sufficient basis for criminal prosecution against Sibiya.

20 **MR MOSING:** I think the word Chair [intervened].

MR FORD: Or give me your words, I am going to use your words Advocate Mosi.

MR MOSING: People using the word 'basis' alright, maybe basis is an unfortunate word.

MR FORD: Okay give me your word, I am going to use your words:

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MR MOSING: I said there ... having regard to the entirety of the evidence that was available at that stage, right, I was not satisfied at that stage that the evidence was sufficient enough to formulate charges against Mr Sibiya.

MR FORD: Okay. So if McBride and Sesoko come to the same conclusion based on the evidence.

MR MOSING: Yes.

MR FORD: Would they be wrong?

MR MOSING: If they come to the same conclusion or as far as Mr Sibiya
10 is concerned.

MR FORD: Yes.

MR MOSING: Based on the evidence that existed then, right, I would say that ... I would be in ... they would be in agreement with me or with my view of the evidence at that point in time.

MR FORD: Correct. You see that is exactly the point in so far as Sibiya is concerned. Sesoko will come and testify that, that having regard to the evidence that him and McBride too were not satisfied that the evidence was sufficient enough to formulate a charge for criminal prosecution against Sibiya exactly what you have concluded.

20 **MR MOSING:** Well that may be so because I was not ... but the report that IPID presented clearly as you have it there had recommended that the evidence is sufficient to charge Mr Sibiya though I did not agree as I have it ... as I have correct ... as I have indicated. But if they came to the same conclusion then yes.

MR FORD: Now having had regards to the evidence there is nothing that

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prevented Mr McBride or Sesoko to ... to come up with a different recommendation because it is an IPID report?

MR MOSING: Yes, no ... I ... I ... I ... think you are correct they can. IF they wanted to correct the recommendation it sets.

MR FORD: Now I just want to go to page 58 now, that internal memo in respect of which you then shared your view as to the basis why you believe there is simply no grounds for ... or to use your words there is not sufficient evidence to satisfy a charge for criminal prosecution against Sibiya. This is what you said in paragraph 7 page 63. I am going to read
10 it into the record it says as follows:

"Recommendation ..."

This is your document.

"The recommendation for the IPID that the DPCI carried out an illegal deportation of Zimbabwean nationals is supported and is born of by the evidence obtained in the docket. Those directly implicated in the actions are the head of the DPCI Lieutenant-General Dramate, Lieutenant-Colonel Maluleke, Warrant Officer Makua, Constable Radebe, and Captain Nkosi. The recommendation in respect of Major-General Sibiya is not supported for the reasons mentioned above. In addition to the charge mentioned in
20 the IPID report, we would also recommend a charge of fraud alternative to fraudery [sic] and altering in respect of the home-affairs documents that were submitted to the civilian secretariat and others. Kind regards
Advocate Moeletsi, Advocate Mosing.
That effectively confirms your evidence in so far as Major-General Sibiya is concerned.

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A MOSING

MR MOSING: Yes but now you have to refer to paragraph 6.3 Chair.

MR FORD: Yes.

MR MOSING: Above because that is where the reasons are more fully dealt with as far as Major-General Sibiya is concerned.

MR FORD: Ja.

MR MOSING: If I may read what I have recorded there?

MR FORD: You can.

MR MOSING: Under the heading 'Challenges':

'The involvement ...'

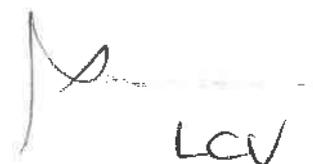
10 6.3

"The involvement of other senior police officers could not be established 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 [Indistinct 00:57:58] 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 of this report despite it being pointed out to the investigate team."

20

MR FORD: Yes.

MR MOSING: So Chair to ... clearly, it states at that point in time the evidence as far as Mr Sibiya is concerned was not conclusive, there was still some work to be done as pointed out in my memo in order to



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completely rule out Major-General Sibiya's involvement with the offences. It is not as Mr Ford has been ... keep on repeating that I was saying there was no basis whatsoever to charge Mr Sibiya. That was not the meaning of the fact that we did not recommend Mr Sibiya being charged at that stage.

MR FORD: Advocate Mosing I am using your word, you said having regard to the evidence you were not satisfied that the evidence was sufficient enough to formulate a charge of criminal prosecution against General ... Major-General Sibiya. You just testified that on the record.

10 **MR MOSING:** Yes. And I have ...[intervened].

MR FORD: Secondly ...[intervened].

MR MOSING: And I have referred to paragraph 6.3 which more closely contain my reasons shortly after or at the time when the matter was [Indistinct 00:59:49].

MR FORD: But in your evidence, you said the investigation was complete. The investigation is complete.

20 **MR MOSING:** Mr Ford I think I have stated as well previously in this hearing that it was complete in order to enable a decision maker to make informed decisions as to prosecute or not to prosecute. But I did also point out that it may be that certain investigations may still be carried out. So I think that ... that is what I have said, said.

MR FORD: On the strength of the available evidence Mr McBride, Mr Sesoko, Mr Khuba came to the conclusion like you did, that there was not sufficient evidence to warrant a charge of criminal prosecution against Major-General Sibiya. You confirmed earlier that they were

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A MOSING

entitled to arrive at that decision.

MR MOSING: Yes, based on the existing evidence.

MR FORD: Yes.

MR MOSING: But as pointed out that evidence still needed to be ... as far as Major-General Sibiya is concerned, there was outstanding work that needed to be done as far as his cell phone data is concerned, right. As I have indicated in paragraph 6.3.

MR FORD: Just going to take instruction Chairperson. My instructions ... Advocate Mosing? My instructions are as follows: Firstly when you look
10 at the cover page of the bundle D that you submitted it is written on 'draft', do you see it?

MR MOSING: The one that says 'draft'?

MR FORD: Yes.

CHAIRPERSON: The signed one it is the signed one.

MR FORD: That is, in fact, the signed January report.

CHAIRPERSON: It is the signed of 22 January 2014, yes?

MR MOSING: No ...

CHAIRPERSON: That is the one that you read from bundle D, is that correct?

MR MOSING: This one?

20 **CHAIRPERSON:** Yes that is right. Okay, proceed.

MR FORD: Do you see that?

MR MOSING: Yes.

MR FORD: Okay. Now the applicant, the employee has asked me to put to you the fact that the reference to draft here would have satisfied in your mind that in fact, this was not final?

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A MOSING

MR MOSING: As I indicated Chair there are two documents, and I am sorry if I do not know the number ... the correct numbers. One that says 'draft' dated 22 January 2014. The other one which is ... does not say 'draft' also dated 22 January 2014. Which in my understanding was the final report, the January report if you are talking about the January report. This one is a draft, in our view, because there was somethings that Mr Juba still wanted to add to that. If we can refer to the documents I might actually be able to say what it was that was outstanding.

CHAIRPERSON: Mark it bundle D, the signed one.

10 **MR MOSING:** Yes I have got ... both of them are signed.

CHAIRPERSON: Okay.

MR MOSING: But if you will look at the contents of the two you will find that this one that I say is the final has one additional thing. Perhaps more than the one which I wrote 'draft'. To be specific ... I cannot remember what it was Chair, will you forgive me, but I will need to just quickly go through here and see what else was added.

MR FORD: Advocate Mosing?

MR MOSING: Yes.

20 **MR FORD:** Forgive me for interrupting you it is not my intention I know you are looking for something.

MR MOSING: Yes.

MR FORD: You mentioned something extremely important to me now.

You mentioned the fact that there was still things outstanding that Khuba still wanted to add, do you recall testifying to that effect?

MR MOSING: On this report yes.

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A MOSING

MR FORD: On that report.

MR MOSING: yes, on this that is dated 22 January 2014 and which I wrote 'annotated draft'.

MR FORD: Ja.

MR MOSING: There was ... if I recall correct there was just one addition thing that he needed to add to that report.

MR FORD: Now ...

MR MOSING: If you allow me?

MR FORD: Sure.

10 **MR MOSING:** I will be able to can get to exactly what it was. As you can see the numberings of ... the pages because the one that is 'annotated draft' has got 26 pages.

CHAIRPERSON: That is fine without having to go to into the details to what Mr Khuba had to add, Mr Ford's point is that that agrees with him that this could not have been a final report because then if there were things that still needed to be added therefore it could not be regarded as final, am I right Mr Ford?

MR FORD: That is correct.

20 **MR MOSING:** I think Mr Ford, Chair, is referring to the one which referred to as a draft. Which of course in our view was not final because it is still a draft. However, the one that is not referred ... dated 22 January that does not have written on it 'draft' that is the final report which is a more added ... it has got more pages than the one that Mr Ford is referring to.

MR FORD: I am not so sure whether we got a copy of that report

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A MOSING

because the report that we have Chair is the report appearing from bundles 1 to 34 in the respondent bundle ... the employer's bundle ...[intervened].

CHAIRPERSON: To 35, to 35?

MR FORD: Ja.

CHAIRPERSON: Which is not signed.

MR FORD: Which is not signed.

CHAIRPERSON: Yes, which then led to us having to obtain this one.

MR FORD: These two ... then we have got ...[intervened].

10 **CHAIRPERSON:** Which is bundle D for [Indistinct 01:06:44].

MR FORD: The we have got C.

CHAIRPERSON: Then it was C.

MR FORD: Which is 22nd of October and it would appear that Advocate Mosing now has two documents dated the 22nd of January.

CHAIRPERSON: And signed.

MR FORD: And signed. I am not sure...[intervened].

CHAIRPERSON: I am also lost to that...

MR FORD: Ja.

CHAIRPERSON: Ja.

20 **MR MOSING:** I think that is what I have been trying to say all along and I thought that it was correct when you indicated the numbering...

CHAIRPERSON: Ja.

MR MOSING: And the D and B. Because this report that is draft, for instance, does not have Mr Khuba's ...summary of Mr Khuba's statement.

CHAIRPERSON: Which report are you referring to now?

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A MOSING

MR MOSING: This is now ... I think what you now have ...

CHAIRPERSON: Is it bundle D?

MR MOSING: As bundle D.

CHAIRPERSON: Ja.

MR MOSING: Which is dated 22 January ...[intervened].

CHAIRPERSON: So remember that now ... what I have in front of me is bundle A which has got a report dated 22 January 2014 which is unsigned. Then I have got bundle D which seems to be similar to bundle A but the difference amongst other is that bundle D is signed. For now,
10 we are going to exclude that for say for [Indistinct 01:07:55] purposes, that is 2013. Now is there any other report that is dated 22 January 2014 in addition to these two reports that we do not have here?

MR MOSING: Well if I recall correctly in my evidence-in-chief I did refer to this document which in my view is a final report. The one ... it is also dated 22 January 2014 and it is signed, it has got ...[intervened].

CHAIRPERSON: So this one has got a twin? This one -- that is signed --

MALE SPEAKER: The one that is draft it this one you have?

MR MOSING: No, let me ... I think this is -- no -- let me ... let me ... let me understand, or let me say what I ... what I -- what I --

20 **CHAIRPERSON:** Ja.

MR MOSING: In this bundle, I do not know what you call this?

CHAIRPERSON: Bundle A.

CHAIRPERSON: The employers bundle, ja? **MR MOSING:** And the D and E -- because the

MR MOSING: This statement that you refer to has got 35 pages, the summary of unsigned.

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A MOSING

CHAIRPERSON: Yes.

MR MOSING: Nè? The unsigned.

CHAIRPERSON: Yes.

MR MOSING: It has got 35 pages. That is similar to this document which is the unsigned one that ... which is a signed one that I have dated 22 January 2014.

MR FORD: It cannot be the same because that is ...[intervened].

MR MOSING: Let me just finish.

CHAIRPERSON: Sorry, sorry, just hold on. Yes?

10 **MR MOSING:** This one that Mr Ford has referred to that ... this 'annotated draft' also dated 22 January 2014 only has 26 pages.

CHAIRPERSON: Yes, that is the one I am having.

MR MOSING: Ja, so it cannot be the duplicate of the unsigned one in bundle ... what is this bundle number?

CHAIRPERSON: Bundle A.

MR MOSING: Bundle A?

CHAIRPERSON: Ja.

MR MOSING: The duplicate one ~~of bundle A's~~ statement, unsigned statement, which I have a signed copy of is this document.

20 **CHAIRPERSON:** The one that I do not have.

MR MOSING: Yes.

CHAIRPERSON: Which have not been entered into the record.

MR MOSING: Similarly ... I think it has been entered into the record. I do not know why the Chair does not have it.

CHAIRPERSON: Did we enter it into the record?

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A MOSING

MR MAKOTLA: Ja.**CHAIRPERSON:** Because I do not ... [intervened].**MR MAKOTLA:** Because we did get copies the previous time.**CHAIRPERSON:** Did we?**MR MAKOTLA:** Let me just double check [cross talk]**CHAIRPERSON:** Mr Ford have you got that ... have you gotten that?**MR FORD:** No we do not have that.**MR MOKHATLA:** Chair the employee has a document because it is attached to his application before the High Court. The same document.10 **CHAIRPERSON:** Are these the documents?**MR MOSING:** Yes these are my documents.**MR MOKHATLA:** From the bundle that I gave you Chairperson, the High Court application, it is there.**CHAIRPERSON:** Okay.**MR MOKHATLA:** Okay.**CHAIRPERSON:** Right. It is fine we are going to take it slow.**MR MOKHATLA:** Ja it start at page ...**CHAIRPERSON:** So that we do not ...**MR MOKHATLA:** At page 21.20 **CHAIRPERSON:** Oh you see you remember now when these proceedings started I said I had three copies of the reports and I was not sure which was which and I asked Mr Mosing to take us through. This is ... I do have this report.**MR MOKHATLA:** Yes.**CHAIRPERSON:** It was given on our last sitting.

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A MOSING

MR MOSING: Yes.**CHAIRPERSON:** Mr Mosing did refer to it.**MR MOSING:** Yes.

CHAIRPERSON: It is here because it is 35 pages just like the one which is unsigned here which is one could say is a twin. I remember because Advocate at the beginning of these proceedings today I could not be sure as to whether it was two drafts that were handed out or three. But I had three so that would explain at this point in time it is not marked. So it was handed up on the last date.

10 **MR FORD:** But I certainly do not have a copy Mr Chairperson.

CHAIRPERSON: But I remember us adjourning, I mean and these copies being made, and that is why I also got this copy.

MR MOKHATLA: Ja.

MR FORD: Chairperson can we stand down just for five minutes to see if we can locate.

CHAIRPERSON: Okay, no it is fine.

MR MOKHATLA: Just look in your application at the High Court that particular report is attached in your application starting from page 21 to

CHAIRPERSON: That is bundle E?

20 **MR MOKHATLA:** Yes bundle E.

CHAIRPERSON: So you are going to page 21. Yes, this one SN 1, 21, 22. you are referring to this one?

MR MOKHATLA: Exactly the same ... it is the same report ends at page 52.

CHAIRPERSON: The report is attached to your application to the High

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A MOSING

Court.

MR FORD: I, unfortunately, do not have application.**CHAIRPERSON:** Let us adjourn for five minutes just get hold of your paperwork.**MR FORD:** Thank you Mr Chair.**CHAIRPERSON:** Alright. If you can switch off for five minutes?**RECORDING PAUSED****HEARING RESUMES**

CHAIRPERSON: ... let's mark this EXHIBIT G, Mr Makathe shall we
 10 mark that EXHIBIT G? Yes.

MR FORD: Advocate Mosing where is the transcript of the discussions you had with Werksmans Attorneys, do you have a copy of that?**MR MOSING:** I am not too sure Chair, I thought those transcripts, I don't know if I have seen any in any of these bundles here.**MR FORD:** No it is not in the bundles.**MR MOSING:** I saw them Chair but ~~I don't think I have got a copy of~~ that.**MR FORD:** Okay.

MR MOSING: And I was shown them ~~by the investigating officer who~~
 20 was the investigating the criminal ~~charges, because he wanted a~~
 statement from me and he only showed me relevant parts ~~pertaining to~~
 myself.

MR FORD: Could you have a look at ~~Bundle G for me please.~~**MR MOSING:** Yes, it is the supporting affidavit.**MR FORD:** Yes, now understandably ~~this is an affidavit and the person~~

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A MOSING

who made the affidavit will come to testify and that's why I am taking you through it. Do you want an opportunity to perhaps just reading it first before I ask you questions about it?

MR MOSING: It's quite a lengthy affidavit.

MR FORD: Yes.

MR MOSING: If you want to save time, because I think we are going to waste time by taking ...[indistinct]

CHAIRPERSON: Maybe can you indicate to him which specific paragraphs that you want him to answer questions on

10 **MR FORD:** We are going to work through the whole affidavit.

CHAIRPERSON: At least if you can given him earlier, ...[indistinct] other documents, I mean I said to you earlier on ...[indistinct] you know last time you gave us documents piecemeal and it is so interrupting, then how do you expect him to within this short space of time to go through this 23 page affidavit and answer?

MR MOKHATLA: To the extent that this is what Mr Kubo is going to come and say and perhaps there is not much the witness can say other than just perhaps you Mr Ford just putting the version to Mr Mosing, what we can do is to just stand down for say five minutes for
20 Mr Mosing to just page through the affidavit then thereafter then you can just put the version so that he has got the opportunity to deal with whatever version Mr Khuba is going to come and state.

CHAIRPERSON: Then let's just stand down for five minutes, if we can just make sure that it's five minutes that we stand down.

HEARING ADJOURNS

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A MOSING

HEARING RESUMES**MR MOKHATLA:** Thank you Chair, are you on record?**MR MOSING:** I have only gone as far as paragraph 14, which is page 10, there's still half of the affidavit which I haven't managed to go through but I think I have seen this affidavit briefly in the past, so ...[intervenes]**CHAIRPERSON:** But in essence do you – I mean did you understand the substance ...[indistinct]**MR MOSING:** Chair I – but I – let's say I can deal with the affidavit, 10 questions put on the affidavit, if necessary I will ask for time to read through the parts that I haven't gone through yet.**CHAIRPERSON:** It is Mr Khuba's affidavit, it is not yours, so Mr Ford will be putting versions to you and you may react to those, the reason why he is doing this so that when Mr Khuba comes in and testify he is not accused of not having put his version to you, so he can put his version to you, and it is up to you ~~how you react to that.~~**MR MOSING:** Yes Chair.**CHAIRPERSON:** And where you ~~cannot react you cannot react,~~ and just remember you are under oath. Can we go on record, are we on record ~~stand down for~~ 20 already, oh okay, no that's fine. Mr Ford you can go ahead, Mr Mosing ~~has gone through the affidavit, he says he can deal with it and where~~ he cannot react or whatever he ...[indistinct]**MR FORD:** Thank you. Let's proceed then to paragraph 5 of the affidavit before me, if we go to page 4 right Mr Khuba says that he was first assigned to investigate, that ~~will be his testimony~~ at the

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A MOSING

involvement of the SAPS including members of the DPCI and ...[indistinct] towards the end of 2011, although he was only given the green light to investigate in October 2012. Now can you confirm?

MR MOSING: Chair I think that paragraph is tied to other paragraphs in this affidavit, later on in the affidavit but what I can mention, what I know is that Mr Khuba when he came on board he started investigating the matter did allude to the fact that IPID was as well instructed right from the beginning, it might be in 2011 as stated here but for some reason they had not commenced with the investigations and they had
10 proceeded with it until ...[indistinct] now started, they got involved ...[indistinct]

MR FORD: Then it deals with in paragraph 6.1 on page 3 of the affidavit it deals with the whole ...[indistinct] media interest and 6.1 there is nothing untoward in that paragraph that you disagree with?

MR MOSING: In paragraph 6.1?

MR FORD: Yes.

MR MOSING: I don't know how about the Co-Parliament ...[indistinct]

CHAIRPERSON: What is the significance of that paragraph?

MR FORD: What is the relevance?

20 **CHAIRPERSON:** Yes.

MR FORD: It is the context, if he doesn't know he doesn't know.

CHAIRPERSON: Mr Ford ...[indistinct] I am afraid you are that's why ...[indistinct]

said off record at some point I am going to have to make a ruling as to the relevance of ...[indistinct] it seems to me that if you are going to go through with the witness paragraph by paragraph because it's context

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and therefore for me this is just a time wasting exercise. This is a time wasting exercise and I just want to know what is this designed to achieve, but it is clear to me that it is a time wasting exercise because if for instance if you look at 6.1 that it was reported by a COPA member in parliament and so on and what does it have to do with the charge whether Mr Khuba and Mr Sesoko was involved in the alteration of the January report, what does that have to do with the charge?

MR FORD: It is material Mr Chair, ...[indistinct] is material ...[intervenes] he following sense, our argument and the employee's
10 version is as follows, that the only time a report is regarded as final is when that report is signed off by the Executive Director if ...[intervenes]

CHAIRPERSON: I accept ...[intervenes]

MR FORD: If the investigation became a matter of national interest. If it is a provincial interest it is signed off by provincial. The context here confirms that this investigation is a national investigation. If it is a national investigation it must be signed off by the Executive Director. The only report signed by the Executive Director is the March report.

CHAIRPERSON: Haven't we been through this point time and again
Mr Ford.

20 **MR FORD:** We have Mr Chairman but I want to make sure that ...[intervenes]

CHAIRPERSON: And yet we come again to the same point...[indistinct] I am all about to – if you don't have further questions for this witness I am about to ask the employer for re-examination and then to excuse this witness from the stand.

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A MOSING

MR FORD: We are not done with cross-examination of this witness.

CHAIRPERSON: But I think Mr Ford just put a version because in any event Khuba is going to come and testify, put a version to him.

MR FORD: Mr Chair we can't just put a version to him, I have to put questions to him, I will tell you why ...[intervenes]

CHAIRPERSON: But it is not his affidavit.

MR FORD: Ja, but hear me out first Mr Chair.

CHAIRPERSON: I have heard you time and again Mr Ford.

MR FORD: But you must hear me every time Mr Chair.

10 **CHAIRPERSON:** Every time I have to hear ...[indistinct]

MR FORD: You are required to do so, you must hear even if ...[intervenes]

CHAIRPERSON: Even if you are repeating yourself, I don't have to.

MR FORD: Mr Chairman ...[intervenes]

CHAIRPERSON: I don't have to have to hear you repeating because if you are going to start something like a broken record I don't have to hear that, I don't know if the sound of a broken record excites you but it doesn't excite me.

20 **MR FORD:** Mr Chairman I don't think anybody is excited by the sound of a broken record, and I don't think you must allow these proceedings to deteriorate to the point where you become personal Mr Chairperson, that is ...[intervenes]

CHAIRPERSON: Personal, that's neither here ...[intervenes]

MR FORD: Hear me out Mr Chairperson so you don't begin in having an argumentative discussion with counsel appearing in front of you,

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A MOSING

that is not your role. I have already indicated in to you in previous emails that I personally hold the view that you are being compromised in these proceedings.

CHAIRPERSON: I have seen that yes. So what is the point?

MR FORD: The point is Mr Chairman you must allow me to ask the questions, and to – if the witness feels that he is unwilling or unable to answer let me just deal ...[intervenes]

CHAIRPERSON: So must I state ...[indistinct] I am a spectator in these proceedings, is that what you are saying?

10 **MR FORD:** You are not a spectator but you are certainly not playing for the other side, you must be absolutely impartial.

CHAIRPERSON: I said to you Mr Ford it is going to come to a point where I am going to ask the other side if they have any questions in re-exam and I am going to excuse this witness and we will proceed.

MR FORD: When is that now Mr Chairman, only after the cross-examination is completed then you are more than entitled to re-exam, but not when the witness is still being cross-examined.

CHAIRPERSON: Mr Ford are you in any way usurping my authority as a Chairperson.

20 **MR FORD:** Not at all, I respect you as the Chairperson.

CHAIRPERSON: From where I am sitting it doesn't seem so.

MR FORD: No I can tell you and I am confirming it on the record I am not challenging your authority, you are the Chairperson, I am just asserting what the employee's rights in these proceedings are.

CHAIRPERSON: It has got to be balanced with the employer's

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A MOSING

interests as well, it is not just him.

MR FORD: Absolutely Mr Chair and that's why I am saying if Advocate Mosing is unable or unwilling to answer a question he is here, he can just say I am unable to answer this question and then we move on.

CHAIRPERSON: So what you are asking me or in fact you are saying that I should just be a spectator to a time-wasting exercise where you just go through paragraph by paragraph and just dragging these proceedings with the – I mean God knows to achieve what.

MR FORD: No we are certainly not involved in a time-wasting exercise
10 Mr Chair, I want to give you that commitment. We are here defending the employee, who has the right to be defended in these proceedings, and you must respect that right, and reference that this is a time wasting exercise I think those type of comments is totally misplaced.

CHAIRPERSON: When you are asking one and the same question over and over again.

MR FORD: Which is the question that I asked over and over again
Chair?

CHAIRPERSON: Ag, come on.

MR MOKHATLA: Chairperson I know that Mr Mogadla is dealing with
20 the matter but just to assist we request that Mr Ford continue with his cross-examination but bearing in mind that the cross-examination should be relevant and that the Chairperson has the right to curtail the cross-examination if it doesn't go in that direction, so and also we have the right to object when we are of the view that it is not going in that direction, so I think if you can do it that way then it will assist

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A MOSING

MR FORD: I have no problem Mr Mokhatla, all I am saying is if there is an objection the Chairperson will deal with it and we will take direction from the Chairperson, I will.

CHAIRPERSON: Let us proceed. Mr Ford you can proceed.

MR FORD: Thank you Mr Chair. Advocate Mosing you agree that this investigation was a national investigation?

MR MOSING: Sure what that means a national proper, I can't comment.

MR FORD: Well I would like you to turn with me to page – we are
10 going to have to deal with the whole question of the CIG investigation, can you explain to the Chairperson what CIG is?

MR MOSING: Chair really – may I just ask what the relevance of this question is?

CHAIRPERSON: Mr Ford ...[indistinct]

MR FORD: Mr Chair you would recall in the employee's affidavit in Mr – Advocate Mosing's affidavit, in Mr Mosing's statement...[intervenes]

MR MOSING: Well now the answer is here ...[intervenes]

MR FORD: Well let's ...[intervenes]

MR MOKHATLA: Paragraph 6.4 ~~it is~~ where is it, it is Crime
20 Intelligence Gathering Division, CIG, that's what it is. I request that Mr

CHAIRPERSON: Let us proceed.

MR FORD: Now in paragraph 6.6 the Mr Khuba states the following
to his surprise Ms Mbheki categorically instructed him not to work or
discuss the investigation with Mr Sesoko. During your interaction with
Mr Khuba did he ever alert you to the fact that Ms Mbheki told him not

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A MOSING

to discuss the investigation with Mr Sesoko?

MR MOKHATLA: Objection Chairperson, relevance.

CHAIRPERSON: What's the relevance Mr Ford?

MR FORD: Advocate Mosing testified earlier when it was put to him about the recommendations and not – when I asked him about the extent to which he knows or does not know whether Mr Sesoko had sight of the January report his answer was that he would be surprised and then he listed reasons why he would be surprised, *inter alia* that Mr Sesoko was involved, Mr Sesoko was kept abreast, Mr Sesoko gave
10 guidance and all of those things, so when I am asking him now I am asking him does he recall at any time that Mr Khuba had informed, had Mr Khuba at any time inform me that in fact Ms Mbheki had asked that the matter must not be discussed with Mr Sesoko, that is not an irrelevant question Mr Chair.

CHAIRPERSON: I think the witness can answer that question.

MR MOSING: Thank you Chair. The question if I can answer that Mr Khuba at no stage informed me that Ms Mbheki had instructed him not to consult with Mr Sesoko.

MR FORD: Did at any stage Mr Khuba explain to you that he was
20 concerned with the CIGC investigation or was [indistinct] unreliable or inadequate as set out in paragraph 7?

MR MOKHATLA: Objection Chair, I just need to find the relevance of this question.

CHAIRPERSON: Mr Ford what is your question?

MR FORD: The question was, my question was whether at any time

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A MOSING

did Mr Khuba indicate to Advocate Mosing whether he harboured concerns about CIG or that primary to those concerns were the fact that CIG had conducted an investigation that Khuba believed was not reliable or adequate, that was the question.

CHAIRPERSON: Advocate Mosing can you answer that question?

MR MOSING: Yes Chair I – Chair at no stage did Mr Khuba indicate that he harboured any such reservations, suspicions and in fact just off this affidavit Chair, if I may say so, is completely utterly contrary to our engagement with Mr Khuba during these investigations. In my view it is
10 a fabrication that is clearly not correct with what transpired.

MR FORD: Why do you say it's a fabrication?

MR MOSING: Firstly quite a lot of things Mr Ford, it is stated in this affidavit by Mr Khuba which I regard as completely inaccurate and outright lies in some instances.

MR FORD: Do you care to be more specific, or would you want me to get to those sections in time?

MR MOSING: Well you might want to – we can go to that or I can give you the gist of so far what I've read, which I can tell you – which I can say where I stand that this is a completely inaccurate and false version
20 of what transpired, whether Mr Khuba – and it being an affidavit and swearing to I find it very, and I can say how I feel is what if you look at paragraph 10 – Chair what I am trying to say is the gist up to where I read at paragraph 14 the fact that Mr Khuba when he started this investigation was suspicious about the investigation that was done and he is trying to cast aspersions I don't know what he is trying to achieve.

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by those paragraphs, what I can say is that is – he never expressed any of those suspicions, he never mentioned that he was precluded from doing his normal work as an IPID investigator such as reporting to the normal people he was supposed to report to. I have indicated that he – it was, it became clear to us that Mr Sesoko was the person that he actually dealt with more frequently in the IPID head office.

If you look at paragraph for instance he says I also worked under the guidance of Advocate Mosing and Moletsi of the NPA, special projects division in the office of the NPE who were involved in CIG's
10 investigation before IPID became involved.

Mosing told me that before the matter was referred to IPID Colonel Nqongwe had approached the NPA to prosecute General Sibiya on the strength of the CIG's investigation but the NPA declined to do so.

If you read this paragraph with the preceding paragraphs as I said the impression from this paragraph that Mr Nqongwe had approached the NPA to prosecute particularly General Sibiya that's a false thing, it never occurred and I never said that to him, that's a lie. So – and I also never said to him the NPA had declined to prosecute on
20 the basis of Mr ...[indistinct] approach.

MR FORD: You would recall earlier on I asked you when you harboured certain reservations about Major General [indistinct] discussed those with Mr Khuba and it would appear that Mr Khuba here in this affidavit deals with that.

MR MOSING: I think this is a different, these are two different

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...[indistinct] Mr Khuba here says right at the beginning of his investigation he harboured certain suspicions about the investigation done by CIG and he is also now saying that Nqongwe had approached the NPA to prosecute Sibiya, that has never happened, that's why I say it is a lie. I never said that to him, and I never said to him the NPA declined to prosecute. The reality is when Mr Khuba came on board with that investigation he – there was nothing of this nature, all this allegations of suspicions he never indicated or expressed any of that, and for some time he and Mr Nqongwe worked very well regarding this

10 investigations. At no stage did it occur to us that he was doubting the *bona fides* of Nqongwe, that he was having all these reservations, so that's why I am saying I find it surprising that it is now an affidavit that he ...[indistinct].

MR FORD: Now he also says that you placed a considerable amount of pressure on him to sign off the January report, do you see that?

MR MOSING: That again Chair in my view is a lie.

MR FORD: It's a lie?

MR MOSING: Yes.

MR FORD: Let's just read what he says, he says in paragraph 11, for

20 your purposes Chairperson:

"On the 22nd of January 2014 ~~was~~ submitted to advocate Mosing of the NPA what I know for the sake of convenience refer to as the January 2014 report of the IPID investigation. It was placed under considerable pressure by Mosing to submit a signed version of the January report ~~with a recommendation~~ so that he

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could hand the matter over to the DBB. Towards the end of 2013 Mosing started insisting that I finalise my investigation and give him the report. My sense was that he was under a lot of pressure to wrap up the case."

What is your comment there advocate?

MR MOSING: I have already said my comment Chair, this is a complete incorrect statement of what had not transpired there. At no stage did I put any pressure whatsoever ...[indistinct] it was not within my powers to do so and neither was it – was he at any stage in a
10 position that he would take instructions of this kind from myself.

The opposite was true, we worked very well together, from the start that Mr Khuba got involved in the investigations right up to him submitting his final report in January 2014. At no stage did we have any difficulties amongst ourselves, at no stage did he object to any – the manner in which we were guiding him so I take it exception to what is contained in this affidavit, particularly in this affidavit that
...[indistinct] of Mr Khuba and I categorically state that it is not a true reflection of what ...[intervenes] **MR MOSING:**

MR FORD: In fact he goes on further to state that the January report
20 was not the final report because there was still investigations and other stuff to complete. That seems to be read true with the version that you shared with us earlier.

MR MOSING: I have taken note of what he has mentioned about that year which is in the paragraphs following upon – which is paragraph 14
...[intervenes]

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MR FORD: Paragraph 13.**CHAIRPERSON:** 14.**MR FORD:** In fact let us just see what he says in paragraph 13.

"While I did what 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 report I continued with the investigation. I always intended to supplement the document with the outstanding evidence and to send an updated report when the investigation was properly complete."

10

Now can you deny Mr Khuba that in fact the investigation was not complete?

MR MOSING: Mr Ford like I said I was in no position to instruct Mr Khuba on anything, he was conducting his investigation, I was merely guiding him and assisting him, so if he states here in paragraph 13 that he complied with what I was instructing him to do, such as submitting a report that was not an instruction.

MR FORD: No Advocate if in no uncertain terms Mr Khuba says under oath that that was not a final report, ~~he still had~~ there was still 20 outstanding issues and you're saying in fact he had greater ownership of that report than you, then clearly then could be no misapprehensions that in fact the January report was not the final one.

MR MOKHATLA: Objection Chair.**MR MOSING:** I am also under oath, I am also under oath.**CHAIRPERSON:** Mr Ford what is your reaction to the objection?

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MR FORD: Well first of all I don't understand what the objection is, I couldn't hear.

MR MOKHATLA: Will you say it is a matter of argument whether it is the final report or not ...[indistinct]

MR MOSING: That is correct.

MR FORD: Mr Chair ...[intervenes]

MR MOKHATLA: I think this question has been asked and answered I don't know how many times, it is not going to change, all you need to do then is to tie up you know the facts on issues of probabilities and
10 argue whether which one is more probable than the other, you won't get that from him.

MR FORD: Mr Chairman if I may respond?

CHAIRPERSON: Yes you can respond.

MR FORD: Chairperson would recall the question immediately prior to the question when I asked Advocate Mosing whether or not his – he could have instructed or exercised some pressure on Mr Khuba to complete the report. He then explained that he was not in a position to and in fact Khuba it was his investigation, it was his investigation and his report. Now the follow up question to that is if Mr Khuba is for all
20 intents and purposes the owner of that report and he tells under oath and say that report was not the final report, under oath and Advocate Mosing is saying well he is the owner of that report more than I am ...[intervenes]

MR MOKHATLA: I mean Chairperson the very same Khuba pleaded guilty to the very same charge and he was dismissed.

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CHAIRPERSON: ...[Indistinct] that I am not going to enter into that Mr Mokhatla my view – Mr Ford I wanted to point it out to you earlier now you know in order for you to understand where I am coming from and ...[indistinct] because just before this question you asked the question ...[indistinct] the thing is ...[indistinct] where Mr Khuba says I was placed under considerable pressure by Advocate Mosing, you know when you talk about ...[indistinct] I just didn't want to – I mean to interrupt your cross-examination, I wanted to say that you know this is what we – this is where I am coming from. Let's ...[indistinct] I mean

10 and I am not surprised there was no objection from the other side and if there was I was going to overrule it because for paragraph 12 is incorrect if there is an insinuation that the conclusion, the leading up to the conclusion of the January report there was some kind of pressure that Mr Khuba was put under by the ...[indistinct] that is very relevant, but as for whether going back again, or the question that we have just asked now whether it was a final report or not final because when you

look at for instance paragraph 13 where he says he did not regard it as final and paragraph – it goes on to say I think it starts at 13 and it goes to 14, he outlines things which was ...[indistinct] point there that against to that

20 ...[indistinct] a matter for argument as to whether ...[indistinct] that report submitted earlier whether in terms of the IPID regulations for all intents and purposes whether I mean if it did not meet those regulations whether it was final or not this matter for argument, but whether in fact the report was as a – the January report was as a result of pressure being asserted on Mr Khuba by Mr Mosing is relevant and it is good

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that you put that version and the witness has reacted to that version and he said it was a lie that he exerted pressure to sign the January report, in fact he said the opposite was true, they worked together side by side and at no stage did Mr Khuba express any ...[indistinct] about the outcome, about the process.

Think that by which ...[indistinct] I am paraphrasing but there's for me there is the example of relevance as opposed to what then must be followed by which I think is a matter for argument.

MR FORD: Mr Chairman the whole of paragraph 14 we deal with the
 10 reasons why Khuba submits the January report was not final. The difficulty for us is when we lead evidence if we could put that this version was never put to the witnesses. We can only argue ...[indistinct] that was put to witnesses, so all I want to say to Advocate Mosing is the deponent, the witness to come, Mr Khuba, sets out in detail why that report was not the final one. All I am going to ask him is to read it and give me – I will question whether or not he agrees or disagrees with what is contained in paragraph 14 and paragraph ...[indistinct] paragraph 14, that's all, then I am not going to need to ask the question him on that.

20 **CHAIRPERSON:** Okay.

MR MOSING: Chair I see it is two o'clock Chair, I have indicated previously that I am only available till two o'clock and as I really have to leave at this stage so as Mr Ford indicated he still has lots of questions to ask, I think it will serve justice if we can resume this at a ...[indistinct] time.

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MR FORD: Chairperson aren't we convening tomorrow morning?

MR MOSING: Chairperson I think the position, maybe Mr Ford is not aware but I did mention it this morning, that's why I requested ...[intervenes] possible, I was here at nine o'clock with the view that we would proceed and have enough time. I have to travel to Port Elizabeth for a few days and I am only available Thursday.

CHAIRPERSON: Mr Mokhatla?

MR MOKHATLA: ...[Indistinct] seeing that Mr Mosink has to leave ...[indistinct].

10 **CHAIRPERSON:** Ja, I think ...[indistinct] now until Thursday and then we will ...[indistinct] and then we will check ...[indistinct] for tomorrow I will be able to give you an indication ...[indistinct] as to whether this will be ...[indistinct] or not.

MR FORD: Sorry Mr Chairperson may I ask was Advocate Mosing being excused, we can then look at how the remainder of the week will ...[indistinct]

CHAIRPERSON: Maybe before we ~~let me just excuse Advocate~~ Mosing. ...[Indistinct] thanks for coming to assist ~~by the~~ employer's side as to ...[indistinct] your presence if ...[indistinct].

20 **MR MOSING:** Thank you Chair I will make myself available.

CHAIRPERSON: Okay Mr Mosing, ~~thank you~~ Maybe you can just go ...[intervenes]

MR MOSING: If there is any change I will let you know as Mr Ford indicate

CHAIRPERSON: (Inaudible)

HEARING ADJOURNS SINE DIE

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PROCEEDINGS RESUME ON 4 AUGUST 2016

CHAIRPERSON: Yes, good morning everyone, we are sitting again on this year, today is the 4th of August 2016, the last sitting was on the 25th of July 2016 and we were due to resume on the 29th, however due to the unavailability of the witness Mr Mosing we couldn't reconvene hence we could only reconvene today.

Just off record after advising parties just make me a ...[indistinct] of what transpired as for me being quoted by a journalist from Media 24 with regard to my involvement in this matter and what the journalist said and raised by the employee, Mr Sesoko's representatives that he be prejudiced. Mr Ford had then indicated that in fact they wanted to bring an application for my approval and that Mr Sesoko is not well, he has got chest pains but that he will be relying on my guidance as to what we will start first ...[indistinct]. We will have to start with this recusal application first which would then confirm the jurisdiction on me whether to proceed and ...[indistinct] circumstances where ...[indistinct].

We are at the point now Mr Ford is going to address us on why his client feels that he will be prejudiced and that perhaps I should recuse myself from these proceedings. Mr Ford?

MR FORD: Thank you Mr Chairperson. I think Mr Chairperson just to give the context the document in front of you will be based largely to guide the arguments I am going to be presenting for your recusal, so it may be that from time I may deviate slightly from the document as it stands in order to supplement by way of oral submissions as well. Mr

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Chairman my attorney has advised the following, that you will recall that when we here on the 25th we were not going to be together until such time the Friday between the 29th when Advocate Mosing would have been available again, and specifically the 27th Mr Sesoko, Mr McBride, Mr Khuba were appearing in the criminal matter in the Magistrates Court.

At that session, in the Magistrate's Court there was a discussion between a news reporter and Mr Matiwe – Matiwe and in that discussion with Media24 he was asked what's the status of the disciplinary hearing of Mr Sesoko, at that discussion he informed that Mr Sesoko's hearing is continuing and in that in fact, that the matter will be continuing this coming Friday because Advocate Mosing is still giving evidence. The news reporter then enquired from him, Who's the Chairperson chairing the hearing and in that discussion, it was disclosed to him that this Chairperson that's chairing Mr Sesoko's hearing, is in fact the same person who chaired the hearing in the matter of Major General [indistinct].

CHAIRPERSON: [Indistinct].

MR FORD: Sorry Mr Chairperson.

20 **CHAIRPERSON:** Make it sound like he had this revelation.

MR FORD: Who had the revelation?

CHAIRPERSON: [Indistinct].

MR MOKHATLA: He said you make it sound like he had this sudden revelation.

CHAIRPERSON: No this person who was Chairing the Sibiya matter.

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but anyway [indistinct].

MR FORD: So following that discussion then Mr Chairman the -
enquiries were made regarding whether or not it was you or not who
chaired General Sibiya's hearing and further enquiries were made to
determine such by seeking a copy of your ruling in that matter. That
matter, duly then came to his attention on Monday and a copy thereof
was forwarded to me which I then saw for the first time on Monday. So
that is the context Mr Chairperson, so the recusal application then
follows two lines and in introduction it says, you as the Chairperson 1.1
10 has demonstrated that you lack the requisite independence to
participate in these proceedings, with direct reference to your conduct
and to the extent that you....[intervenes].

CHAIRPERSON: During these proceedings?

MR FORD: During these proceedings and the extent to which your
conduct may have compromised Sesoko and bringing an independent
mind to bear in the matter before you and if I may just share an
observation Mr Chairperson, right up front, even up until just now the
manner in which you interact with the parties, your demeanour, the
manner in which you pose questions or responded to them, clearly
20 demonstrate that you have adopted a particular position with reference
to these matters and that is not even included in here. Your conduct
now, just in the last five minutes, you are dismissive, you roll your
eyes, you look up, you make comments which are inordinately
inappropriate.

For instance, just now you made the comment that Mr

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Matiwe...[interventions]

CHAIRPERSON: About the revelations?

MR FORD: Ja, just now you made a comment...[intervenes].

CHAIRPERSON: [indistinct].

MR FORD: Ja, just now you made that comment that Mr Matiwe suddenly got this revelation.

CHAIRPERSON: I said you made it sound like, please don't [indistinct] sound like.

MR FORD: You're quite correct, you did say I make it sound like he
10 suddenly got a revelation but with that comes, not only what you're
saying Mr Chairperson, it's also your whole demeanour when we're
addressing you and when you are addressing us which does not
[indistinct] well for a person who is coming to preside over a matter
that has the impact of changing a person's livelihood and status and
the request for you to recuse yourself is not an attack on you as a
person. It's saying that you may have been compromised and, like you,
I have also been in the position where, for some reason the manner in
which I preside over matters have given an indication of how I felt the
or determined the parties [indistinct] but your demeanour, Mr
20 Chairperson, is not the demeanour that should accompany a person
who's chairing proceedings in an independent manner. You are
compromised, you are getting emotional, the manner in which you deal
with issues is that you are no longer the person that can bring an
independent mind to be in these proceedings and once that has
happened, Mr Chairperson, once you get to the point where you are

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compromised, whether rightly or wrongly whether justifiably or unjustifiably, at that point in time you must withdraw, you must say, I can no longer participate in this, I am compromised.

Whether or not the basis for the compromise is acceptable or not but once you get to that point Mr Chairperson you have a duty, a legal duty to step away from the proceedings, to say, I cannot, I am going to make a decision that will impact the livelihood and status of another person and I am compromised, and for that reason I am going to withdraw. Now I am saying to you Mr Chairperson you have reached
10 that point, you've done it, you've reached it. And on nothing else, just on that Mr Chairperson, the sensible thing to do for you, would be to recuse yourself.

Now I'm going to take you through to the specifics of why, other than what I've just mentioned, you are no longer independent, you cannot bring an independent mind to bear in these proceedings. I'm going to highlight several instances where you've compromised yourself. If I may start, then Mr Chairman with → so the first issue then is dressed up as your lack of independence. So if I may then just take
20 you Mr Chairperson, the second issue that we are going to be dealing with is the failure to disclose and that's set-out under paragraph 102 and we'll get to the details. We're saying there that the Chairperson failed to disclose his involvement in the disciplinary proceedings and the dismissal of Major General Sibiya. When, under all circumstances, and in relation to the issue which you are required to consider it would have been appropriate and necessary for you to have disclosed it. Right up

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front not saying, that I submit and believe that it is in the public domain, that is your excuse and that I didn't see it necessary. Of course it's necessary, you would have recalled there was a discussion between myself and Advocate Mosing downstairs, the first thing that I did when I came into the room, Mr Chairperson would recall, is I disclosed the details of that discussion because that is the appropriate thing to do.

Now I'm going to address you a little bit on the case of Wayne Hutchinson who sat, in more or less the same position as you
10 where he also failed to disclose and the Court took a very stern view that, that was a basis for him to have recused himself. There was a need for you to disclose because – and we'll deal with the details, the matter pertaining to Sesoko, he's being charged with 1) that he authored the report but there was a purposeful alteration that purpose of alteration was that he purposed to exonerate Dramat and Sibiya.

CHAIRPERSON: I understand that.

MR FORD: And in respect of that you've already made the decision insofar as Sibiya is concerned and that – when the word Sibiya, the name Sibiya was mentioned Mr Chairperson you should have – you
20 should have – in fact there was a duty on Mr Mokhatla as well but in the main, you should have said, gentlemen are you aware that I have been involved in the matter pertaining to Mr Sibiya at which point in time we would have taken an instruction as to whether or not you are a fit and proper person to continue with the hearing. You didn't, for whatever rhyme or reason you elected to do – not to do so, you didn't

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do so and I'm going to explain to you, why you ought to have done so.

So those are two legs on which the argument is based on. Now, firstly Mr Chairperson, from the commencement of the disciplinary proceedings, from the commencement of the proceedings, you have demonstrated a patent bias in favour of the employer. In this regard you agreed with every submission made by the employer's representative and dismissing in every instance, submission made by the employee's representatives. This was evident Mr Chairman, in the manner in which the hearing was to proceed. You would recall when
10 the hearing commenced under your auspices, we explained to you that there is the application before the Labour Court and we said it will be sensible for that process [indistinct]. Every time, without fail when Mr Mokhatla made a suggestion, Mr Chairperson, you agreed with him. Every time that I made a suggestion you dismissed, and the record, Mr Chairperson, bears the reference of that.

Now remember in an application for recusal all we need to say is that there is a reasonable apprehension on the part of Mr Sesoko that you, Mr Chairperson, are no longer independent. You know— you don't have an impartial mind or bring an impartial mind to bear in these
20 proceedings. Now during the application for the stay of the disciplinary proceedings you demonstrated the knowledge of the matter notwithstanding the fact that such information was never presented before and here I'm going to pause Mr Chairperson. When you dealt with the stay application you had an affidavit from Mr Sesoko and you had a reply argument from the employer's counsel.

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your ruling, Mr Chairman, you note matters or you make a reference to things that was not raised in our application nor was it raised in the argument. So the question that begs to be asked is, where did you get that information from and if I may just demonstrate that point. Mr Chairman, I'm not sure whether you have our stay application before you still?

CHAIRPERSON: [Indistinct].

MR FORD: No I understand that, I'm making the point to demonstrate your lack of independence, I'm asking do you have a copy Mr
10 Chairman, can I give you a copy?

CHAIRPERSON: [indistinct] necessary because I was [indistinct] with that application and I know what was the nature of that application. So I'm saying for you to take me through it, it's not necessary.

MR FORD: No I'm not taking you through the application, I'm just going to say to you...[intervenues].

CHAIRPERSON: I will have your copy.

MR FORD: Ja can I just show you the application, Mr Chairman, I just want to find the stay application, please forgive me Mr Chairman. Now I'm not referring you to the detail of the stay application Mr Chairman
20 but if you page through the stay applications and I'm not - if you've ruled - you're quite right you have ruled with it and I'm not asking you to make a ruling in relation thereto. What I'm trying to demonstrate to you, Mr Chairperson, is the following - in the stay application there was information presented to you right, then Mr Theo Makata had presented the respondent's argument right. Neither in his argument or in our

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argument did we present information to you that you then included in your ruling.

CHAIRPERSON: You can accept that as common cause.

MR FORD: Ja.

CHAIRPERSON: I know what you are talking about, that I referred to the rendition of – I mean the alleged interrogation of Zimbabwean's by General Dramat and Sibiya and so on, so I know exactly what – am I right?

MR FORD: Ja...[intervenes].

10 **CHAIRPERSON:** Because I remember – so to the extent that, in that ruling put information which neither you or Mr Makata addressed simply because, I mean, I have this information by virtue of a tax payer's matter, that you can take that as common cause, you can proceed.

MR FORD: Now with that concession on your part Mr Chair, you are incorporating information from another hearing and making it apply in a hearing that you've presided over in respect of Mr Sesoko and in that hearing you have arrived at a particular conclusion, so...[intervenes].

CHAIRPERSON: But was that not in the background?

20 **MR FORD:** Ja, wait first, you come with almost a bit of institutional memory when it comes to the matter. So what we're saying is it's staff can demonstrate it in this way. Mr Chairman, nothing in these proceedings will convince you otherwise about a decision you've already taken in respect of General Sibiya, nothing. So the employee comes to these proceedings at a disadvantage, it is no longer an independent Chairperson because it is an independent Chairperson that

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has already made a decision in respect of some of the matters or issues in relation to which Mr Sesoko needs to testify on.

Then that concession on its own Mr Chair is sufficient for you to say, you know what, perhaps I am not as neutral as I ought to have been in these proceedings...[intervenes].

CHAIRPERSON: [Indistinct].

MR FORD: It's a fact quite right.

CHAIRPERSON: It's not a concession it's a fact.

MR FORD: But a concession is a fact, concessions are facts.

10 **CHAIRPERSON:** Proceed.

MR FORD: And I'm saying to you Mr Chairman is, I have no – I hold nothing against you personally nor does the employee you're a member of the bar you're a very reputable person, we are all members and it's not an indictment on you when somebody asks for your recusal. It's simply you saying, when I consider holistically the information presented there is a reasonable apprehension and for that reason I should step away. It's not like, we casting dispersions on you and that, we don't I'm just saying in this matter you're no longer independent, you're not and because you're not independent you should recuse yourself.

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Now the other points we're making Mr Chairman is the following, even in my address now, your demeanour is a dismissive our demeanour is a dismissive demeanour, right. Just your demeanour – when a person presides over disciplinary proceedings or legal proceedings the demeanour that you present must be such that the

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other person or the parties, both, have reliance have you haven't made up your mind either way but if you adopt a dismissive demeanour when you're being addressed by the employee's counsel or the employee and you're adopting an embracing demeanour when you are addressed by the other side it suggests that you've been compromised. You rolled your eyes Mr Chairman.

CHAIRPERSON: I don't recall rolling my eyes, I mean, ...[intervenues].

MR FORD: On several occasions you rolled your eyes.

CHAIRPERSON: I dispute that but you can proceed [indistinct] me
10 rolling my eyes.

MR FORD: Ja you roll your eyes.

CHAIRPERSON: I've never done that, but it's fine you can proceed.

MR FORD: Then on occasions Mr Chairman, when I address you, you would fold your arms in a manner that suggests disinterest.

CHAIRPERSON: Yes I've done that, that's right.

MR FORD: In fact it went a little further because just prior to doing
that, this is what you've done and I want to demonstrate it and I'm
going to explain to the record what I'm doing, this is what you did,
that's exactly what you did. For the record the Chairperson threw down
20 his pen, folded his arms and sat backwards!

CHAIRPERSON: And told counsel for the applicant for the employee
that – because he was being repetitive in process and even witness, I
mean the Chairperson had even stopped writing and the response from
counsel for the employee said you couldn't care less if [indistinct] I
remember that and I agree, I confirm

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MR FORD: Now Mr Chair, just your involvement now, it's almost like you're defending yourself upfront whilst I'm doing the – hear me out Mr Chairperson, you need to hear me out, it's almost like you're defending yourself upfront, you haven't even heard the reply and all of that, Mr Chairperson suggests, all of what I'm saying now suggests that you've been compromised and the honourable thing for you to do is to recuse yourself, that's the honourable thing. In fact your reference is patently incorrect the throwing down of the pen and the folding of your arms was not in relation to the fact that you felt my questions were repetitive,
10 that was not – that came only later, this is the stance that you took when we raised issues insofar as what is the charge in relation to Advocate Mosing and in particular that you allowed the employer to amend a charge without giving him an opportunity to respond to the charge. You say, that was in response to your comment, you don't see what prejudice the employee will suffer, that was when you've done that.

The issue pertaining to the repetitive questions was when you put your pen down and said you're not writing anymore, that – so you missed the two completely. Now in that regard, Mr Chairperson you
20 demonstrate disinterest, you can't as a Chairperson of a hearing demonstrate disinterest because ~~by doing so~~ you're giving the employee the impression that you can no longer bring an independent mind to bear and all it needs to have Mr Chairman, as you know, you know the law is a reasonable apprehension. That apprehension may even be unfounded but it it's reasonable you should recuse yourself.

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because he no longer has the confidence that you will bring and independent mind to bear, he does not have the confidence. I, as your colleague I don't have that confidence.

The Chairperson shook his head when the employee's counsel presented arguments that he disagreed without awaiting a reply from the employee's counsel, on several occasions you've done that but the most alarming Chairperson is the threats and when you threatened you said, Mr Ford you address me directly, I'm going to arrive at a point when I'm going to stop your cross-examination, I am
10 going to stop it. Not, I'm waiting for the employee's representative to bring an application to cease this line of questioning. Mr Chairperson you can't do that, you can't I mean you should know better than that.

Further you take decisions, questions asked during cross-examination are relevant. I specifically said to you, which question are repetitive questions, you couldn't answer me but you made a decision that the questions were repetitive. I wanted to know from you, which
20 questions, tell me, you were unable or either unwilling to do so. It's almost - Mr Chairperson I get the sense that you've been called into these proceedings to rubber stamp a decision that has already been taken by the way in which you deal with these matters.

Now when I explained to you there is a context to the charge, the charge is that Sesoko and McBride and Khuba had altered a report with a purpose of exonerating Dramat and Sibiya, so when I'm leading evidence by putting questions to demonstrate that, at no point can you

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even remotely come to the conclusion that they altered report to exonerate, you need to look at the purpose. Your inclination was, I should only ask questions about the report and whether or not it was altered on and you became frustrated Mr Chairperson [indistinct] questions, you became [indistinct] with that.

Threatening to stop another party's cross-examination cannot instil in Mr Sesoko the confidence that you, Mr Chairman is an independent person, it simply can't and especially, Mr Chairperson when it's not even raised by the employer's counsel it's raised by the
10 Chairperson. To quote your words, "the time will come that I will stop the cross-examination, I think that time must come that I will stop the cross-examination". You can't do that, not in these proceedings, and what's worse you don't even excuse the witness whilst you're having this interaction with the counsel. So the witness must now see how the Chairperson undermines the employee's counsel. There was nothing wrong with you, I submit, if you were to have said, I'm standing these proceedings down I am going to speak to Mr Mokhatla and Mr Ford I will come and speak to me I private and we'll have this discussion and we'll resolve the issues but you disregarded me completely Mr Chairperson.
20 I would never have done that to you as a colleague, never but you've done that.

No what you've done Mr Chairperson, cannot in the mind of you there has the employee put you in the position where you have an independent mind to bear at these proceedings. Mr Chair just on your conduct, Mr Chairperson, you must, must, must agree that there is a reasonable

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apprehension and we'll go through the law shortly in terms of what is reasonable and not reasonable and then the second last issue is when you advised me that you even stopped writing down some of the questions, that's simply not the thing one would say, I would never say that, I don't even think – I've never heard a Judge say that ever, I've never heard a Commissioner at the CCMA say that, in fact it's for the first time I've heard that, I've even stopped writing. You don't say that because that suggests that you are no longer interested and even your demeanour now, Mr Chairperson as you sit there now, suggests that
10 you are disinterested, and if I must just, for the record demonstrate the Chairperson's demeanour, the Chairperson sat back in the chair, his head on the rest, his eyes literally closed and sitting back having no regard for the discussion...[intervenes].

CHAIRPERSON: You said my eyes closed [indistinct].

MR MOKHATLA: Mr Ford you cannot be dishonest.

MR FORD: I'm not being dishonest Mr Chairperson.

CHAIRPERSON: At no point, my eyes were closed [indistinct].

MR FORD: Mr Chairperson, all I'm saying to you, when I'm addressing you, you can't be doing this. All you're doing is – I can't see whether
20 your eyes are closed or open...[intervenes]

CHAIRPERSON: So you [indistinct].

MR FORD: Hear me out first...[intervenes].

CHAIRPERSON: That my eyes were closed.

MR FORD: Okay then your eyes were drawn that I can say confidently and you can't deny it.

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CHAIRPERSON: Come again?

MR FORD: Your eyes were drawn, it was like this.

CHAIRPERSON: No.

MR FORD: Like that you see?

CHAIRPERSON: [Indistinct] proceed.

MR FORD: I proceed, so what I'm saying Mr Chairperson all of those things suggests that you've been compromised and on those grounds alone we should not continue and then 11 Mr Chairperson, the hearing was scheduled for the 29th of July 2016, it did not continue [indistinct] 10 2.3 on 11 and the postponement have come from the employer's counsel and not the Chairperson. Previously you sent out emails, you make the dates unilaterally, this time it's the employer's counsel that sends out emails and make arrangements for dates and here's the issue, it appears to be in order for the employer to determine when and where the hearing continues but if Mr Sesoko was unavailable on Friday, Mr Chairman you would have continued with that hearing. Forgive me Mr Chairperson, my attorney has just brought to my attention that I've missed one point, 2:3:10 and that is the following. You advised in your ruling, quite contrary to what you said today that 20 the delay in these proceedings is to be that both parties is to blame for it but that's not the position that you adopted in your ruling.

So advising you that the employee is delaying the discipline without even commenting on the fact that the employer was to blame for the delay in the disciplinary proceedings. Now Mr Chairperson on the strength of lack of independence, I submit the reasonable and

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sensible thing for you to do would be to recuse yourself. Now failure to disclose.

As I indicated earlier, information has come to light that the Chairperson in the present hearing or Mr Sesoko is the same Chairperson who presided over the disciplinary hearing of General Sibiya. There was a duty on the part of the Chairperson to have disclosed his involvement but he failed to do so which confirmed the employee's reasonable apprehension of the Chairperson's bias. The information came to light on Monday the 1st of August confirming that
10 the Chairperson handed down his written judgment in respect of General Sibiya on the 24th of July wherein he found General Sibiya guilty of the misconduct charges he was charged with...[intervenes].

CHAIRPERSON: You can take it for granted that [indistinct].

MR FORD: Let me go through paragraph – just paragraph 6, in paragraph 6,

“Mr Sesoko is facing a charge for altering [indistinct] of General Sibiya in the “renditions of the Zimbabwean Nationals”,

And also there is a purpose of interpretation it says,

20 “With the purpose of criminally exonerating General Dramat and Sibiya. Mr Sesoko drafted a report recommending General Sibiya, amongst other, but not to criminally charge for his role in the renditions matter”.

Now it is quite common and clear that, as you said earlier on page 1, when

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that the facts in the matters are the same, you mentioned it yourself earlier, you said you drew on what previously happened at another disciplinary hearing and incorporated it your ruling albeit that, that evidence was never presented, you confirm?

CHAIRPERSON: No I never said [indistinct] never put it that way I said to the extent that I was dealing with [indistinct] and I'm paraphrasing now but what I was dealing with there was [indistinct] yes, it's common cause that neither [indistinct] facts before me which related [indistinct] because of the knowledge simply because I had Chaired Sibiya's matter, this is [indistinct].

MR FORD: That's what we said, that's exactly what we said.

CHAIRPERSON: I'm just saying when you're saying now that I said the facts are the same, I never said that. You could suggest that [indistinct] do not say I said that.

MR FORD: But you're not denying that you said that.

CHAIRPERSON: I'm not under cross-examination Mr Ford.

MR FORD: No [indistinct] fair enough. So if I can just address your further Mr Chairperson. The Chairperson should not have accepted to Chair the latter disciplinary hearing in view of the identical nature of the underlying facts, especially where evidence is not presented that there was no basis for criminal charges to preferred against General Sibiya. That's the evidence as it stands. With the corollary, the corollary being that to the extent that certain cellphone data needed to be authenticated.

Now the evidence that Khuba will lead is here to say that

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those cell phone data [indistinct] and there's no basis to find – make a finding in respect of Sibiya. We cannot present that to you because you've already made a decision in respect of Sibiya. The only difference in the two matters, and I'm going to need to read this for the purpose of the record is that the one – in the one the question concerns the actual participation of General Sibiya himself and not – or not and in the other Mr Sesoko examines and assesses objective evidence relating to the same facts to reach a conclusion, whether General Sibiya, in fact, participated in the renditions or not or whether
10 the renditions occurred with his knowledge and he did nothing to stop it but in both cases an examination of the same fact is inevitable.

So Chairperson, yourself would invariably also have, in both cases, examined the same set of facts to reach his conclusion and judgment because you're required to determine whether or not there was an alteration and where the alteration was intended to exonerate Sibiya but you've already found on Sibiya; you've already made a decision in respect of Sibiya. So no matter what evidence we present we can never put it past you because you've already made a decision about Sibiya.

20 "The Chairperson based, on his assessment of the facts in the Sibiya matter as taken as an informed personal view in relation to that matter and it is quite inconceivable, given his findings in that matter that the Chairperson could reach a decision different from the one in Sibiya's matter which thereby could only mean he cannot come to any decision other than that of guilty of altering

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the report as charged as to do so he would have no option but to
revisit/examine the same facts in Sibiya's matter, alternatively
such would be a significant consideration in his judgement.
Logic dictates, that if General Sibiya is found guilty of the
charges relating to the illegal rendition of the fugitives, the
Chairperson would in all probability come to the same conclusion
in respect of Sesoko. This creates a problem as it [indistinct]
that the Chairperson has already formed a view in respect of this
matter. Sesoko would be justified in having a reasonable
10 apprehension of bias from the Chairperson and that the
Chairperson would tend to lean more towards the finding that is
consistent with his finding in the Sibiya matter. Sesoko cannot
think of a possible situation where the Chairperson to give a
[indistinct] and different and consistent with his findings on a
case whose underlying facts that bears resemblance to the
current matter".

So the safest thing to do, Mr Chairperson is to submit; look I
did make a decision in the Sibiya – I made fact – a conclusion based on
the evidence, I cannot distance myself from the decision, this matter,
20 the charge, the heart of the charge is that Sesoko altered a report to
exonerate Sibiya and his evidence he's going to present the basis for
saying there's no claim against Sibiya, none but you've already made a
decision on Sibiya. So reasonably he cannot expect you to be
independent you've already made a decision in respect of Sibiya.

Now the legal principles. The principles are clear when it

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comes to matters such as the present one the Courts have stated as follows,

"The test applicable to determine whether a judicial officer is disqualified from hearing a case by reason of a reasonable appeal to [indistinct] was enunciated by the President of the Republic of South Africa ... [intervenues].

CHAIRPERSON: Are you going to read the entire [indistinct].

MR FORD: Okay I'm going to highlight a portion for you ja, just read the last few lines in that initial quotation it commences with the
10 paragraph,

"At the same time",

It's about seventh from the top of the first quotation,

"At the same time, it must never be forgotten that an impartial Judge is a fundamental pre-requisite for a fair trial and the judicial officer should not hesitate to recuse herself or himself if there are reasonable grounds of a party for apprehending that the judicial officer, for whatever reasons, was not or will not be impartial",

And in this instance I'm saying to you that threshold has been
20 met and then I'd like to – the second paragraph, in paragraph 7 of that judgment I'd like to just bring to your attention it's the fourth line from the bottom where the Court held,

"What the law requires is not only that the judicial officer must conduct the trial open mindedly, impartially and fairly but that such conduct must manifest to all those that are concerned in the

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trial and its outcome, especially the accused”,

Now I petition you, that from the employee's point of view, you are no longer an impartial person and you cannot bring an impartial mind to bear both in respect of your conduct, both in respect of a decision in a previous matter. The next paragraph is important Mr Chair and I know that you're aware of the law but for the purposes of the record, I'd like to state it,

"It is settled law that not only actual bias but also the reasonable perception of bias disqualifies a judicial officer from presiding”,

10 And the question that we beg to ask here Mr Chairman is, can one say that the employee's perception is unreasonable, based on what I have demonstrated to you in the argument, no you can't. You cannot come to a conclusion that his perception is unreasonable.

Once this is established the disqualification is so complete that continuing to preside after recusal should have occurred renders a further proceedings a nullity.

20 Now paragraph 14, it is submitted that in addition failure by the Chairperson not to disclose his involvement in General Sibiya's matter in respect of the facts as stated herein above is a dereliction of the legal duty he owes to the employee. The Chairperson should have brought this to the employee and his legal team's attention at the commencement of the hearing in order for them to advise whether there would be any objection to him chairing the hearing in this instance as well.

I would have done that, I would have done it in no uncertain

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terms, you did not.

Nothing stops the Chairperson to *mero motu* recuse himself from these proceedings and the case law is clear. The Indemmi decision the Court held – I am not going to go through that because that is what is important though is what the Constitutional Court said in the next quotation, page 9.

“It must never be forgotten that an impartial judge is a fundamental pre-requisite for a fair trial and the judicial officer ...”

10 No, that was repeated. Now the decision that I would like to bring to your attention is the Surgical Innovation decision, in respect of Advocate Hutchinson, where the Court held as follows:

“I am of the view that the fact that Hutchinson had previously represented the applicant in CCMA disciplinary proceedings constitutes an interest that required disclosure.”

So what the Court said in this decision once you have been involved in a matter that shows an interest or an involvement you should recuse yourself. A practical application of the above principles can be found in the judgment of Bernett and it is a short quotation, I am going to read

20 it.

“The question which a judicial officer subjectively asks himself therefore is whether having regard to his or her share or ownership or interest in one of the litigants in the proceedings he or she can bring the necessary [indistinct] in the case. If the answer to this question is in the negative the judicial officer must

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of his or own accord recuse himself or herself. If on the other hand the answer to this question is in the affirmative the second question to ask whether there is any vestible reasonable ...[indistinct] on the parties, whether on the ...[indistinct] of the interest in the outcome of the case interest in one of the litigants by shareholding, family links or otherwise or attachment to the case.

10 If the answer to this question is in the affirmative the judicial officer must disclose his or her interest in the case, no matter how small or trivial that interest may be and in the event of any doubt a judicial officer should err in favour of disclosure."

And the point that I want to make, and I made it before I held you in such high regard Mr Chairperson that the moment I sat down after having had a non – the discussion with Advocate Mosing was not even relevant to these proceedings but I respected you so much that the moment I sat down I disclosed it to you.

CHAIRPERSON: That discussion, you referred to it earlier, I can't recall.

20 **MR FORD:** Ja, Chairperson you would recall I said to you when we were downstairs I did not know who Advocate Mosing was, I went there and we had struck up a normal conversation, during that conversation I then became aware that he is in fact the witness that will be testifying and he shared with me that we studied at the same ...[indistinct] at that time and that when I had started my first year it was his last year, and immediately I respected you so much Mr Chairperson,

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CHAIRPERSON: ...[Indistinct]

MR FORD: For the aforesaid reasons Mr Chair, it's no aspersions on you, tomorrow you will get another brief, let somebody else deal with this matter.



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CHAIRPERSON: ...[Indistinct] there must be a moment of laughter, I mean there must be a light moment, it is too tense, it is too – I don't know if laughing also constitute another ...[indistinct] it is okay to laugh.

MR FORD: What we sense Mr Chairman is and the request for recusal is not an indictment on you and your profession, it is simply saying one of the parties are of the view that I am no longer sufficient impartial to continue, I am stepping away, I will take another brief, I will carry on. That is what we ask for you to do. Let somebody else be burdened with
10 this matter, but let it not be you.

For those reasons Mr Chair it is submitted that the employee has demonstrated good cause for an order that the Chairperson recuse himself as ...[indistinct] unless there is anything else you want to address me on.

CHAIRPERSON: I would like you to address me on ...[indistinct] but I think you have done enough.

MR FORD: Thank you Mr Chairperson.

CHAIRPERSON: Mr Mokhatla

MR MOKHATLA: Thanks Chair.

20 **CHAIRPERSON:** Proceed.

MR MOKHATLA: Thanks Chair, first and foremost Chair I would like to apologise in the manner that you found out about the alleged prejudice suffering by the employee from a journalist, I can assure that it was not from the employer's representative, but be that as it may and what I would like to state for record purposes is that despite being "aware"

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about this issue we are only served with the application and we are made aware of the recusal application when it is argued.

We have complained about this previously and for that Chairperson we don't want to ask you to recuse yourself because you haven't made ...[indistinct] you know the manner in which you have been consistently suffering you know you're prejudiced and ambushed at every turn by counsel for the employee in as far as bring about his application. That I need to state on record that ...[indistinct] this.

It is my submission that this application for recusal needs to
10 be looked at holistically. Firstly we need to have regard to the timing of the application ...[indistinct] and secondly the aim which this particular application seeks to achieve.

I will submit that the timing of the application it is very interesting, you have been seized with this matter since form 7 April this year, if my memory serves me well, and you chaired the Sibiya matter sometime last year and it was in the public domain, it was no secret that you chaired that matter.

I find it strange that it is ~~alleged~~ or it is submitted to the effect that the employee or the employee's counsel and attorney were
20 not aware of this fact by virtue of the fact that you know you chairing the Sibiya matter was a matter of ~~public record~~. It was in the public domain.

And also if we had regard to this timing of the application the employee has run out of options, he at every turn sought to delay these proceedings, he has made numerous applications trying to have the

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disciplinary inquiry set aside, all of which have not been successful. He even tried his luck at the Labour Court, his application was dismissed with costs. We are sitting here, we have got an application that is before the High Court in which the essence of which is to try and have ...[indistinct] of the IPID Act declared unconstitutional with the result that the person who initiated the charges against the employee will be whatever he is done will be declared invalid, so is the disciplinary proceedings that he has initiated.

So what I am trying to get at and bring this picture is that
10 taking into account what I have said and this belated application for
recusal it is part of the scheme to have these proceedings done away
with at all costs, there is nothing that the employee will not do in order
to have these proceedings set aside, and if we have a look at the stage
at which the inquiry is at, the inquiry is almost halfway through if not
three quarters of the way through because the employer has indicated
that Mr Mosing will be its first and final witness and officially the case
needs to be – we will close our case and he will have to testify.

Now if you look at the timing of bringing this recusal
application it is sought to achieve a purpose that if you recuse yourself
20 everything that we have done, because depending on how cross-examination
will go he has to take the stand and it has already been
mooted that he is sick.

So all of this I submit Chairperson is aimed at derailing the
proceedings and nothing else, and if the submissions made as to
your lack of independence Chair, like rolling your eyes, folding your

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arms, looking in the air with disinterest, to that I will say I am embarrassed about these submissions and I am embarrassed that this comes from a member of our Bar. These I will submit are counsel's insecurities about the manner in which he is conducting his proceedings. If he is asking an irrelevant question you have every right to interject or the employer has every right to interject.

I will submit these are just all the insecurities of counsel about the conduct of these proceedings, there is nothing, nothing to it. He has to do his work properly, ask relevant questions and stop asking
10 relevant questions with the aim of delaying the proceedings, and also if you have a look at the Sibiya matter and the Sesoko matter these matters are different.

This could be found on paragraph 3 of the charge that is preferred. The charge is simply that he altered a report, because what we are submitting is that there was a January report, as well as a March report and these are two different ~~as to what ends he sought to~~ achieve that is not relevant. All that we are saying is that he altered a report.

Now Sibiya is already charged criminally by the National
20 Prosecuting Authority, irrespective of whether, what information was outstanding on the report, that's neither here nor there, the charge is simple, he altered a report. The Sibiya matter found that he actually took part in the ...[indistinct] contraventions, but that is not relevant for the purposes of this hearing, it is whether or not he altered the report, as to what ends he sought to achieve it is not the gravamen of the

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charge. He clearly don't understand the charge and that is evidenced by your cross-examination.

So these matters are two different, totally different, this is not concerned about whether Sibiya actually participated in the renditions, whether he was there for not, it is concerned about altering the report, that's it. Whether there was evidence or not to recommend that he be charged or not it is neither here nor there, it is about altering the report.

As I am saying as clearly demonstrated by the counsel for the
10 employee's cross-examination that he does not understand the charge at all. So I submit that these cases are similar, it is totally incorrect. Yes they have facts that Sibiya was involved in the ...[indistinct] but what has to be determined in this matter is completely different, we are not here to determine whether Sibiya actually participated in the renditions, that's not our case. That's not what the Chairperson is called upon to decide. I suggest that you re-examine your case in order to understand the charge, and there was also mention, I am not going to go through each and every aspect of rolling the eyes and all that, as I have already said I don't think you know -- I think this is
20 opportunistic and it is just insēcurities of counsel; this has nothing to do with the matter, it can't be said that a Chairperson is bias for rolling their eyes or folding their arms and very soon now it will say that you know you lack independence by laughing you know. I think you did a wise thing by asking permission as to whether you can laugh or not in the proceedings.

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On the issue of the postponement of the 29th when the matter was supposed to sit on the 29th Mr Mosing could not finish his cross-examination because of the repeated irrelevant questions. There was nothing that we can do, Mr Mosing had a prior engagement, and the only thing to do was to say look Mr Mosing is not available therefore we can't proceed. What does the Chairperson say, proceed? And where was Mr Mosing by then. It doesn't matter, Mr Mosing was not going to be available on the 29th. What are we supposed to do? Proceed? Because he is still under cross-examination, I think with due respect
10 this particular point is just nonsensical. In any event you guys did not object to that, why did you not object that no we want to proceed on the 29th?

I mean the issue of the previous rulings of the Chairperson these are pending in the review Court, your application to try and interpret the proceedings of the hearing has been dismissed, so you can't say, you can't come around and say look he has ruled against you previously and that that constitutes bias, you have had a bite, you took that to court, and it was dismissed.

So it means every presiding officer if he rules against a
20 particular litigant he or she will be said to be biased? No. And in fact to demonstrate that you guys lack *bona fides* previous Chairperson, with the exception of Masepu, have ruled against you every same points, you have had more than two bites at the cherry.

So also – you want to tell also those chairperson who ruled against those points were also biased, is that what you want to tell us?

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Chairperson as I have alluded earlier on I am not going to go through all this ...[intervenes]

CHAIRPERSON: ...[Indistinct] the way Mr Ford says I ought to have disclosed, I failed to disclose my involvement in the Sibiya case and he felt that I owed it to have disclosed, what is your submission on that point?

MR MOKHATLA: There was no duty to disclose, firstly this was in the public domain, and I questioned the timing of bringing this application and the allegation that it only came to their attention at this particular point in time. When the proceedings are at an advanced stage and the employee needs to take the stand after Mr Mosing has testified, it was public knowledge. It was public knowledge, it seems from a year ago.

CHAIRPERSON: Mr Ford also takes issue amongst others with the fact that in my ruling I – with regard to the ...[Indistinct] proceedings which you have referred to now which is pending in the Labour Court, that I incorporated facts which were not before me.

MR MOKHATLA: Those facts are common cause as we've got it here, they are in the public domain, there are no secrets.

CHAIRPERSON: But does that not preclude me from presiding over these proceedings, because his contention is that I could not bring in an open mind to the proceedings, if on summarising Mr Ford I am right, that simply because I had a prior knowledge of the facts in the Sibiya matter, I had presiding in the Sibiya matter, my mind was not – I could not keep an open mind, I could not bring an open mind to the proceedings.

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MR MOKHATLA: No that submission misses the point that these matters are two totally distinct matters, even though they might be related somewhat, I have already submitted that the charges are different. In the Sibiya matter you had to determine whether he actually participated in the renditions and in this matter what you need to establish is whether or not Mr Sesoko has altered a report, which he denies. These are totally different matters, you do not have to find on whether what was his motive in altering the report.

These are completely two different matters. In any event
10 irrespective of what he has done, of their recommendation and all Mr Sibiya is still charged criminally for that matter. You are not bound by the facts in the Sibiya matter.

Chair and Mr Ford made much about the Hutchinson case but what he fails to do is to give us the facts of the matter and from what is quoted in here it is said that I am of the view that the fact that Hutchinson had previously represented the applicant, so I am speculating now because we have not been given the benefit of the case. I think in this instance Mr Hutchinson was presiding the matter in which one of the parties was a person that he represented as his client.
20 In the previous matter, so in this instance you haven't represented either of the parties, so it is distinguishable from this matter to the effect that you will be said to be biased on issue disclosed, you have not represented either of the parties in this matter, so I am making this trying to distinguish the – this case from the current matter, I am doing so, I am speculating because we have not been given the facts. I am

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submitting that based on what he stated, on what he quoted I believe that it is said that Mr Hutchinson was duty bound to disclose because he had represented an applicant who was one of the parties in a particular matter.

Chair on that basis it is our submission that the application should be dismissed, it is opportunistic, it is aimed at trying to frustrate the continuation of the proceedings, if we had regard to the timing of the charges, of the application. You have been appointed since April this year, nothing has been done about that.

10 **CHAIRPERSON:** Are you saying they only, I mean Mr Ford is saying they only became aware of my involvement in the Sibiya matter on Wednesday the 27th and he got the copy of my ruling on Monday the 1st if I am not mistaken.

MR FORD: That is correct.

CHAIRPERSON: What is your view on that one?

MR MOKHATLA: I find it hard to believe and it doesn't make any sense, unless on the sense that your involvement in the Sibiya matter has been in the public domain since last year. It has been in the public domain since last year, it is no secret.

20 **CHAIRPERSON:** Mr Ford could argue that he is that in as much as it may have been you know in the public domain that here that does not necessarily follow that he would then have followed the proceedings and then that he himself specifically would have known about it or Mrs Sesoko would have known about it and perhaps that makes subjective. I am not saying that is what he is going to say but I am just anticipating.

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that that could be an argument.

MR MOKHATLA: Ja, but is that reasonable? Is that reasonable, that's my question.

CHAIRPERSON: Any further submissions Mr Mokhatla?

MR MOKHATLA: No those are my submissions Chair and then my prayer that the application must not ...[indistinct] just be dismissed and ...[indistinct] procedures.

CHAIRPERSON: Thank you. Mr Ford?

MR FORD: Mr Chairperson perhaps to start with the last issue that my
10 learned friend raised first. ...[Indistinct] Breitenbach was charged by
the NPA and Wim Trengrove represented her. That is in the public
domain, I don't know who chaired that, I really don't so the fact that
something is in the public domain does not obviate the need to disclose
and that is where my learned friend does not seem to get the
connection and what the authorities are saying is no matter how trivial
it must be disclosed, and I think what my learned friend is also missing
the point completely is saying, suggesting that if you agree to your
recusal then it means the hearing starts afresh. That is not what they
say, because we have a record, we have an existing record, all they
20 would need to do is the new chairperson must just appraise himself of
the evidence that was led, and that could take him a day or two, or
possibly three days, so it wouldn't prejudice the employer at all, because
because the evidence is there, there would be no need to regurgitate
the evidence, so there is no prejudice to be suffered by the employer,
so that deals with the whole issue of both timing and ...[indistinct]

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because there is no intention around wanting to delay proceedings, and the law as my learned friend stands is there is no – you are not precluded from bringing an application for recusal at any time, you can bring it any time, but Mr Chairman fundamentally what my learned friend misses is the manner – he says I don't understand the charge and I am merely displaying my insecurities.

I am not, I am saying the employee has arrived at that conclusion, because Mr Chairperson this is how the charge sheets – it says the following, you – referring to Mr Sesoko, Khuba, McBride,
10 altered the report which had been handed over to the NPA and deleted information incriminating Lt General Anwa Dramat, the former National Head of the DPCI and/or Sibiya the Provincial Head of the DPCI from the report in order to reach a conclusion that Dramat and Sibiya had been exonerated by IPID when you knew or ought to have known that the final IPID report recommended that Dramat and Sibiya be criminally
charged.

So it goes more than whether or not they altered, it is what was the intention behind the altering, that is part of the charge, that is the charge.

20 So it is nothing to do with counsel, I have no insecurities in this matter, as my learned friend know Mr Chairperson and you also tomorrow we get another brief and we remain counsel, I will see you in court, I will greet you and I will treat you with absolute respect and that is what we are called to do. I don't become personally involved, I don't get involved in personal issues. To say it is counsel insecurities is

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missing the point complete, it is the apprehension that the employees experienced at this matter.

CHAIRPERSON: No, but, okay, just a moment, that's fine, proceed

MR FORD: And the fact that we are trying to at this belated application to have ...[indistinct] done away with at all costs is also not, it is also not, for reason that we have given, we have got record, and in short to say that the employee has run out of options is an idea that we sat back and said okay what is the next best thing to do. It is disingenuous, in fact is a disrespectful comment if ever I find one.

10 So both on timing and on aim if that – because he premised his reply on those issues, timing and aim, and we are saying aim cannot be affected because should you decide to recuse yourself as the Chairperson the just continues before a different Chairperson.

All you're doing is you take yourself out of that situation and the evidence on the record how could the employer be prejudiced by that? And in ...[indistinct] I have addressed you on that. Mr Chairperson I submit for all the reasons stated it is not a personal attack on you, it is not, it is the furthest thing from it, and if it was in your shoes and having heard this application I would have recused myself and next week another person can be appointed to continue with the hearing on the 16th of August, no prejudice to the employer, and my attorney asked me just to bring to your attention that there are in fact similarities between the two matters in the Sibiya and the matter before you, but I don't want to deal with that Mr Chair, I think that enough was said, and again all I can state is you are my colleague, and I respect

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you and I will forever respect you, and this application is not an indication of the respect I hold for you, not at all.

CHAIRPERSON: Carry on.

MR FORD: Thank you Mr Chair.

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This is an application for my recusal that has been brought by the employee, the basis of the application seems to be twofold, my lack of independence in these proceedings since they started throughout as well as my failure to disclose that I was involved in the Sibiya matter
10 which I presided over at that stage and I gave a ruling.

The application is opposed by the employer who feels that it is another delaying tactic on the part of the employee that the employee has run out of options and that this is one of – this is just part of the scheme of a greater scheme and part of the employee to delay or derail these proceedings and that just to summarise the employer's argument in opposition that the timing of – the employer finds the timing of this point quite interesting because I was already seized with this matter since April this year and that the application ought to have been brought earlier for me to recuse myself if there was
20 any apprehension on the part of the employee that they would not have received a fair hearing.

The employer further argues that the matter of the fact that I was involved in the Sibiya matter was in the public domain and the employee or the employer's counsel ought to have known about it and it was no secret and therefore the failure on my part to disclose my

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involvement does not in any way mean that it is not what it is made out to be by the employee insofar as being the basis for my – for that application for my recusal.

I have heard arguments both from the employee and the employer, once the charges – once the matter is – let me put it this way the two matters, the Sibiya matter and the Mr Sesoko matter bear relationship insofar as the relationship insofar, which relates to IPID investigating the conduct of Mr Sibiya and Mr Dramat's conduct in relation to the ...[indistinct] renditions, the charges are not the same, they are not even similar, they are two distinct charges. For me the charge as much as there could be – there is a relationship between the two which is clear, however the charges that is being faced by the employee, Mr Sesoko, is totally different and has got nothing to do with what was before me when I presided Mr Sibiya's matter.

Mr Sibiya's matter was seized with whether – I was concerned with whether he was involved in the renditions, whether he was in ...[indistinct] or Four Ways or whether he was not there and Mr Sesoko's charge is concerned with whether – and it is a factual inquiry, and I have said this before, it is concerned with whether in investigating the conduct of Sibiya as a police officer and at the point in time being the head of also Provincial Hawks whether he altered the final report, the so-called final report, whether it is a fact, whether the factual enquiry the general report was final given the fact that as Mr Ford has argued the regulations, IPID regulations you state what needs to happen before a report could be final and whether therefore the

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final, the January report could be said to have been the final report so that therefore it could be said that when Mr Sesoko and Mr Khuba and Mr McBride came up with the report, compiled the report in March of 20 – that is March of 2014, whether that amounted into an alteration or not and if it did amount to an alteration whether that constituted misconduct.

These are two distinct charges and I do not for a moment believe in my own conscience that simply because I was involved in the Sibiya matter therefore I would be – I would not be in a position to
 10 bring about an open mind in these proceedings because of the fact that these are two different matters, I do appreciate the concerns shared by the employee but when you look into the two matters, how different they are I do not think there is a reasonable apprehension of bias, and I do not think that Mr Sesoko will be prejudiced by my continued presence in these proceedings, and that is really the gravamen of my ruling.

I would have preferred to do ~~I mean to [indistinct] to do this~~ ruling in writing and set it out in ~~detail~~ but because of the time constraints and parties know what time constraints we have had to face
 20 in these proceedings I have elected to ~~do this ruling~~ *ex tempore* and not necessarily that it is of any lesser value that I am doing it *ex tempore*, I am just saying that for the satisfaction of the parties – perhaps our – and under normal circumstances where there hadn't been so much of time constraints I would have preferred to do it in writing but having said that I do not have a problem with supplementing the



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reasons that I have given now for my *ex tempore* ruling, in my ruling if any party requires for me to put down my reasons what I do know that the record has captured the gravamen of my reasons and the gravamen of my reasons really for dismissing the application for recusal is that I do not think a case has been made out that there is a reasonable apprehension of bias on the part of the employee and that therefore I do not think that the employee – and that because of the lack of similarities between the two matters the fact that there are two distinct matters I do not think that the employee will be prejudiced by my

10 continuous involvement in this matter.

That is really the gravamen of my ruling as to whether I ought to have disclosed, that is a very truesome point and I want to touch on it. I think it is arguable – I think it is arguable whether I had an obligation to disclose in view of the fact that the matter as far as I was concerned and I take Mr Ford's point in this, I mean he made an example of Dennis Breitenbach that he may not have followed that matter and so on, and I did put the question to Mr Mokaka that what if Mr Ford could argue that he did not necessarily follow that but it may have been in the public domain but that does not follow that he himself or Mr Sesoko was aware of that matter.

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Now as much as the matter could have been – I mean from where I was sitting the matter was in the public domain and that is why I did not see any need to raise it *mero motu*. I do not even think that there was an obligation on my part as the Chairperson to raise it *mero motu* and simply because I do not think that there are similarities

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between the two cases.

Of course one would have looked at it if it was raised at the beginning, whether Mr Sesoko could have made an application for my recusal at the beginning, but also take the point, the first point when he says the fact that something is in the public domain does not necessarily mean that everybody is following it and I do take that point.

So as to whether I mean the timing of the application I think Mr Sesoko could be excused in that part because there is nothing, there is no as much as something could be in the public domain but it does not necessarily follow that everyone would know, it could be argued that Mr Sesoko being – having worked with Mr McBride and everything, and been involved in investigating Mr Sibiya perhaps he could have known that the chairperson who presided over and so on, but there's no proof to the effect that Mr Sesoko would have known or Mr Ford would have known and Mr Mathibe, so I do not choose – I mean to make any view in that regard and I do take it that it is possible, if not even probable, that Mr Sesoko could not have known and Mr Ford could not have known despite the matter being in the public domain, but from where I was sitting the reason why I did not feel any obligation to disclose was because I felt I knew that the matter was in the public domain, perhaps it could be argued that perhaps I took it for granted that everyone would have known and that maybe with benefit of hindsight it is something that I could have put on the table and invited parties to address me on it, that could be argued that with the benefit of hindsight, but one would understand it better if Mr

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Sibiya's matter was not even in the public domain, was one of those hearings which were held – which were not widely reported on and so on I would take Mr Ford's point then that I owed to have disclosed even no matter how trivial I think it was so that at least the parties have a discretion to exercise but in this case the matter was in the public domain and I do not think I had an obligation to raise it *mero motu*.

In fact going back to what Mr Ford says about what I did in my ruling which touched on the Zimbabwean renditions that on its own at that point in time Mr Ford knew, I mean he raised his eyebrows that
 10 – let's assume at that point time Mr Ford did not know that I was involved in the Sibiya matter that when he saw that ruling and it had the facts that were not before me I would imagine that that on its own if anything it just shows that I was, I had nothing to hide, I put it out there because I mean if I felt for instance that I was prejudiced and so on and this point has not been raised before me let me not even touch on those points, but the very fact that I touched on those points and I am saying to the parties I know about this matter so at that early stage my view would be the parties ought to, I mean would have said to themselves how come the Chairperson knows so much about this, has
 20 he got prior knowledge, maybe at that point in time then raise this – here I felt make this application for recusal, but that's besides the point.

All I am demonstrating is I have never – it was never a secret that I presided over the Sibiya matter and that is why I was even so bold to even put it in my ruling, to put the facts in the background that these related to the Zimbabwean renditions, because for me it was

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never a secret. If it was a secret I wasn't going to put it there because I knew that neither of the parties had put those facts before me, so I think – I think at this point in time one could very well say we come to a point where I then have to formalise the dismissal of the application and for the reasons that I have set out above I therefore – I am of the view that this application has got no basis, that there is no reasonable apprehension of bias and that Mr Sesoko will not be prejudiced by my continuous involvement in these proceedings simply because the matters whilst there could be a relationship but the charges bear no

10 similarity, and that I bring into these proceedings an open mind and will judge Mr Sesoko based on the facts that are presented on the table, whether or not he – whether or not there was any alteration of the report.

On this basis THE APPLICATION IS DISMISSED, as I said earlier if any party wishes me to supplement my reasons in writing I will gladly do so, if only to afford the parties that comfort that the reasons are there in writing, just in case in future they become a subject of litigation I will be more than happy to put them in writing, but I also think that the record has captured the gravamen of my ruling and that

20 is my ruling.

MR FORD: Chair thank you, may we ask an opportunity to consider your ruling and then come back to you if that is permissible?

CHAIRPERSON: How much time do you need?

MR FORD: Not longer than 15 minutes.

CHAIRPERSON: The time is 11:31, can we reconvene at quarter to?

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MR FORD: Okay.

CHAIRPERSON: Thanks, can we please go off record.

HEARING ADJOURNS (at 11:31)

HEARING RESUMES (at 11:45

CHAIRPERSON: On resumption, we are back on record after a short break. Before we took the short adjournment which followed by ruling on the application for my recusal Mr Ford requested to take instructions in light of my ruling and that is why we took that adjournment, and Mr Ford you may proceed?

10 **MR FORD:** Thank you Mr Chairperson, I thank you for the indulgence. Mr Chairperson you will recall earlier this morning I indicated to you that Mr Sesoko is not well and that I am going to take – needed your guidance as to what do we deal with first, and it was important for me to get instructions via my attorney from Mr Sesoko in respect of what do we do from here forward.

My instructions are that we are obviously not happy with the ruling, for – it is understandable.

CHAIRPERSON: Yes, for obvious reasons.

MR FORD: For obvious reasons, which makes it very difficult for us

20 ...[intervenes]

CHAIRPERSON: You would have wanted to go your way. I mean ...[indistinct] that you presented.

MR FORD: Absolutely, so we find ourselves in a really invidious position where we are now faced with having to continue with the hearing today in the absence of a writing ruling in respect of which we

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can take further decisions.

So what the employee and my attorneys advise that we will be approaching the Court on a semi-urgent basis, prior to the 16th of August, to request that your ruling be set aside and that you not be permitted – again no personal issue.

CHAIRPERSON: No, no I accept that, I accept that.

MR FORD: And especially since there is no prejudice for the employer as we already argued, but I think more importantly now for us Mr Chairperson is what do we do with Mr Sesoko, I did bring it to your
10 attention right at commencement. Mr Sesoko wants to know since he is on suspension who actually makes that decision as to whether he can or can't go and consult a doctor because he is effectively now at work.

Is it the Chairperson that makes this decision, is it Mr ...[Indistinct] that makes the decision, he is effectively asking time off to go and consult a doctor.

CHAIRPERSON: ...[Indistinct] do you have any response with regard to Mr Sesoko's condition.

UNIDENTIFIED SPEAKER: I don't know what it is that is asked for, is
20 he saying that we should not continue because he is sick or what is he asking for?

MR FORD: Ja, I am not so sure whether Mr ...[Indistinct] wasn't aware when I made the announcement early this morning that Mr Sesoko had complained of chest pains this morning and was ill since yesterday but he made the effort to come here out of respect for you Mr Chair of So...

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now that we are here I brought it to your attention right from the word go and your ruling was we accepted it as that, you will first deal with the recusal application and thereafter, so the issue that we ask you now is simply who makes the order for him to go and consult a doctor, in the absence of his line manager or is it the Chairperson that he can get time off to go and consult the doctor or is it Mr Gamanyane that makes that decision.

CHAIRPERSON: I am not sure that I follow.

MR MOKHATLA: I also don't follow.

10 **CHAIRPERSON:** Because in my view seeing that I am seized with the proceedings if there is an application for adjournment or postponement then that application has got to be brought before me and I have to look at the circumstances and weigh them, just like any other application before whether he was indisposed and so on or you were indisposed ...[indistinct] I think for me it is similar to any other, I mean it just so happens that he happens to still be an employee of IPID that then his employment relationship comes to the fore, but insofar as whether the proceedings will continue or they adjourn to accommodate him I think that is entirely in the chairperson's discretion looking at the
20 circumstances whether they dictate that the proceedings be adjourned and so on.

MR FORD: Ja, so if I understand correctly Mr Chairperson you will then be able to sanction if he – is there a need for him to get sick leave because in essence that's the question if he does go and consult a doctor would it constitute that he is taking sick leave today or does

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your ruling when we have addressed mean that you have extended him sick leave or is he still on suspension?

MR MOKHATLA: No, no, no it's simple, then you apply for a postponement or not and then you furnish your reasons, the Chairperson has no competence to declare what is sick leave or anything of that sort. So he is seized with the matter and the proceedings today, it is either you apply for a postponement or – it doesn't have to involve the employer or anything.

MR FORD: In that instance Mr Chairperson as I have indicated Mr
10 Sesoko is not well. He is taken the trouble to come through, he is experiencing chest pains, he would like to consult a doctor and I don't think that request is unreasonable.

CHAIRPERSON: What is ...[indistinct] Mr Mokhatla?

MR MOKHATLA: Well look Chair my reaction is this, and I find it disingenuous on the part of the employee, the issue of not him being well why is it now mooted once the application for recusal is dismissed, we can simply continue with this matter, with this particular witness, depending on how you rule. If you rule that he can be excused that's fine, the his legal team can continue with this particular witness and
20 then we will see where do we go with this particular witness. I think it's unfair on the part of the employer, we have known about this date and whether or not he is sick I cannot say. I am not a doctor, but I questioned the *bona fides* of the application for a postponement.

MR FORD: Ja, Mr Chairperson ...[intervenes]

MR MOKHATLA: When you know the application for recusal is being

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dismissed, but I leave that in your hands.

CHAIRPERSON: To Mr Ford's defence I mean he did bring it up front and I did say that I will have to first deal with the issue of recusal as that confirm jurisdiction of me and then thereafter I will deal with this so it is not only brought now, it was brought earlier on to my attention. Mr Ford do you want to ...[intervenes]

MR FORD: Ja, the other issue that I would like to bring, I am not sure what Advocate Mosing's availability is for the rest of the day but Mr Chairperson Advocate Mosing was not available on the 29th and all of us had to change our plans because he was not available, and understandably Mr Chairperson would remember when Mr Mokhatla was here he had asked us what will happen now when will Mr Sesoko start testifying and we indicated Mr Sesoko will be ready by Friday, so there's no – there can be no prejudice on the part of Advocate Mosing because Advocate Mokarri had given him a call and asked him and he had come back into the room and confirmed Advocate Mosing's availability and then the fact that he then became unavailable cannot mean perpetually the employee must be held against his unavailability,

CHAIRPERSON: No, no, ...[intervenes]

MR FORD: Can I just finish? So what we're saying is Mr Chairman if this court would be very hard-pressed to continue with the matter in the absence of the employee from whom we must take instructions, so all we're asking is the matter is scheduled to continue on the 16th of August, there's another four hours left in these proceedings, well three hours considering the lunch break, and the employee is not well.

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CHAIRPERSON: My view Mr Ford is owing to the time constraints that we have already had in these proceedings and the one moment Mr Mosing is available, then he is not available. I will be very slow to giving a postponement and I understand even without a sick note to that effect, which is from a qualified medical doctor to the effect that Mr Sesoko is not well, which could have been a different issue if it was at that level, and I do understand when you say Mr Sesoko attended these proceedings out of respect but also the fact that he has been able to attend up till now it may mean that maybe another – I don't know how long you are going to take with the witness, another two or three hours, I don't think, I don't know, I am not a medical doctor, I should defer to doctors in this case if that is going to be too much for him, perhaps at this point what I can do let's continue the proceedings, let's see he will indicate to you, Mr Sesoko, if he is uncomfortable as the day goes and then if that happens then of course we will have to adjourn but for now I would imagine that we would need to proceed ...[intervenes]

MR FORD: Mr Chairperson I need ...[indistinct] if you said to us now as the Chairperson that I am experiencing chest pains there is nobody in this room that would have called on you to continue with this hearing, not a single person in this room. I am saying to you as an officer of the Court and you are such an officer too, that my client is experiencing chest pains, again you disregard that, what happens if he has a heart attack here, what then?

I am saying to you the lunch break is upon us literally within a matter of minutes, what stop him to go and consult a doctor, he is not

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well, at this point in time Mr Chairperson I must say that your conduct go beyond, it is not – it is becoming unreasonable. The man is not well, he is experiencing chest pains. What – must he first fall over and die, must he first get a fit before you and Mr Mokhatla coming with his it is disingenuous, I mentioned this to you early this morning, at the instance when we started and hear me out Mr Chairperson, this is an instance where your reasonability as a chairperson should come to the fore, the man is not well, he is experiencing chest pains, you are more interested in letting the matter carry on for another three hours.

10 This is not an unreasonable thing, it is an irresponsible thing to do ...[intervenes]

CHAIRPERSON: Mr Ford I have made my ruling, can we please proceed. Can you please call Mr Mosing to take the stand. Good afternoon Mr Mosing. I would like to warn you that you are still under your formal oath and you are still under cross-examination and Mr Ford will then continue from where he left off. Mr Ford your witness.

MR MOSING: (s.u.o.)

CROSS-EXAMINATION BY MR FORD (continued): Advocate Mosing we were supposed to be here on the 29th of July, you had indicated
20 your availability to Mr Mokhatla to continue with the hearing, but you were not here, you were not available on Friday the 29th.

MR MOKHATLA: But we know why he was not available, this is irrelevant for purposes ...[intervenes]

CHAIRPERSON: What is the relevance Mr Ford?

MR FORD: Well I just want to understand what is his availability today

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and in time to come Chairperson.

CHAIRPERSON: Okay.

MR FORD: You were not available ...[intervenes]

MR MOSING: Sorry Chair but that question could have then been directed differently but yes I am available today because that is the day that I must inform the hearing to proceed, that was arranged with myself, the 29th I indicated that I had an engagement and the date was not arranged with me unfortunately. You will recall when I left Chair for Port Elizabeth I was sms'd or phoned by Mr Mokhatla to tell me that
 10 you had decided to postpone it to the Friday instead of the Thursday, I then indicated to Mr Mokhatla that unfortunately I have another urgent engagement that I couldn't, that is now for the 29th of July.

MR FORD: So are you available on the 16th of August? Can you check.

MR MOSING: Ja, I think so far I ...[intervenes]

MR FORD: Can you check your diary quickly?

MR MOSING: Is it a definite date? **MR MOSING:** (S.O.P.)

MR FORD: Yes it is. **CROSS-EXAMINATION BY MR FORD (continued)**

CHAIRPERSON: Can we proceed with other questions while
 20 ...[indistinct].

MR FORD: Ja, Advocate Mosing Mr Sesoko sitting to your left is experiencing chest pains so the reason why I am asking you whether you are available on the 16th is that notwithstanding the fact that he is experiencing chest pains the employer's representative and the chairperson are adamant that the hearing must proceed because they

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don't want to prejudice you.

CHAIRPERSON: Mr Ford please it is unfortunate that you decide to put it this way that the employer and the chairperson are adamant, using the word adamant, I find that very disturbing, I made a ruling and I said especially so because Mr Mosing happens to be available but I didn't say because he may not be available on the 16th therefore we are going to proceed today, I said if – the gravamen of my ruling was that in the absence of a medical note that says to me that Mr Sesoko is sick and cannot attend these proceedings, which I would preferred to be the case, these proceedings would continue but if along the way Mr Sesoko indicates any discomfort that he cannot with these proceedings then we take matters as we go, it was never the basis that because Mr Mosing is not going to be available therefore we cross-examine today. I think there is a distortion of the facts.

MR FORD: Advocate Mosing would it be a problem for you if we could continue on the 16th because we can't proceed today. ~~at~~ [intervenes]

CHAIRPERSON: Mr Ford it is an irrelevant question and I have made a ruling. We need to proceed and ~~proceed~~ asking relevant questions to the witness.

MR FORD: Mr Chairman I think it is a very relevant question and I can explain to you why. This witness ~~has now~~ come to testify that an officer appearing in front of you ~~that wasn't quite honest with you~~ regarding his availability. You recall when we were together the last time Mr Mokhatla had come in and ~~said~~ have spoken to Advocate Mosing and he has indicated his availability for the 29th so that is the

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reference point, and I don't think Advocate Mosing has a problem answering that question. Shall I put the question to him again.

MR MOKHATLA: No it is irrelevant.

CHAIRPERSON: It is irrelevant.

MR MOKHATLA: He is here now, he is testifying, ask questions relevant to the charges.

MR FORD: Mr Chairperson I am not sure who is chairing the hearing here is it you or Mr Mokhatla over there because I am addressing you Mr Chairperson and I always respectfully address you so are you
10 saying I shouldn't ask the question again.

CHAIRPERSON: I am saying it's an irrelevant question, please proceed with relevant questions.

MR FORD: Advocate Mosing I will alert you – the Chairperson had indicated if Mr Sesoko gets to the point where he cannot continue that we will then reconsider the position at that point in time. If that does happen I apologise for any inconvenience that you may have suffered in the process of coming here today.

MR MOSING: It is not any inconvenience to me Chair I made myself available, I am required to be available for these hearings and I am
20 here and I have been here since nine o'clock.

MR FORD: Is there anything in your testimony since the last time we were together that you would like to amend?

MR MOSING: No I would not like to amend anything.

MR FORD: Now do you recall we left off our discussion, we were working through the affidavit of Mr Innocent Khuba, it was cited as

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addendum ...

CHAIRPERSON: Do you have a copy for the witness? There is Mr Khuba, Innocent Khuba's affidavit.

MR FORD: Advocate Mosing you have not led any testimony to the effect that Mr Sesoko altered the report, am I correct?

MR MOSING: Chair I am only here to testify about what I know, I cannot comment as to how or who changed the report.

MR FORD: I will ask the question again. Advocate Mosing ...[intervenes]

10 **CHAIRPERSON:** Yes ask the questions.

MR FORD: Did you not lead any evidence to the effect that Mr Sesoko altered the report?

MR MOSING: Chair I can merely inform the hearing what I was informed by Mr Khuba, and that is that he was instructed to with Mr Sesoko was instructed by the new Executive Director to relook at – work on the report and then it seems it culminated in the March report. He informed me that they sat for about four days together with Mr Sesoko working on the March report. As he said that's what I was informed, not that I know of directly.

20 **MR FORD:** Did he indicate to you whether your input in that report will be sought?

MR MOSING: Well I think when we had the meeting the report had already been submitted, the March report, so he was merely informing me as to what had transpired, had already transpired.

MR FORD: Did you at that time inform him that you find it quite

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strange that there was a new report considering that he – the report that you worked on was a final report?

MR MOSING: Chair I think by then the report became public and I don't think we actually, I engaged Mr Khuba with regard to my opinion on how the report was changed.

MR FORD: When did you have this engagement with Mr Khuba?

MR MOSING: That would have been sometime around 2015, it was definitely after the end of 2014. I can unfortunately not give you an exact date, but it was definitely after the end of 2014.

10 **MR FORD:** Yes, now I am going to ask you to turn with me in Bundle G, and pick up on some of the issues that Mr Khuba raises in this affidavit which you vehemently denied. Now we left off at – from paragraph, the section that deals with submission of the January report 2014 on page 7, paragraph 11, that's where we stopped, and I specifically asked you the question about the fact that you placed considerable pressure on Mr Khuba to finalise the report.

CHAIRPERSON: Is that page?

MR FORD: Page 7.

CHAIRPERSON: Okay, thanks.

20 **MR FORD:** And your answer was that this is an absolute lie, am I correct Mr Mosing?

MR MOSING: Indeed Chair. There was no pressure placed on Mr Khuba to do anything from my side.

MR FORD: Did you and Mr Khuba at any stage have an acrimonious relationship?

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MR MOSING: Not at all Chair, as I indicated previously we had a very good working relationship up to the stage when the matter was forwarded to the DPP office and my involvement in the matter ceased.

MR FORD: So why would he according to you lie about what happened in 2014?

MR MOSING: Well Chair I think the entire supporting affidavit that we are referring to in Bundle G you know indicates a clear move in my view from the position that existed when we were working together with Mr Khuba in the matter. There's a number of ...[intervenes]

10 **MR FORD:** Chairperson Mr Sesoko ...[indistinct] to give him some water.

CHAIRPERSON: Thank you, whilst we were off record or before we went off record there was an indication that Mr Sesoko was not feeling well, earlier on I had made a ruling that we proceed and we will just to observe his situation, his condition and also bearing in mind that one is not a medical doctor and should always defer to the medical experts and also give Mr Sesoko the benefit of the doubt that if he says he is not feeling well it could very well be that he is not feeling and this is why we then went off record. He indicated exactly that he was not feeling well because of the chest pains, he wanted some water and I am not sure what his condition is right now, I have asked his attorney, Mr Mathibe to address me directly whilst we were off record and he did indicate to me that Mr Sesoko is not feeling well and they are trying to get someone to drive him to the doctor also. Did you add Mr Khuba at any stage?

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So, and to – we have then reached a conclusion that the

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matter – the disciplinary hearing be adjourned to the 16th in order to give Mr Sesoko that opportunity to go and consult with a doctor and for the proceedings to then reconvene on the 16th.

On that note these proceedings are adjourned and we will reconvene on the 16th of August 2016 at nine o'clock. Thank you.

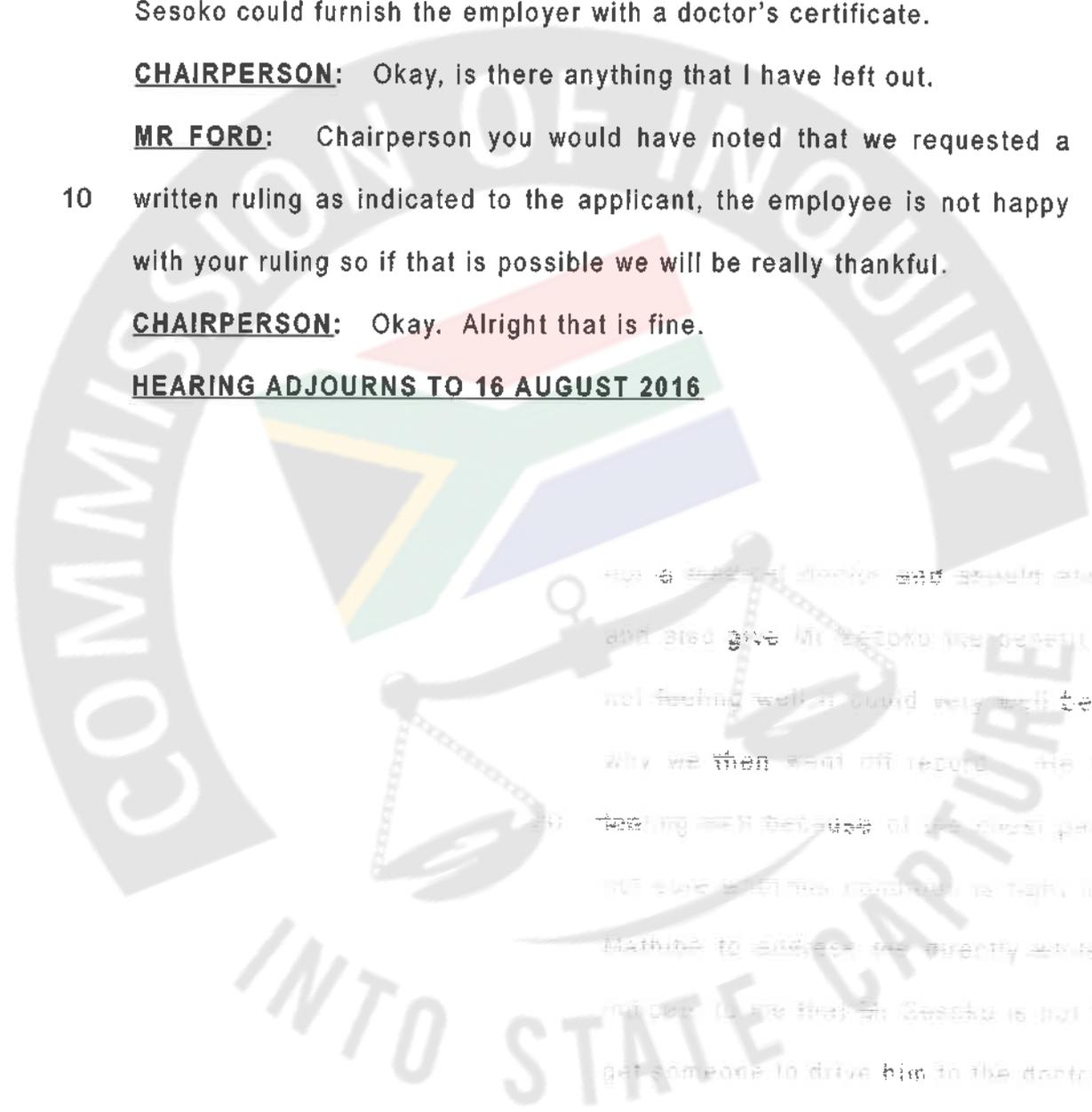
MR MOKHATLA: Also just on that note I will appreciate it if Mr Sesoko could furnish the employer with a doctor's certificate.

CHAIRPERSON: Okay, is there anything that I have left out.

MR FORD: Chairperson you would have noted that we requested a written ruling as indicated to the applicant, the employee is not happy with your ruling so if that is possible we will be really thankful.

CHAIRPERSON: Okay. Alright that is fine.

HEARING ADJOURNS TO 16 AUGUST 2016



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ON RECORD

PROCEEDINGS RESUME ON 16 AUGUST 2016

CHAIRPERSON: We are on record, good morning everyone. This is a resumption of the disciplinary hearing in respect of Mr Matthew Sesoko. The last sitting was on the 4th of this month, and an application had been moved for my recusal, by the ...[indistinct] counsel Mr Ford. I then at that point in time ruled on the recusal and gave an *ex tempore* ruling but then over and above that undertook to give the – to give my reasons for the benefit of those who may wish to have written reasons in respect of my ruling.

10 Some time back I received an email from Semathele enquiring about very good reasons and I did respond to say that I have done my written reasons at the commence or prior to the commencement of the proceedings today as I hereby do.

 This is a copy of my written reasons, in essence it encapsulates what I have already said *ex tempore* save to say that it may go into a bit of details insofar as the reasons which I gave for the refusing – for dismissing the application for recusal.

 We ...[indistinct] with that and I would then expect at this point to have Mr Mosing as the witness to be on the stand but I do
20 notice that Mr Sesoko is not here. I am not sure if Mr Ford wishes to address me on that aspect as to what is the situation insofar as Mr Sesoko is concerned.

MR MOKHATLA: Chairperson can we call Mr Mosing in already?

MR FORD: Chairperson before you do that, my attorney has given me

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instruction in respect of Mr Sesoko and the fact that he is not here. The details for in his realm of knowledge and I am going to ask him to address you directly in terms of what is happening with Mr Sesoko.

You would recall Mr Chairperson when the application the recusal was moved the ...[indistinct] at the commencement of that presentation that Mr Sesoko was not well and in particular I advised you that he was experiencing chest pains. Notwithstanding that you elected to continue with the matter and I demonstrated to you my displeasure and discomfort with your decision to continue with the disciplinary hearing when someone is telling you that I am experiencing chest pains.

MR MOKHATLA: No you cannot do that, I am going to object Chairperson, you can't direct, it is not right, you can't revisit matters which had happened, you have got to tell this hearing as to where is Mr Sesoko. Chairperson we cannot have this type of situation where Mr Ford is going to hold this hearing to ransom by the antics that are being set down again. The question is a simple one, in a disciplinary inquiry an employee must be present. He is saying to you that he is not able to tell you where Mr Sesoko is, that the attorney is going to address you on it. Either he can do that or that he must do that, so I am not sure let's formalise these proceedings in such a way that they run with dignity, that is very important. We are running a record here, well if somebody is sitting with a record which is a mess because it is full of people who are disgruntled time and again with the ...[indistinct] Chairperson, it can't be right.

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The Chairperson has given you his ruling, if you are not happy with the ruling you know what you have to do but you can't revisit it here, now you must tell this hearing where is Mr Sesoko so that we can be able to also make our own decision ourselves as to whether then we adjourn, if you want us to adjourn or whether then we proceed then if we have to proceed.

So it is either Mr Ford as counsel who must address you, he has been of course ...[indistinct] not attorney to address you but if he does not know the facts for this disciplinary inquiry we can
 10 ...[indistinct] the rules and then allow the attorney then to address you and then from there a decision has to be made, but for him to say that now that if maybe Mr Sesoko is in a situation of some sort you must feel guilty as the Chairperson because you have proceeded with the hearing when Mr Sesoko was complaining about chest pain is completely out of order and we cannot allow that type of a situation for the hearing to degenerate into that type of situation.

A simple thing is where is Mr Sesoko, is Mr Ford going to tell us, if he can't he said that the attorney will tell us, it is as simple as that.

20 **CHAIRPERSON:** Point taken Mr Mokhatla and Mr Ford what is your response?

MR FORD: Ja, I don't take issue with what Mr Mokhatla is saying, I was merely giving context Mr Chairperson so I am quite happy for my attorney to address you but I was just giving you context, what happened then was Mr Sesoko went to consult that same day with a

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medical practitioner when he was becoming ill in your presence.

As to what happened between then and now my attorney will be able to address you on it.

CHAIRPERSON: Ja, but maybe Mr Ford before – and I don't have a problem with the attorney addressing me, I have allowed him before. These are internal proceedings and ...[indistinct] to be strict about this. I am an advocate of flexibility so I don't have a problem with that; but before we allow Mr Mathibe to address me once you put in that background when you're saying that it is important that we do not
10 distort facts. When you say that I allowed or ruled that the hearing should proceed despite Mr Sesoko being sick or not feeling well you should also remember that what I said, I said let's just observe him and we see how it goes. If he has got some discomfort as we go along and then we will revisit the issue as I did.

So I think it is important to put on record, to I mean to be quite truthfully when you're putting the background and the context because the record will bear testimony to that, that as much as I allowed the hearing to proceed despite you having advanced that he was experiencing chest pains I did say but he must indicate as we go
20 along if it gets worse so that then we can revisit and we did revisit, so I just thought that we should put a proper context. Mr Mathibe do you want to address me what is the situation?

MR MATHIBE: Thank you Chairperson. Chair, I am just going to make reference to the documents that I have here, I consulted with the client yesterday and he indicated that he may not be able to attend today's

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proceedings because he has been booked off sick by you know his medical doctor. In fact you now I have got four documents here Chairperson, the first one is detailed the 4th of August, as in that's the day of our – that's the day of our last appearance, I will hand them to you Chairperson as soon as I am done here, and the second one is dated you know the 8th of August as well and then I've got another one which is dated the 11th you know of August as well. I think for me this is the most important one especially in relation to today's proceedings and the last one that I have is a prescription I think this one serves to

10 support the one I have just mentioned, but if I may Chairperson just to read this one into the record, it is from Dr GML Mkunisi. It says:

The undersigned hereby certifies that Mr Susuko was examined by me on the 11th of August. According to my knowledge he was unfit for work from the 11th to ...”

And then it states for further notice work may be resumed on – I think it says pending you know psychiatrist treatment and it says nature of... the illness it starts with a question mark Chairperson don't know what that means and it says there ...[Indistinct] and it is signed on the 11th of August 2016. I will give these to you.

20 **CHAIRPERSON:** Have these been shared with the other side? at that time we can revisit it

MR MATHIBE: No, no, I have not shared it Chairperson.

CHAIRPERSON: You see what you could have done because you knew that your evidence documents at the moment you arrived here you should have asked me, a simple thing from Mr Pallard, Mr Pallard I have got these originals can you make copies for us, everybody will get

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their copies, so now we have to adjourn so that then copies are made.

MR MATHIBE: I don't ...[intervenes]

CHAIRPERSON: It is fine, we are going, can we have this ...[indistinct] can we just get off the board for a bit so ...[indistinct].

RECORDING PAUSED

HEARING RESUMES

CHAIRPERSON: Mr Mokhatla?

MR MOKHATLA: Thank you Chairperson. We have had a chance of reviewing the medical certificate, okay, if you have a look at the certificate, I am going to start with the ones from a Dr R M Mahlashe.

CHAIRPERSON: Just mark it then is just – the last exhibit was I think it was G, shall we mark the first page Mahlashe as EXHIBIT H, if I'm not mistaken, I think the last document was G.

MR MOKHATLA: I might be mistaken, I've got until F.

MR FORD: But the G is the affidavit?

CHAIRPERSON: It's the affidavit ja, oh so this must be H and then the next one Dr GMM Corrisi we will mark it as I. Right, so you're taking me through?

MR MOKHATLA: Annexure H.

CHAIRPERSON: Yes, okay.

MR MOKHATLA: On your left hand side is the medical certificate dated 4 August 2016. This was on the day that we were here for the inquiry when it was stopped. You notice that the nature of illness is stated as angina something for investigation, I think we can safely assume that it deals with chest pains and so forth, as [indistinct] by the word

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angina, and at the end the certificate states that he will resume duty for review on 8 August 2016, that is four days later.

Now the certificate on your right hand side of H is dated 8 August 2016 so that is the day in which he was reviewed by the very same doctor on the 8th. Now when this very same doctor on the 8th reviews him now the nature of the illness has changed though, it is now review of medical condition, it is depression.

CHAIRPERSON: Yes.

MR MOKHATLA: Now what is significant on your right hand side of H
10 the doctor Mhlashle states that he will resume duty on 11 August 2016.

CHAIRPERSON: Yes.

MR MOKHATLA: So in other words from the 8th to the 11th he was unfit for duty but from the 11th onwards he was supposed to resume duty

CHAIRPERSON: Yes.

MR MOKHATLA: Okay, now we move on to Annexure I.

CHAIRPERSON: Yes.

MR MOKHATLA: What's strikingly different with Annexure I is that it is now a different doctor, it is Dr G M L Nkulisi.

20 **CHAIRPERSON:** Yes.

MR MOKHATLA: Right, that is on the 11th so now when the employee was supposed to resume duty on the 11th he instead of resuming duty he went to a different doctor, Dr Nkulisi.

CHAIRPERSON: Right.

MR MOKHATLA: And now he does not even say to this doctor that you

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know we can glean from the certificate that look I have been to another doctor and I was treated for something to this effect, maybe something dramatic has happened, I can't go to work. So this is on the 11th when he is examined by the new doctor, when he was supposed to resume duties. The very same doctor he says he examined him on 11 August 2016, and he says that here he is unfit for work from 11 August until further notice, so indefinitely, this new doctor.

CHAIRPERSON: Miss Nkara please behave, please keep these proceedings ...[indistinct]. Proceed Mr Mokhatla.

- 10 **MR MOKHATLA:** Yes, and is unfit until further notice, work may be resumed pending psychiatric treatment and the nature of illness is measured ...[indistinct] so we have got two conflicting situations, the first Dr Mahlache said look he is fit to go to work on the 11th, right, so instead of going to work on the 11th he goes to a different Dr Nkulisi, who now says look no, no, no, you are not fit for work until indefinitely, so what I am simply demonstrating to you Chairperson is that these particular medical certificates are highly suspect. I think I have demonstrated to you the questions that can be raised from these medical certificates. When he was supposed to go to work on the 11th
- 20 he goes to a different doctor, who books him off indefinitely and I will also submit to you Chairperson ~~that this medical certificate~~ in particular Annexure I, with respect they are not even worth the paper they are written on, this is clearly a ploy to derail the proceedings, nothing else. They are not even supported ~~as stated~~ this is just a ploy to derail and frustrate the proceedings and while I am still on that

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Chairperson there is authority by the Labour Appeal Court in the matter of Gobozi v Naidoo and Others, it is a 2006 ...[intervenes]

CHAIRPERSON: Just a minute, you said it is ...[intervenes]

MR MOKHATLA: [2006] Gobozi v Naidoo N.O. and Others [2006] Vol 27, ILJ pg 786 and it is a decision of the Labour Appeal Court and the relevant paragraph is paragraph 20.

CHAIRPERSON: Yes.

MR MOKHATLA: Yes, which basically says that medical certificates are by their nature hearsay evidence and that the absence of affidavits from doctors means that the Court is deprived of any elaboration on the
10 widely and vaguely stated symptoms attributed to the person, the patient itself.

So basically all that I have submitted on the medical certificate as well as the case law is that this is nothing but just a ploy to derail these proceedings, and the other thing you know which is interesting is that we've got Dr Mkulusi who is a — he is just a general practitioner, and Dr Mahlashe is just a family practitioner and as to how Dr Mkulusi would be able to determine whether the employee has psychiatric issues is just beyond me, and strangely enough both these
20 doctors are at Daviton in ...[indistinct]

The question is why didn't the employee go to the first treating doctor if he had problems and he decided to go to a different doctor, when the first doctor had said look you are fit to go to work on the 11th. Chairperson we have a situation here of a witness who has been testifying since from the 20th of June, Mr Mosing, Mr Mosing is

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here to assist the proceedings, he has his own employer, he cannot be at our disposal indefinitely. This prejudices his work and the interest of his employer. He has been under cross-examination since from 20th of June up until today. The poor witness arrives here early and nobody informs him that we are not going to proceed, he is going to learn now when we tell him that we can't proceed because the employee is sick, and alas the lawyers for the employee have been aware of this since from yesterday.

And Chairperson based on what we've submitted, what we
 10 say is that the medical certificates should be rejected, secondly the inquiry should proceed. If the employee reps are not in a position to proceed then the cross-examination of Mr Mosing must be deemed to have been closed and we should be allowed an opportunity to re-examine Mr Mosing and then the matter should proceed, take us on the way forward,

Thank you Chair.

CHAIRPERSON: Mr Ford?

MR FORD: Thank you Chairperson.

CHAIRPERSON: I don't know if you want to address me on this one
 20 because the attorney addressed mentions this because he had the relevant knowledge, so but if you feel that you wish to be the one responding it's okay, you can decide between the two of you who wants to respond?

MR FORD: Ja, my attorney has been able to give you the contents of the medical certificate but in terms of the legal issues raised by

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...[indistinct] I will address you and not my attorneys, unless I receive different instructions.

Firstly Mr Chairman, Mr Chairperson there is not one occasion, not once, that Mr Sesoko was required to be here that he was not here. From the commencement of these proceedings not once was he requested to be here and he was not here, so to create the impression in your mind that this is a ploy to derail the proceedings and essentially that Mr Sesoko must be the architect of that ploy couldn't be further from the truth.

10 So much so that when he was feeling ill he came, and I indicated to you when I addressed you, out of respect for you and these proceedings he came, so how can this now be a ploy on his part if he had been all along supportive of the process, at every stage, and not once has the legal representative appearing for the employer demonstrated to you that Mr Sesoko never attended on this day, this day, that day or this day, as part of his attempt to derail proceedings.

Secondly Mr Chairperson, you would have no doubt have heard Mr Mokhatla when he said ~~there is simply no way that in the absence of the employee this hearing can proceed. It would almost~~
20 appear that Mr Mokhatla and his learned junior are now making an about turn.

MR MOKHATLA: I never said that, you know that very well, ~~not talked~~ about cross-examination, I never said that it can't proceed, I said that you will need instructions from your client when you cross-examine, that's what I said.

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CHAIRPERSON: Mr Ford proceed.

MR FORD: Mr Chairperson I am not sure whether I am addressing you or the respondent Mr Mokhatla, you would have noted that when the presentation was made this side was absolutely quiet.

UNIDENTIFIED SPEAKER: Chairperson we are entitled to correct him when he is placing incorrect facts to you, when there is something that ...[indistinct] it is done all the time.

CHAIRPERSON: Mr Ford can you please proceed.

MR FORD: So in respect of the medical certificates that were
 10 presented to you for consideration Mr Chairperson none of us here are
 medical practitioners, none of us, and to speculate as to the *bona fides*
 of a medical practitioner or whether or not they in having issued
 medical certificates acted with suspicion, that is a very I would say
 brave thing to say about – for counsel, I would never say that, because
 I am simply not in a position to second-guess a medical practitioner, I
 am not, neither are you.

So what Mr Mokhatla is asking you is to second-guess the
 medical practitioner. The fact that the one doctor booked him off from
 the 4th to the 8th, another from the 8th to the 11th, another from the 11th
 20 until he gets psychiatric attention what is so perplexing about that, that
 is the reality as it stands. We accept Mr Advocate Mosing is – has
 made himself available to testify, but even when he was unavailable
 things had to be moved and swapped around to accommodate him so
 Mr Chairperson I can't take it any further.

Do these medical certificates comply with Rule 15 as set out in

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the APCA the Code of Conduct? Of course it does, at no point did anybody come to you and say these medical certificates are suspect for the following reasons, one it doesn't set out the diagnosis; one it doesn't indicate when the person will be fit to resume, every requirement that is required to be covered by the medical certificate have been covered.

CHAIRPERSON: Can a General Practitioner or let me put it this way, is a general practitioner qualified to pronounce on issues which are matters of speciality, like for instance depression? Are General Practitioners qualified to pronounce on that?

MR FORD: But we see it every day, they do with deference, you can defer and if you look at Annexure I, this is exactly what he is saying.

CHAIRPERSON: Mr Ford when you look at Annexure I it says – I am telling you because I want you to address me on this before I make a ruling on this, I am giving you an opportunity to address me on this because when I started this ...[indistinct] even before I invited the employers or the employer's counsel to address me on that, I said let's take about five minutes, which I think became even more than five minutes, to reflect on this. I also had a look at this. It is – I mean the point that was raised by Mr Theo Mokhatla insofar as the days and so on and different totals, are issues that really never visited my mind, but what visited my mind which was quite glaring was that none of these are specialists, Dr Mikasan is a family practitioner and when you look at those, when you look at the qualifications he's got nothing which would point to psychiatry or psychology, clearly then a general:

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practitioner. Then you look at Nokilisi, Dr Nokilisi again on one hand it says general practitioner and the prescription says GP Anaesthetist, as far as I know an Anaesthetist is someone who would administer anaesthetic when a patient is ready to perform operations and somehow, so I don't know how those relate to depression, I am not sure, but what is quite obvious to me is that none of these is either a psychologist or a psychiatrist and my question to you is, is a general practitioner qualified to pronounce on issues which are a specialty?

MR FORD: Well Mr Chairperson I am going to have to answer you by referring to our profession, where we get attorneys and we get counsel. Counsel specialises, but the fact that an attorney holds a relative degree of understanding and knowledge in a field does not completely allow his views in respect of a particular matter to be discounted.

As I sit here before you Chairperson, I say it respectfully, I don't know whether if you look at Annexure I a prescription certificate that comes there where the MBCHB, DASA, ATLS, ACLS and PALS places him in a position where he can make such a preliminary finding. I don't know.

All I'm saying to you is he has deferred to a psychiatrist and we know, Mr Mathibe has addressed to that the employee is consulting with a psychiatrist today.

CHAIRPERSON: And my second point to you is the indefinite nature of this and that is a source of concern to me, because what it does it chains me, the Chairperson and these proceedings into a you know a road that – you know a dead-end so to speak because now it's – if I can

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finish, it says 11 August 2016 for further notice pending psychiatrist treatment.

Now this – now my reading of that there's an indefinite because it means that we are not in a position to set other dates because we could set those other dates but we don't know when he undergoes that psychiatric treatment or evaluation whether when is he going to be fit. In other words it's different from saying he is not fit from this date to that date, which means that then thereafter we are in a position to look at the dates but now it is an indefinite kind of leave
10 of absence and that is a concern to me.

MR FORD: Firstly Mr Chairperson that should not be a concern for two reasons, one, the certificate says he is booked off from the 11th, pending or a deference is given to a psychiatrist. We know that he is meeting with his psychiatrist today. You Mr Chairperson will be well within your rights to say please can we have some indication from the psychiatrist after the visit today as to what is the prognosis for recovery, and when will he be fit to resume work. There would be nothing stopping you from doing so, but to say that you are bound indefinitely is not actually accurate, because the certificate as it reads effectively
20 means the following, on simplistic terms, one, he is unfit for work pending the consultation or treatment by a psychiatrist, he is seeing a psychiatrist today, so that we know, and there is nothing wrong and I don't think my attorney will – he will probably ask to consult with the psychiatrist to get even if it is a two or three page report, insofar as one, what is the treatment, what is the prognosis for a recovery

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condition, because like you Mr Chairperson I also want this matter to come to an end, but I can't do it at the expense of a person who ought to be here.

Our desire to bring to finality the matter does not in itself mean that we must dismiss or override a person's right to participate in proceedings that will ultimately or could ultimately change his status.

CHAIRPERSON: What is your then concern ...[indistinct]

MR FORD: Mr Chairperson my attorney has asked me to bring the following to your attention as well, he says that when a practitioner
 10 issues a prescription you can only issue a prescription relative to your field of practice or your knowledge in the field of practice and for this practitioner to go to the point where he issued a prescription, albeit like Mr Mokhatla correctly said very difficult to see, make out what is written there, one would – ...[indistinct] it's better to err on the side of caution.

So this is what we are proposing Mr Chairperson is the following, Mr Sesoko is consulting with the psychiatrist today, before the end of the week my attorney will make effort and endeavour to present to you a document or a report from the psychiatrist setting out
 20 the history, the treatment, the prognosis and the date for recovery.

If Mr Chairperson, that is not the commitment I want to give to you, if that date for recovery is unreasonable meaning if the psychiatrist comes back and say he is only going to be available in six months time I would submit to you that it would be unreasonable.

Under those circumstances Mr Chairperson I would submit to

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your authority, I would say then the reasonable thing would be to – for you to determine when in your estimation the matter should proceed.

CHAIRPERSON: Anything further on that you wish to address me on Mr Ford?

MR FORD: That's all Mr Chairperson.

MR MOKHATLA: Can I – can you ...[intervenes]

CHAIRPERSON: Sorry can I just please finish this, I just want to hear if there is any ...[indistinct]. Please address me on the LAC decision on ...[indistinct]

10 **MR FORD:** Mr Chairperson I have not read that decision, I can only really address you on it if I have read the decision, I am not sure what is the – whether there will be anything, I cannot, I haven't read the decision, all I am saying to you the facts are what they are, remember we had an internal disciplinary hearing where these things are relaxed as you correctly said. We are at an internal hearing where you hold the power to make a decision that will affect this person's status

CHAIRPERSON: Is there anything further?

MR FORD: That's all Mr Chairperson

20 **CHAIRPERSON:** Mr Mokhatla are you – was there anything ...[intervenes]

MR MOKHATLA: Just two things you know the submissions relating to how is prescription done and by who, this is all speculation. Now this reinforces the decision that I have quoted to you, this is all hearsay and by not having affidavits from the doctors who had done a certificate it deprives us, all of us you know to question and get elaboration on

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what really is going on and I am now surprised that Mr Ford is stating ...[indistinct] that the employee is seeing a psychiatrist today, when he started he was like a person who is clueless as to what is happening today. Why would an employee want to see a psychiatrist today when he had already seen the doctor on the 11th and a previous doctor had said that he is fit to work on the 11th of August 2016. It is clear as daylight, as chalk and cheese this is just a ploy to derail these proceedings. We beg you Chair that the application for this postponement must be dismissed and the matter should proceed.

10 Thank you Chair.

CHAIRPERSON: Rather a second bite at the cherry, so I will allow Mr Ford the chance to reply.

MR FORD: Ja, Mr Chairperson on the limited issues raised by – and I think Mr Mokhatla is correct in one respect, we are not medical practitioners, we are not, so I cannot tell you on what basis a prescription was issued, I can only draw from my own experience and the information that my attorney has. Secondly when my attorney addressed you I was clear that he had indicated and certainly made it clear to me that the employee will be consulting with a psychiatrist, so
20 that issue and for Mr Mokhatla to come back to say that this is a ploy to derail it can't simply be correct because the employee has always been here.

CHAIRPERSON: Will that be all Mr Ford?

MR FORD: That's all Mr Chair.

CHAIRPERSON: Okay.

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I have heard the arguments on the issue of the doctor's certificate as to why Mr Seseko is not here today. I have had a look at the certificates, both as EXHIBIT H and EXHIBIT I. I have raised my concerns with Mr Ford as to whether a general practitioner in any event and just for a moment leave what the employer has constantly raised insofar as the days as to when he was going to supposed to resume his duties and so on, the fact that none of the practitioners who are written here, Dr G M Nkolisi and Mr R M Matashe are specialists who will be in a position to then diagnose ...[indistinct] so as to whether he was suffering from depression, surely these documents before me right now would have carried more weight if it was from a psychiatrist or at the very least from a psychologist, someone who works depression related issue and who is best qualified to then pronounce on that.

That for me I find it unpersuasive and for that reason — and I am aware of *Nkibuzi v Naidoo*, the judgment, the SCA judgment pertaining to what Mr Mokhatla was stating earlier on, it is unfortunate that Mr Ford is not aware of that decision that states that there has got to be an affidavit from a medical practitioner stating as to exactly what the nature of the illness is, because otherwise the forum is not in a good position to know just by judging, just by looking at the certificates that indeed then the person is indisposed.

For me the seconder my primary concern and perhaps even if in the absence of an affidavit from the doctors, if for instance I saw this one of these at least there was a psychiatrist or at the very least a

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psychologist I would have been persuaded that these people are best qualified and they are best placed to pronounce on Mr Sesoko's condition.

When I look at the first, when you look at Annexure, I mean EXHIBIT H on the left side, dated 4th August 2016, I'm not sure what that is for investigation, it could be that related to the chest pains that Mr Sesoko was complaining about, but when it comes to the next one which is dated the 8th of August 2016 and just talks about depression and this is a general practitioner I am not persuaded that a general practitioner is best qualified to pronounce on a condition which is otherwise a preserve of a specialist, and for the reason I am not persuaded that these certificates are legitimate as much as we are not doctors, we are lawyers, and we not in a good position to decide as to whether these are legitimate or not, but there are things which ought to be *prima facie* clear, like for instance I said I mean if this is related to depression one would expect common sense would dictate that it has to be from the psychiatrist or psychologist at the very least.

For instance let me make an example, if for instance this was coming from a physiotherapist and yet I am told about depression those are two unrelated I don't have to be a doctor to decide that, that I can see even, I even I can use my common sense to decide that physiotherapy and depression or you can take another wide example, one would have to – and perhaps this is where then the issue of primary affidavit could have happened if in the absence of Mr Sesoko having consulted a psychiatrist or a psychologist.

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In the result these MEDICAL CERTIFICATES ARE HEREBY REJECTED and I am not persuaded that the application, I mean that these proceedings should be postponed any further, especially in view of the fact that they have been going on for quite some time.

I have already expressed a view previously that it puzzles me that such a simple matter with such a simple charge should have taken over a year, and I know that there has been a change of chairperson and so on and what have you, but it just flies in the face of expeditious resolution of labour disputes.

10 As much as I am aware Mr Ford that one has got to balance between expeditious resolution of disputes and the employee's right to a fair hearing, but one has got to maintain the balance. Employee's right to a fair hearing cannot and should not at all times be seen alone and without taking into account the employer's interests as well. It should be in the employer's interest that disputes are resolved as expeditiously as possible. It can't be correct that a dispute goes on and on for such a long time and you and one would then say simply because the employee has got the right to a fair hearing it means that the employee – it means that one should ignore the employer's interest, 20 one should balance those two interests; those are two interests that are competing and one must always balance those, so you balance the expeditious resolution of labour disputes insofar as the employer's side is concerned and the employee's right to a fair hearing insofar as the employee is concerned.

I have on occasions been faced with more or less similar things

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issues myself, I mean be it as a Chairperson or appearing as counsel and especially, within the realm of labour relations it is not difficult to understand that disputes, that labour disputes ought to be resolved expeditiously and it's a no brainer that obviously one cannot want to resolve a labour dispute expeditiously at the expense of the employee's right to a fair hearing.

Then there comes a point where the employee could be said to have waived their right to a fair hearing, when they have been afforded that right to a fair hearing and by their conduct or in whatever
 10 they do they've waived that right, it does come to that point, and I am not saying that in this case specifically whether Mr Sesoko has waived his right, that's not what I'm saying, before I am misquoted, all I am saying is what I see before me as the reason for Mr Sesoko not to be present today is not persuasive and number two there is nothing that says to me as of the 16th of August 2016 Mr Sesoko is not eligible to be
 at this hearing. All the ...[indistinct]-says it says 14th August 2016 until
 further notice. I find that unpersuasive and as a result I am going to
 allow these proceedings to proceed and so what is going to happen now
 is to call Mr Mosing to take the stand and for - if there is any cross-
 20 examination by the employee's side to do so, if there is no further
 cross-examination I am going to allow the employer to re-examine and
 if there's no re-examination then I am going to excuse Mr Mosing.

If you could just please call Mr Mosing and the employee's right to a fair

MR FORD: Mr Chairperson my attorney indicates he needs to take an instruction, if you would allow him to take an instruction, [indistinct]

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inform client of what your decision is and I have indicated to ...[indistinct] that I am extremely on edge to continue with the matter in respect of which client is not here and he is not able to give direct and proper instructions. I think I will be reported to the Bar – I serve on the Professional Committee at the Bar, I would not want to be reported that I continued with a matter where – in which I did not receive instructions to proceed and where I can't – I am sorry I am not prepared to take that risk.

CHAIRPERSON: You are within your right Mr Ford to – I mean to
10 excuse yourself but the proceedings will proceed.

MR FORD: No I am saying I cannot do anything until I have taken an instruction, you're saying we must continue, I can't do that, my attorney must get an instruction.

CHAIRPERSON: Fine, we will stand down for five minutes. The time now is 11:31, we are going to resume at, let's resume at twenty to, at 11:40.

MR FORD: Thank you sir.

HEARING ADJOURNS (at 11:40)

HEARING RESUMES (at 12:10)

20 **CHAIRPERSON:** We are back on record again, the time is ten past twelve, we had adjourned at about quarter to twelve to allow Mr Mathibe to take instructions from Mr Sesoko. I have already ruled that the proceedings will continue in the absence of Mr Sesoko as I am not persuaded with the certificates, ~~medical certificates~~ that have been presented before me and for that reason I made a ruling that we

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proceed, and then just off record I was advised by Mr Ford that they find themselves in a predicament because Mr Sesoko is not – I mean they were unable to put versions to Mr Mosing, one understands that difficulty, but sometime there comes a point where proceedings have got to be taken to finality. For that reason we are going to proceed as I had ruled, if you could just call Mr Mosing to come to the stand.

Good afternoon Mr Mosing.

MR MOSING: Good afternoon Chair.

CHAIRPERSON: You have been recalled or just called, you have been
 10 requested to once again attend these proceedings and give testimony and I must also warn you that you are still under your former oath and to the effect that whatever evidence you are about to give to these proceedings is the truth, the whole truth and nothing else but the truth.

Now we had adjourned last time for whilst you were still under cross-examination. Mr Ford do you have any further questions for Mr Mosing?

MR FORD: Subject to the concerns that I have raised Chairperson yes I do.

CHAIRPERSON: Please proceed.

20 **MR MOSING:** (s.u.o.)

CROSS-EXAMINATION BY MR FORD (CONTINUED): [Indistinct] I just want to know Mr Mosing you and the Chairperson had a discussion outside and you were laughing tell us what was that about?

CHAIRPERSON: How is that relevant?

MR FORD: ...[Indistinct]

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CHAIRPERSON: How is that relevant? You just asked him, as a Chairperson I have a duty to ask because what guides us is the relevance, so if you can just demonstrate to me what is the relevance?

MR MOKHATLA: I was about to object to the same.

MR FORD: It is certainly relevant in the sense that a Presiding Officer must not only be neutral but also be seen to be neutral, having a hearty discussion with one of the witnesses called by the respondent and I just for everybody's peace of mind would like an indication what was that about. It is not something that you see where chairpersons
10 interact with witnesses called by the other side and ...[indistinct] laughter.

MR MOKHATLA: Chairperson because I have indicated I was going to object can I state the reason for objection?

CHAIRPERSON: Yes.

MR MOKHATLA: Mr Ford has just told you that his client is not, when I say his client I mean Mr Sesoko, is not here; he is not able to take instructions from his client, so what I find to be quite peculiar is that Mr Ford who is counsel will actually ask such a question on his own version ...[indistinct] that Mr Ford when you were standing here the
20 door ...[indistinct] was open, you could see that this was just a conversation about things which are unrelated to this matter, not once did he raise it with me to say that I had discomfort by the Chairperson's ...[indistinct] to a witness here. Even ourselves as ...[indistinct] were stood outside Chair and we were talking, Mr Mathibe who is the instructing attorney he passed you here I think about two or three times

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he never said a word because he saw nothing untoward to that and for Mr Ford, who is counsel, to wait for a witness to come and ask certain questions is completely unacceptable and it is ...[indistinct] and I must put it on record. It is not accepted in our profession that that can happen. I will understand it if it was an instruction from a lay client, that the lay client says that I want you to raise this issue because it concerns me, but now we know that he didn't get it from his client, he didn't get it from his attorney because the attorney has passed you here twice or three times and he saw nothing untoward about that, so

10 we should not degenerate these proceedings into ...[indistinct] in order to ...[indistinct] so what is the relevance of the question?

If Mr Ford is saying that I doubt the integrity of the Chairperson he must then raise it with you direct, not then to us and the witness that sat on the relevant questions, so that's the basis of my objection and if Mr Ford can deal with that, and particularly why did he not raise it with us here when he was seated here and why did he start up himself because ...[indistinct] just to go to you as an ...[indistinct] congeniality Chairperson we feel uncomfortable that you will be talking ...[intervenes]

20 **CHAIRPERSON:** It is done like that all the times professionally among colleagues.

MR MOKHATLA: Not this type of an ambush in order then to try and besmear this record.

CHAIRPERSON: Mr Ford?

MR FORD: Ja, Chairperson my attorney was on the telephone most of the time at

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the time and we have discussed it, my attorneys instructions are apart from putting that version to you was to say to you that I must have it noted that we are participating at these proceedings under protest, that the situation in which we find ourselves is possibly peculiar one that doesn't sit well with us and I am asked to bring this to your attention and this will bring it to the attention of the witness directly because he was part of that discussion and if there is nothing prejudicial in that discussion then I am not so sure Chairperson whether you wouldn't just – in my mind it is.

10 **CHAIRPERSON:** No, I have heard ...[indistinct] and I have heard ...[indistinct] objection, I think the proper way to do it when, whilst we were still off record was to address this issue as well, so that I don't allow the witness to come in and then you put the question to the witness then in fact the objection is relating to me.

MR FORD: Chairperson can I propose the following just for two minutes, can we excuse the witness just for two minutes and we go off the record Mr Chair, if that's permissible.

MR MOKHATLA: But there's no need I mean to go off record ...[intervenes]

20 **CHAIRPERSON:** Mr Ford I mean this is already on record, I can tell you straightaway what you were talking about, now that you have raised, decided to raise it whilst the witness is here, I want to tell you what we are talking about, we're talking religion, as I walked out here I said to the witness please can you bear with us, be patient, because the witness has been sitting here since half past eight.

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I don't know if there's something untoward about it to say to the witness as the Chairperson please bear with us be patient, because I know when I arrived here at nine o'clock the witness was already here, he was here last time as well and nothing happened, so please just be patient and then from that side we spoke about patience and being ...[indistinct] and then he drew it to his religion that he is a Christian and he knows that patience, the pastors talk about it all the time, and we talked about Apostle Paul, how he was struck by lightning on his way to Damascus to pursue Christians, his name was Saul before he became Paul, how he wrote to the ...[indistinct] when he was in prison, all those sort of things, so I just thought I should let you know what the witness and I were chatting about and we were talking so loudly for that matter, I mean I don't remember if the door was open or it was closed but for me it was neither here nor there because we were not discussing any merits of the case and I wouldn't want to discuss merits with the witness, we talked about general stuff, which I will deal with anyone ...[indistinct] if we talked to him if I had not done so, I already before, I am not sure as long as you do not discuss the merits and I take your point that justice must not only be done but must be seen to be done, I take that, I agree but I just want to put you at least that what was being discussed with the witness was just outside the door, religion and whether God does exist, and that was all.

MR MOKHATLA: But Chairperson because we want integrity Chairperson in these proceedings what must also be mentioned is that

Handwritten initials: M and W

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the discussions that were taking place between yourself and Mosing, informal discussions, what happened visually three metres away from where I am sitting myself and five metres away from where Mr Ford is sitting and with the door most of the time open, so that must also be placed on record.

CHAIRPERSON: Mr Ford you can just proceed with your questions if there are any.

MR FORD: Thank you Mr Chairperson. Advocate Mosing when you left here the last time we were working through a document called
10 Bundle D, do you recall?

MR MOSING: Yes I do recall.

MR FORD: And the context for that document is founded on the basis that the charge related to Mr Sesoko ...[indistinct] report, am I correct?

MR MOSING: Chair I did comment the last time on pages of the charges, I have not seen the charge sheet.

MR FORD: Ja, and in particular we canvassed with you that the charge is based on two legs, one being that he authored the report and that he ...[indistinct] report with the intention of exonerating General Anwar Dramat and Major General Sibiya.

20 **MR MOSING:** Yes.

MR FORD: And you led evidence previously to the effect that insofar as General Sibiya is concerned that you and the ...[indistinct] exactly you said the following:

"Having regard to the evidence I was not satisfied that there was sufficient evidence enough to formulate a charge for criminal

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prosecution against General Sibiya.”

MR MOSING: Chair if I recall correctly there was a memorandum that I had written, that you were referring to the last time, a copy of it, from which reasons for my view on the matter was clearly mentioned.

MR FORD: Can I take you to the memorandum then Advocate Mosing.

MR MOSING: I have been given a copy Mr Ford.

MR FORD: Yes, it is in Bundle B; and it commences on page 58 Chairperson, just whether the witness bundle is available.

MR MOSING: I've just got the memorandum.

10 **MR FORD:** But I am going to be referring to other documents as well.

CHAIRPERSON: Proceed Mr Ford, have you got the witness bundle? Have you got Bundle B, the employees bundle. Have you got it? It seems that he is going to be covered Mr Ford, you can proceed.

MR FORD: It commences on page 58 of Bundle B and it continues until page 64 of Bundle B.

MR MOSING: Yes.

MR FORD: Do you see that?

MR MOSING: I do have the memorandum...[indistinct]

20 **MR FORD:** I am not going to take you through the summary of facts; I will go to your recommendation under paragraph 7 and I am going to ask you to just – we've touched upon this previous but I am going to ask you to do so for purposes of the cross-examination that will follow and the recommendation that you made in respect of Major General Sibiya was that it is not supported for the reasons mentioned above.

MR MOKHATLA: But Chair this question has been asked and

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answered on more than one occasion.

CHAIRPERSON: Mr Ford my recollection is that this question – Mr Mokhatla is correct, in fact it was one – I mean we have been through this memorandum on ...[intervenes]

MR FORD: Exactly.

CHAIRPERSON: On more than I don't know how many occasions.

MR FORD: If I may just explain Mr Chairperson this memorandum is going to lead into the issue that we are going to be raising now with the affidavit of Mr Khuba, because we are going to contrast them.

10 **CHAIRPERSON:** So seeing that Mr Mosing authored this memorandum, it is his document, can't we just take it for a fact that it is his document and therefore we would then go straight to the affidavit, if you wish to raise any contradiction and so on please do so.

MR FORD: I will do so in a minute Chairperson, I just want to get the sequence, if I may with ...[indistinct]-because this document is dated the 13th of February 2014.

MR MOSING: That is correct Chairperson.

MR FORD: And the so-called final report is dated January 2014.

MR MOSING: That is also correct.

20 **MR FORD:** And your recommendation in the January report runs contrary to the recommendation in the memorandum on the 13th of February.

MR MOKHATLA: This question has been asked Chair on more than one occasion.

CHAIRPERSON: Mr Ford you at some point you said I was making a

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threat and if you read my ruling on recusal I have touched on that point that that was never a threat. I said it is going to come to a point where I am going to have to excuse this witness and if the lawyer wishes to re-examine the witness I am going to give them their chance, insofar as cross-examination he is going to be excused from that because otherwise we – I have a duty as a Chairperson to protect a witness from abuse and I have put that on my ruling as well and I repeat it, I reiterate it.

It is part of my duties as a Chairperson to protect the witness because right now the witness I mean is vulnerable, is subjected to the same kind of question that he has had to answer time and again and I am about to reach that point and please don't take this as a threat Mr Ford, this is me exercising my discretion as a Chairperson, but if you wish to take it as a threat by all means, that is going to be your interpretation, but I am exercising my discretion as a Chairperson, I am about to assume that if there are no further questions from yourself and that the witness is therefore excused from cross-examination I am going to turn my attention to the employer for re-examination, if there is none or once it is done I am going to excuse the witness.

I hope that the questions that follow from here on are questions which have not already been answered by the witness because if they are the same questions I am going to make that ruling. We cannot keep on skidding the same place all the time, that can never be. It just can never be and the transcript will bear testimony to this, as to how many times a certain question has been asked, and the

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witness answered.

I cannot just sit here and say ...[indistinct] to the witness ...[indistinct] I have got a duty as much as I have a duty to make sure that when you ask a legitimate question that the witness answers that question truthfully and that I have – it is part of my duties to remind him that he is still under formal oath and that he must tell the truth and one of my duties as well is to protect the witness from abuse, and that is what I am doing right now, so I hope from now on that the line of questioning that is going to follow is not something that we have heard
 10 before, and that we can then have a sense of progress, because if there is no sense of progress then I am afraid I am going to have to excuse the witness.

MR FORD: Mr Chairperson can I explain to you what my difficulty is, and I don't – at no point do I ever want to create the impression that I am challenging you or that I am trying to be obstructive or that I am usurping your authority, I respect you. The difficulty is Mr Chairperson we have ...[intervenes]

MR MOSING: Chair can I maybe just interject before Mr Ford – and I am not too sure because I find it a little bit difficult when Mr Ford and
 20 the Chair is discussing based on these questions, perhaps I might be excused until that is done, because I think it does affect, I am a legally trained person as well so I don't want Mr Ford to be you know in a discussion with the Chair as to why he is asking certain questions, so if I may be excused until that is done, so that

WITNESS MR MOSING TEMPORARILY EXCUSED

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CHAIRPERSON: Yes Mr Ford?

MR FORD: Mr Chairperson first of all thank you for Advocate Mosing's attitude towards not compromising himself. It is – this is not a witness that has commenced his testimony and continued to be in attendance until his testimony is completed, so the reason why I am picking up from where we left off is just so that there is context for what - the questions that may follow, but my difficulty is Mr Chairperson and you must allow me to create that context and to carry on, it also doesn't help the process if Mr Mokhatla objects every time, without allowing me
10 to lay that context, because there is a context Mr Chairperson and there is nothing insofar as the laws of evidence that says your cross-examination if you are not allowed to ask a question that you have asked previously, nothing.

And I am giving you the context and when we started I explained to you for purposes of context this is what we do.

CHAIRPERSON: Can I just ask from the employer's side once the cross-examination is done will there be any re-examination of Mr Mosing Mr Mokhatla?

MR MOKHATLA: Yes there will be two, or at the most three questions.

20 **CHAIRPERSON:** Okay. Mr Ford I understand what you are saying but I am afraid I do not agree with you, I do not share your sentiments and to the extent that already this hearing has taken this long I do not even think we have that luxury of going back again asking one and the same question, even if it means you're saying you are saying you are giving the context, I think we all understand the context and the witness

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understands the context, you must just go ahead and ask that question and not ask the question that has been asked before and I did say if this line of questioning continues when Mr Mosing comes back I am going to stop the cross-examination, I am going to rule that there are no further questions and I am going to hand the witness over to the employer's counsel. You may want to decide now if you still want to cross-examine the witness or ...[intervenes]

MR FORD: Of course we still want to cross-examine the witness Chair, the witness can come back.

10 **CHAIRPERSON:** Okay. Please proceed.

MR FORD: Advocate Mosing if you return to Bundle G for me, Bundle G, if you can turn to page 8 of Bundle G. Now Mr Khuba will testify that the reason why the January 2014 report was not a final report, amongst others, was the fact that he had indicated to you that there was material evidence still outstanding:

MR MOKHATLA: Again Chairperson this has been asked and answered on the 27th of July.

MR FORD: That question was never asked, it didn't even start with that page.

20 **MR MOKHATLA:** It was, I have it here on my notes on the 27th; I remember, I had it here on my notes

MR FORD: Mr Chairperson the question...[intervenes]

CHAIRPERSON: I AM RULING NOW THE CROSS-EXAMINATION HAS FINISHED, THERE ARE NO FURTHER QUESTIONS FROM THE EMPLOYEE'S SIDE. Are there any questions in re-examination?

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RE-EXAMINATION BY MR MOKHATLA: Just one question Mr Chair.

CHAIRPERSON: Mr Mosing you are now under re-examination, you understand?

MR FORD: Mr Chairperson ...[intervenes]

CHAIRPERSON: Mr Ford I have made my ruling.

MR FORD: But let me address you on ...[intervenes]

CHAIRPERSON: Mr Ford I have made my ruling, I have made my ruling. Mr Mokhatla are you ready?

MR MOKHATLA: Yes, just a moment. A version was put to you Mr
10 Mosing that Mr Sesoko will come and testify that he knows nothing
about the January report and he was not involved and I am trying to
find your comment, can you just refresh my memory what was your
comment to that question?

MR MOSING: Chair yes I am speaking a little bit under correction, I
may not remember exactly what my answer was but I did mention in my
– in response that to my understanding Mr Sesoko was consulted by Mr
Khuba, at stages during the investigation of the matter. I think the
– although in fairness it was never from the beginning because I only got
to know about Mr Sesoko's involvement a little bit, it was probably in
20 2013, I recall that I have mentioned that we did have a meeting where
Mr Sesoko attended at a petrol court, a garage, there were drafting of
certain questions for the suspects where it got apparent that Mr Sesoko
participated or was made aware of those questions.

MR MOKHATLA: That is questions in relation to the first report?

MR MOSING: Ja, the questions ...[intervenes]

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CHAIRPERSON: Please don't lead him there.

MR MOKHATLA: Sorry about that sir.

MR MOSING: It is questions pertaining to the suspects that were put by Mr Khuba to the suspects, that were prepared for in terms of the warning statement. It was apparent that Mr Sesoko was cc'd on some of those questions, the draft questions because we had to advise him, advise Mr Khuba on the questions. As I have indicated to my understanding Mr Sesoko was even before the report was, the final report was done.

10 **MR MOKHATLA:** You're talking about cc, what do you mean by he was cc'd?

MR MOSING: What I mean is in an email, in any email exchanges between myself and Mr Khuba, particularly on these questions, there was questions I think that were prepared for Attorney General Dramat to be put by Mr Khuba and during those questions Mr Sesoko was cc'd as well on all the emails.

MR MOKHATLA: You're talking about an email, do you have a copy of that email because we don't have it here?

20 **MR MOSING:** I do have – in fact Chair in the last sitting when we were – when I was waiting here for the hearing to proceed I actually decided to go through the emails because I recently learnt that whatever emails was exchanged between or whatever emails I received or was sent out from my system that those emails are saved, going back even five years ago, so I decided to look at all the emails exchanged between myself and Mr Khuba even in the light of the affidavit in Bundle G that

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was placed before me and that I was cross-examined on indicated Mr Khuba had a certain ...[indistinct] of what transpired, you know such as the involvement of Mr Sesoko, such as the fact that he indicated that he was placed under severe pressure by myself and also the fact that he was led to cooperate with Mr Mkgangwe unwillingly according to his affidavit, so I decided to look at all the emails and I came across quite a few instances which actually contradicts what is in this affidavit of Mr Khuba, such as for instance the fact that the questions that were drafted so that he could interview General Dramat Mr Sesoko was party
 10 to that questions, on the email exchanges.

MR MOKHATLA: Chair I will ask direction from you, it seems as if the witness does not have physical copies of the emails he is referring to, can we ask that once I am done with re-examination if we can get together with Mr Dramat for purposes of printing the emails so that we can hand them up to you.

CHAIRPERSON: Mr Ford?

MR FORD: We are participating in this process under protest in the sense that we have nothing further to add insofar as this process is concerned Chairperson and insofar as ~~it~~ [indistinct] I need to take an
 20 instruction.

CHAIRPERSON: Okay, alright.

MR MOKHATLA: Okay Chair that is my re-examination, if you can provide that we get the emails referred to and hand them up.

CHAIRPERSON: Will that be ~~it~~ would that conclude the re-examination?

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MR MOKHATLA: That will conclude my re-examination.

CHAIRPERSON: Thank you. Advocate Mosing you are excused, thanks very much for how many times you have ...[indistinct] we are appreciative of the time that you took.

MR MOSING: Thank you very much.

CHAIRPERSON: Are there any further witnesses that you want to call?

MR MOKHATLA: That is the employer's case Chair.

EMPLOYER'S CASE

10 **CHAIRPERSON:** Okay, now in view – the employer has closed its case, in view of the absence of Mr Sesoko is there any other witness that is present that the employee wishes to call today?

MR FORD: Mr Chairperson as I indicated to you earlier Mr Sesoko – we were unable to get hold of Mr Sesoko. My attorney, in fact when we had a discussion with Mr Mokhatla to see if we can't use ...[indistinct] to determine what is Mr Sesoko's (a) availability and (b) what is happening insofar as further appointments or discussions or treatment is concerned. I think we can only realistically be able to give you feedback probably after the lunch hour, and ideally we would have requested that Mr Sesoko take the stand first to testify but if Mr Sesoko is put off today it makes it very difficult for us to continue with Mr Sesoko and as I said we are in an invidious position because some of the rulings that you have made have taken us by surprise and obviously we need to consider our position.

CHAIRPERSON: So as things stand right now there is no witness that

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the employee wishes to put on the stand?

MR FORD: No ideally the employee should testify first.

CHAIRPERSON: ...[Indistinct] maybe he should ...[indistinct] to take the stand, that depends, he has got a right not to testify.

MR FORD: No he would want to testify.

CHAIRPERSON: I am just saying that it is not ...[indistinct] but I agree with you ideally and generally this is what ought to happen but in this case Mr Sesoko is not here and I have already made my ruling insofar as that is concerned.

10 Should then I take these proceedings as having come to an end and go away and make my ruling insofar as what is the verdict is concerned, bearing in mind that there is only version that is before me, and that is the employer's version. The employee's version is not before me, so what it means is the employer's version is uncontested.

MR FORD: No Mr Chairman you know that it is not uncontested; you now the peculiar circumstances of Mr Sesoko's absence here; that has been outlined to you and if we get medical proof that Mr Sesoko is not here not because he is undermining you or the proceedings and he is booked off for today it would be unfair for you to adjourn these proceedings on the basis that it is uncontested.

20

MR MOKHATLA: But Chairperson has already made a ruling in as far as the certificates are concerned, what you are going to get afterwards is going to make matters worse, as if you are trying to cover ...[intervenes]

CHAIRPERSON: There's deficiencies in the medical certificates; there

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is already a ruling on the medical certificates.

MR MOKHATLA: Let me just, I think the Chairperson wanted to find out on a second issue whether are you going to call other witnesses.

MR FORD: We are intending to call witnesses.

MR MOKHATLA: And then if you are who are they and where are they, and I think that is what I was trying, the Chairperson was trying to establish but if you are not able to tell the Chairperson that, that is what caused the Chairperson to say that well it means that the proceedings will be closed because the employee – so that's what he
10 wanted to find out.

MR FORD: No thank you for that. When Advocate Mosing was unavailable proceedings were postponed to a common date, there are two witnesses that we want to call, obviously Mr Sesoko, principally Mr Khuba and we still trying to get confirmation as to whether Mr McBride will make himself available to attend, but neither Mr Khuba or Mr Sesoko are available today.

CHAIRPERSON: Alright ...[indistinct]

MR FORD: Thank you Mr Chair.

CHAIRPERSON: Alright.

20

EX TEMPORE JUDGMENT:

Mr Sesoko was charged with ~~charges appearing on Bundle A, and~~ as appears on A4, the charge was, ~~or charges was amended along the~~ way but the gist of the charge was captured on charge one and part of number three, which read as follows:

"You Khuba and McBride ~~altered the report~~ which has been

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JUDGMENT

handed over to the NPA and deleted information incriminating Lt General Anwar Dramat, former National Head of the DPCI, and Sibiya the Provincial Head of DPCI Gauteng from the report in order to reach a conclusion that Dramat and Sibiya had been exonerated by IPID when you knew or ought to have known that the final IPID report ...[indistinct] that Dramat and Sibiya be criminally charged ..."[intervenues]

MR FORD: Mr Chairperson please forgive the interruption, my attorney asked me to ask what is happening.

10 **CHAIRPERSON:** I am giving an *ex tempore* judgment on the ...[intervenues] of the employee.

MR FORD: If that is the case may we ask an indulgence just for five minutes Mr Chairperson so that we can take instructions as to what – because if the employee can by hook or by crook still get here, because we are scheduled to be here until four o'clock then the lunch hour is upon us ...[intervenues]

MR MOKHATLA: You see I mean what you don't understand Mr Ford is that a ruling of the Chairperson that the trial proceeds it presupposes that he was supposed to be here, so to say that you give
20 him another chance is to undermine the ruling.

MR FORD: But that is not what we are saying Mr Chair...[intervenues]

MR MOKHATLA: That you do not agree with the ruling of the Chairperson but because of you know what the Constitution states ...[intervenues]

CHAIRPERSON: Can I then proceed with my ruling?

Handwritten initials: J and W

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EX TEMPORE JUDGMENT (continued)

This is ruling *ex tempore*. Along the way there was – there were ...[indistinct] which were put to the witness, Mr Mosing, who was called by the employer to testify insofar as the alteration or the alleged alteration of the January 2014 report was concerned. There seemed to be quite a number of reports which were drafts in nature but – and we mark them as DEF along the way, or I think we started with C, there was a draft which is marked with C, which is dated 22 October 2013, so there were a number of drafts which culminated into the January 2014-
 10 report.

Now the version that was put to Mr Mosing was that the January report, the January 2014 report could not have been final because in order for it to be final it had to be signed by the Executive Director who is Mr McBride and that to the extent that it was not signed by ED, which is the Executive Director therefore that was not final and therefore Mr Sesoko could I mean alongside Mr Khuba and Mr McBride could not be said to have altered that report as it was not final.

I do not find that argument – I do not find any basis for that argument that the January report was not final, simply because some
 20 regulations, I mean simply because it was not signed by the ED, I think for all intents and purposes the January report which recommended that Mr Sibiya, Dramat, be criminally charged once a final report and that the March report that came from Mr Sesoko, McBride and Khuba did alter that.

In fact when Mr Mosing was ~~cross-examined~~ it seemed to be

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common cause that the March report that Mr Sesoko participated in the authoring of the March report, but what was in issue was whether that amounted to altering the January report to the extent that same was not final.

Now that was common cause then that there was that Mr Sesoko participated in authoring the March report, so that much is not in dispute. I even said along the way during the proceedings that the question then becomes whether if Mr Sesoko did participate in authoring the March report whether that act amounted to an act of
10 misconduct and if so whether therefore is it of such misconduct.

Now I have already outlined that it was never in dispute that Mr Sesoko participated and co-authored that report in March and as a result it did amount to altering the January report and one would recall that the March report came up with the recommendations which were different from the January report, which were to the effect that Mr Dramat and Mr Sibiya should not be criminally charged. Those are two varying versions, this day and night, and it is clear to me that an act of misconduct was committed and as such **I FIND MR SESOKO GUILTY OF MISCONDUCT.**

20 Now I am going to move to sanction. I want to give parties an opportunity to address me on mitigating and aggravating factors. I will start with you Mr Mokhatla, what sanction should be imposed as a result of my finding.

MR MOKHATLA: Thank you Chair. The misconduct of which the employee has been found guilty of is very serious misconduct, it relates

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AGGRAVATING/MITIGATING

to dishonesty as well as defeating the ends of justice.

I cannot over-emphasize the seriousness of the sanction, the charge that was preferred against the employee.

Now if we are dealing with issues of dishonesty, dishonesty in all likelihood results, if proved, results in dismissal so as the employer we are going to move for the sanction of dismissal and – if you can just bear with me Chair, we will submit further that you know the dishonesty that was – the charge that was preferred to the employee goes to the heart of the employment relationship by the finding of guilt on this
 10 misconduct it is our submission that there is no chance of the employment relationship being restored between the applicant and the employee.

The other aggravating factor Chairperson is that we submit that having a look and considering the manner in which these proceedings have been conducted and frustrated on the account of the employee that militate against considering anything else besides the fact that the relationship between the employer and the employee cannot be salvaged. This misconduct of dishonesty as well as defeating the ends of justice cannot, no any other sanction will be
 20 appropriate in the circumstances apart from the dismissal of the employee.

Thank you Chair.

CHAIRPERSON: Any mitigating factors? Any finding

MR FORD: Mr Chairperson we cannot submit mitigation to give the effect of authenticating this disciplinary proceedings under you,

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AGGRAVATING/MITIGATING

because you have done what is most shocking in these proceedings, in essence all we can say is that we are – I must take medication I think just to recover, we are shocked ...[intervenes]

CHAIRPERSON: Are these mitigating factors?

MR FORD: ... by what has transpired Mr Chairperson and if I may ...[intervenes]

CHAIRPERSON: Okay, are these mitigating factors Mr Ford, are you addressing me on mitigating factors?

MR FORD: Mr Chairperson this is what I have been trying to say to
 10 you is we haven't been able to get hold of Mr Sesoko, how then do we begin to address you in mitigating in the absence of even having taken a single instruction. How then do we do that? We know that you have been called here to rubber stamp a decision of dismissal, we know that.

MR MOKHATLA: Chairperson just to assist again, I have noticed a concerted effort from Mr Ford to undermine these proceedings on each occasion by having ...[indistinct] the Chairperson, undermining the integrity of the Chairperson and I want to again state it on record, irrespective of how you believe you are more intelligent than the other person you have got to understand and respect the authority of the rule
 20 of law, that it is the Chairperson who is appointed and that Chairperson has the power to do certain things. It does not help Mr Ford and his client to vent his anger about how shocking and that he has to take the medication, that is out of order, so ~~Chairperson we can't allow these proceedings to degenerate because of Mr Ford's antics, so it is clear that if you don't have any mitigating factors and you are asked~~

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SANCTION

Chairperson that you proceed to hand down the ruling on sanction.

CHAIRPERSON: Mr Ford once again are there any mitigating factors?

MR FORD: We cannot address you in mitigation Chair, because
...[intervenes]

CHAIRPERSON: Thank you, thank you Mr Ford.

MR FORD: ...we don't have an instruction ...[intervenes]

CHAIRPERSON: Thank you Mr Ford.

MR FORD: We have requested you for an opportunity to take
instructions ...[intervenes]

10 **CHAIRPERSON:** Thank you Mr Ford.

MR FORD: We asked – can I just please finish Mr Chairperson?

CHAIRPERSON: Mr Ford I have made a ruling, if there are no
mitigating factors I am going to proceed to make a finding on sanction.

SANCTION

As a result, I have heard the aggravating factors from the
employer which included that this is a serious misconduct, it is the
charge that involves altering of a report which also involves dishonesty.
The employer also submitted that in all dishonesty matters the sanction
ought to be a dismissal, that dishonesty goes to the heart of the
20 employment relationship.

The employer further submitted that the very conduct of the
employee towards these proceedings in trying to frustrate these
proceedings further aggravates, should further aggravate the sanction.

I have then invited the employee's counsel to address me on
mitigation. There were no submissions on mitigation, and as a result I

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SANCTION

have come to the CONCLUSION THAT THE ONLY APPROPRIATE SANCTION TO BE IMPOSED IN RESPECT OF THE CHARGE THAT MR SESOKO WAS FOUND GUILTY OF IS THAT OF DISMISSAL WITH IMMEDIATE EFFECT.

These proceedings are now adjourned. I am not going to be writing any ruling in writing, I have done a ruling *ex tempore* which could be transcribed, the recording verbatim what my ruling was and as such I have made my ruling and these proceedings are therefore adjourned, thank you.

- 10 **MR MOKHATLA:** Thank you, Chairperson I would like to thank you for concluding these proceedings, what I also wanted to place on record is that we will take steps to ensure that the record is transcribed on an expedited basis and then will then immediately be transmitted to the relevant parties including yourself and both the finding on the guilty verdict and also then on the sanction.

Thank you Chairperson.

CHAIRPERSON: Proceedings are adjourned.

MR FORD: Thank you Chair.

HEARING ADJOURNED

J *lcu*

TRANSCRIBERS' CERTIFICATE

I, the undersigned, hereby certify that, *in as far as it is audible*, the foregoing is a true and correct transcription of the proceedings recorded by means of a digital recorder in the matter of:

DISCIPLINARY HEARING OF
MR MATTHEWS SESOKO

10

<u>DATE HELD:</u>	VARIOUS
<u>TRANSCRIBER:</u>	B DODDS, D BONTHUYIS, K SCOTT, D STANIFORTH
<u>DATE COMPLETED:</u>	2020-02-27
<u>NO OF PAGES:</u>	285

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MS 5

IN THE GENERAL PUBLIC SERVICE SECTORAL BARGAINING COUNCIL
HELD AT PRETORIA

In the arbitration, between

Case # GPBC 1853/2016

Matthews Sesoko



Employee

And

Independent Police

Employer

Investigative Directorate

SETTLEMENT AGREEMENT

Whereas the Parties are desirous of resolving the labour dispute subsisting between them and matters incidental thereto;

The Parties hereby enter into this settlement agreement and record the terms of their agreement as follows;

1. The labour dispute referred to the Council at the instance of the Employee relating to his dismissal is hereby resolved;
2. The Employer agrees to reinstate the employee from the date of his dismissal on the same terms and conditions prevailing immediately prior to his dismissal;
3. The Employee hereby accepts the reinstatement and undertakes to report for duty on the 23rd November 2016.

(Handwritten signatures and initials)

4. The Employer undertakes to conduct a proper hand over when the Employee reports for duty and further to re-orientate the Employee and appraise him of developments regarding events related to his office during his period of absence.
5. Any other matter of mutual interest between the Parties and not specifically addressed herein shall progressively be resolved by further engagement and negotiations between them through invoking the internal personnel process as they may be relevant and applicable
6. This settlement agreement shall be made an order of the Bargaining Council under authority of the official duly appointed to preside over this matter.
7. This shall constitute the entire agreement between the Parties. No variation of any of the terms hereof shall be valid unless reduced to writing and signed by each of the Parties or their lawful representatives.

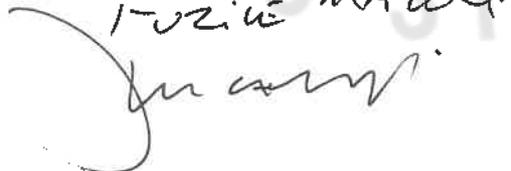
THUS DONE AT PRETORIA ON THIS THE 22ND DAY OF NOVEMBER 2016



Employee



Employer Representative

BEFORE PANELISI
 Fuzie MALOMI





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MS6

GAS

Diepsloot Cas 390/07/2012
Glen Angus to Innocent Khuba

2015/04/29 04:50 PM

Good Day

I refer to our telephonic discussions in this matter,

I suggest that we meet early next week to address the attached (Tuesday 05/05/2015) if your schedule allows as such

Your input and guidance from your in depth knowledge of the matter is of utmost importance and highly valued and appreciated

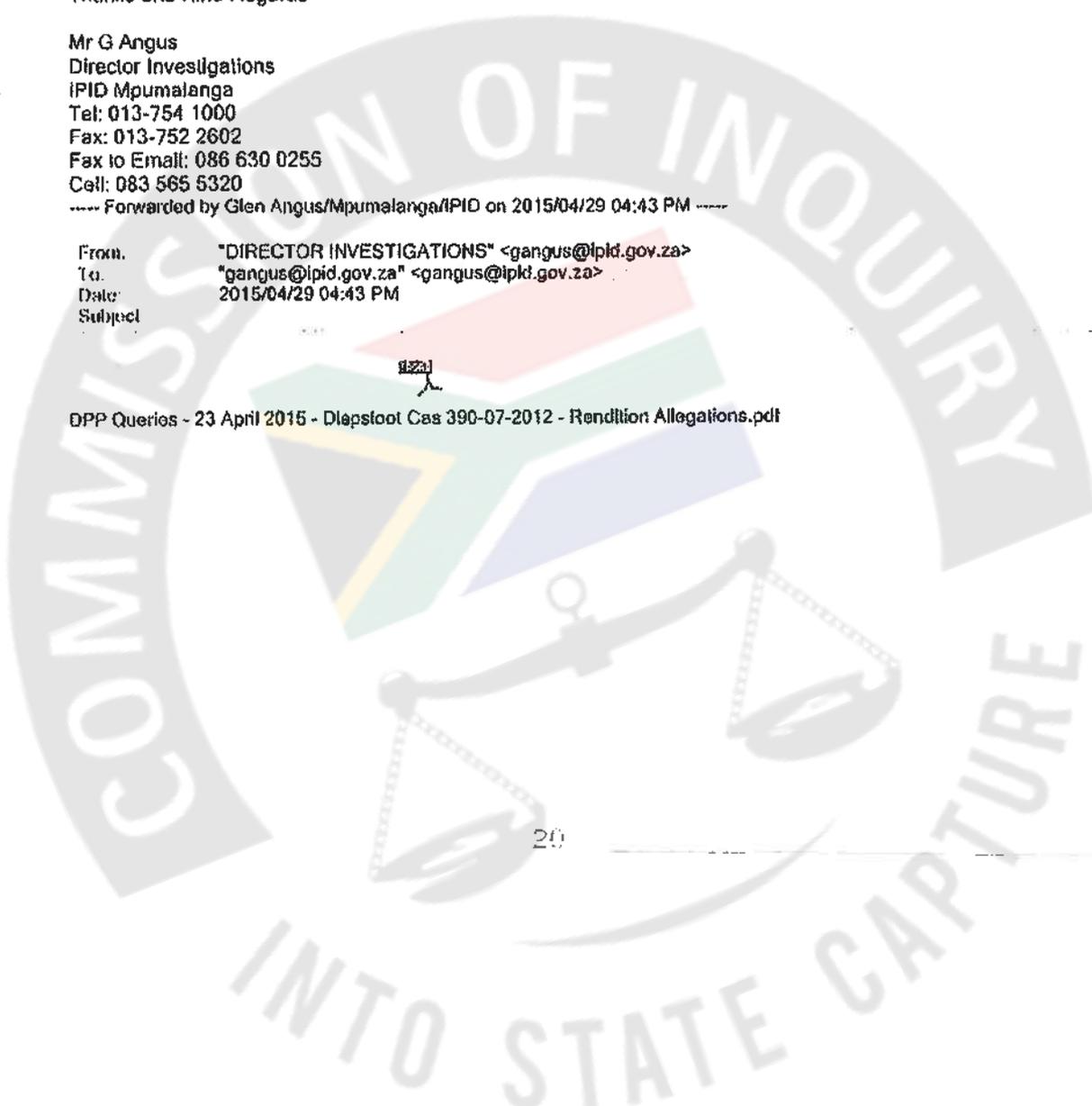
Thanks and Kind Regards

Mr G Angus
Director Investigations
IPID Mpumalanga
Tel: 013-754 1000
Fax: 013-752 2602
Fax to Email: 086 630 0255
Cell: 083 565 5320

----- Forwarded by Glen Angus/Mpumalanga/IPID on 2015/04/29 04:43 PM -----

From: "DIRECTOR INVESTIGATIONS" <gangu@ipid.gov.za>
To: "gangu@ipid.gov.za" <gangu@ipid.gov.za>
Date: 2015/04/29 04:43 PM
Subject:

DPP Queries - 23 April 2015 - Diepsloot Cas 390-07-2012 - Rendition Allegations.pdf



to
Lcv

GAZ

**Director of Public Prosecutions
Gauteng Local Division**



NATIONAL PROSECUTING AUTHORITY

Reference Number: 9/2/12(2014/236)
Enquiries: Ms C Riba
Telephone number: (011) 220-4000

23 April 2015

**DPP Gauteng
Local Division
Regional Office**

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The Acting Executive Director
Independent Police Investigative Directorate
Private Bag X941
Pretoria
0001

BY HAND: Mr G Angus

RE: RENDITION CASES: DIEPSLOOT CAS 390/7/2012

1. The following further investigation must be done before a decision can be taken:

- I. An expert analysis of the cell-phone data in respect of Major General Sibiyi in relation to the allegation by witnesses that Maj Gen Sibiyi was at the scene of the crime where the victims were assaulted and in Fourways where a meeting was held on 5 November 2010 about the operation. The same applies for the operation conducted on 23 November 2010 as well as the "braai" at Silverton on 26 January 2011.
- II. A transcript of SMS messages sent or received by Lt Col Maluleke, Maj Gen Lebeya and Lt General Dramat during the period of the operations must be obtained.
- III. The cell phone records of Col M Polelo for 26 January 2011 must be obtained and his location must be established during the alleged braai. The position or location of Lt General Dramat must also be established. See in this regard A.68; A.69; and A.79.

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

Mac

GAZ

- IV. Chain statements regarding the success reports sent to Lt General Dramal to establish proof of receipt and knowledge of the content thereof must be obtained.
- V. The annexures referred to in Willem Carel Stephanus Vorster, A50, must be attached to his statements.
- VI. Death certificates of all suspects allegedly killed by the police and a copy of the transcript of the court proceedings in Zimbabwe against Gudl Dube who was allegedly sentenced to life imprisonment.
- VII. The relevant Department of Home Affairs directive (that is, the so-called amnesty document) as it applied to Zimbabwean nationals during the period of arrest and deportation of the suspects by the police.
- VIII. The Integrity Management Unit (IMU) file compiled by DAW/O Ntlhamu (A.80).
- IX. A sworn statement from Interpol about whether or not they were approached or consulted by the SAPS regarding the suspects being wanted for any crime.
- X. A statement from the prosecutor who dealt with the Atteridgeville cases against the accused regarding their withdrawal. According to A.70 and A.72 Lt Col Maluleke had a discussion with the prosecutor. The relevant docket must also be obtained.
- XI. It must be established which car/s Maj Gen Sibiya used in his official capacity during the relevant times. Description and colour is required.
- XII. A copy must be obtained of all the photos in possession of Emmanuel D Mkasibe (A.68).
- XIII. According to W/O P Jawuke (A.5) as well as D Campbell (A.6) a case docket was opened against them for attempted murder or wanting to kill Maj Gen Sibiya. This was the result of their refusal to take part in the harassment and/or disarming of Col Ximba. The
- Guided by the Constitution, we in the National Prosecuting Authority ensure justice for the victims of crime by prosecuting without fear, favour or prejudice and by working with our partners and the public to solve and prevent crime.

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CAS number of this docket must be obtained and the docket must be submitted to this office for perusal. The I/O in this matter was Lt Col Lebeya who must also submit an affidavit in this regard. See A.6.

- 2. The matter must be regarded as urgent and the investigation must be completed on or before 12 May 2015.
- 3. The police docket CAS 390/7/2012 is attached, but must be returned to this office together with the required information.

GL
 GL ROBERTS SC
 DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS
 GAUTENG LOCAL DIVISION, JOHANNESBURG
 TF



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

to law



REFER TO
EXHIBIT Y 6

**SUPPLEMENTARY AFFIDAVIT
& ANNEXURES**

OF

**HUMBULANI INNOCENT
KHUBA**

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

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

1

**ANSWERING STATEMENT TO THE SUPPLEMENTARY STATEMENT DEPOSED
TO BY MR INNOCENT KHUBA**

I the undersigned,

SANDILE JULY

do hereby state under oath 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. Although I may not have personal knowledge of what I say in certain instances, such statements are corroborated by objective evidence from the documents which are not and could not be disputed, thus making it unnecessary to call anybody to corroborate them.

FACTUAL BACKGROUND

- 3 During 2011/12 Mr Khuba was appointed by the then Executive Director of IPID, Mr François Beukman, as an investigator. The IPID Act came into operation on 1 April 2012. As such, Mr Khuba's appointment to investigate was made before

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the IPID Act came into operation. Although this is the case Mr Khuba nonetheless conducted his investigation pursuant to the provisions of section 28(1)(f) and (h) of the IPID Act. Mr Khuba states this fact at paragraph 3 page 25 of his report dated 22 January 2014. At the time Mr Khuba was appointed to investigate the Rendition case, his substantive position was that of Director: Investigations. Mr Sesoko, on the other hand, also occupied the position of Director: Investigations at the time of Mr Khuba's appointment. It is important to emphasise that Mr Sesoko was under no circumstances or at any stage in his IPID career, Mr Khuba's boss or supervisor.

4 Once appointed to investigate the Rendition case, Mr Khuba assembled a team of investigators from Limpopo to assist him with the investigation. In conducting his investigation, Mr Khuba was assisted by Mr Sesoko, Col. Moukangwe and Advocates Anthony Mosing ("**Adv. Mosing**") and Billy Moeletsi ("**Adv. Moelets**").

5 Two reports came out of the IPID investigation, both signed by Mr Khuba and submitted to the NPA for a prosecutorial decision. The first report is dated 22 January 2014, signed and submitted by Mr Khuba to the NPA on or about 24 January 2014 for a prosecutorial decision. The second report is dated 18 March 2014 signed by Messrs Khuba, Sesoko, and McBride. This report was submitted to the NPA on or about April 2014. The first report, amongst others, recommended criminal prosecution against Generals Anwa Dramat ("**Dramat**") and Shadrack Sibiya ("**Sibiya**"). The second report did not recommend criminal prosecution against Generals Dramat and Sibiya.

6 The Minister of Police at the time, Mr Nathi Nhleko ("*the Minister*") was faced with glaring discrepancies between the reports emanating from the same investigation and suspected serious tampering with the reports. Consequently, on 23 February 2015, the Minister appointed Werksmans Attorneys to conduct an investigation into the reports submitted by IPID in relation to the Rendition. The Minister prescribed the following terms of reference for the investigation:

"[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-General Dramat; Major-General Sibiva; and any other officers mentioned in the original report;

[5.4] the circumstances under which the report and the docket was handed to the NPA and what happened to the docket whilst in the NPA possession;

[6]...

JS

[7] I require your report within two weeks from the date of your appointment, an extension may however be granted at your request. [Emphasis added]

4

- 7 I attach marked "SJ1" a copy of the letter of instruction.
- 8 I was the lead lawyer in the investigation. Soon after my appointment as lead investigator, I assembled a team of attorneys and a candidate attorney to assist in conducting the investigation. The investigation team was made up of the following professionals: Mr Sandile Tom (admitted attorney and associate at the time of the investigation), Ms Kerry Badal (admitted attorney and associate at the time of the investigation) and Mr Kwazi Buthelezi who was a candidate attorney, and myself. I supervised the finalisation of the report that was subsequently submitted to the Minister. To ensure that the investigation was sound in analysis and free from bias, I enlisted the services of my fellow director at Werksmans, Mr Bradley Workman-Davies. His role was to independently assess whether the conclusions reached by the investigation team were rationally connected to the evidence.
- 9 The terms of reference are self-explanatory and I understood my mandate to be to independently assess the two IPID reports dated 22 January 2014 and 24 March 2014, respectively. In particular, I was required to consider why the authors of these reports came to different conclusions based on the same information and/or facts. In so doing, I was required to investigate, based on the available information, whether there was any misconduct or offence, and

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whether there was a *prima facie* criminal case against the Generals mentioned in paragraph 5.3 of the terms of reference.

5

10 Interviews were held with Mr Khuba on the following dates; 27 March 2015, 13 April 2015 and 23 April 2015. Werksmans completed the investigation on 23 April and submitted a report to the Minister on 24 April 2015.

11 Following the recommendations made by Werksmans in its report, Mr Khuba was placed on precautionary suspension on 21 May 2015. He was issued with a charge sheet on 6 July 2015. Similar action was taken against Mr Sesoko. Messrs Khuba and Sesoko were charged for the same misconduct by their employer, as employee one and two respectively. I attach hereto as annexure "SJ2" a copy of the charge sheet. In terms of this charge sheet Mr Khuba was charged as follows:

"Charge 1

1. You, Mr Khuba ("first employee") are currently the Provincial Head of IPID in Limpopo. During 2012, you were appointed as the Lead Investigator in the matter relating to the illegal rendition of Zimbabwean nationals by certain members of the Directorate for Priority Crimes Investigation ("DPCI") which occurred during November 2010 and January 2011. The investigation was concluded on or about 2014 and you submitted a final investigation report to the National Prosecuting Authority ("NPA") for a decision. In submitting the said report to the National Prosecuting Authority, you were accompanied among others by Mathews Sesoko, Head of Investigations at IPID, who provided legal

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assistance to you and your team during the investigation. In submitting your January 2014 report to the NPA, you met with Adv. Anthony Mosing of the NPA and handed a final report to him for the NPA to take a decision to prosecute.

6

2. Notwithstanding that you had submitted the final report to the NPA, which the NPA subsequently referred to the Director of Public Prosecutions, South Gauteng (Adv. Chauke) you, accompanied by Angus approached the DPP South Gauteng's office, and collected the docket and the report from the DPP, South Gauteng.

3. You, Sesoko and McBride altered the report which had been handed over to the NPA, and deleted information incriminating Lieutenant General Anwa Dramat (Dramat), the former National Head of DPCI, and/or Sibiya, the Provincial Head of DPCI Gauteng, from the report in order to reach a conclusion that Dramat and Sibiya had been exonerated by IPID when you knew or ought to have known that the final IPID report of January 2014 recommended that Dramat and Sibiya be criminally charged.

4. By altering the report of January 2014, you and Sesoko have made yourself guilty of dishonesty, and defeating the ends of justice."

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7. If the enquiry holds that you are guilty of misconduct, you may present any relevant circumstances in determining the disciplinary sanction. [sic]

[Emphasis added]

- 12 The disciplinary hearing commenced on Friday 17 July 2015. The content of the charge sheet was taken from the findings expressed in the Werksmans report and as such, the disciplinary hearing provided Mr Khuba with a golden opportunity to rebut the content of the Werksmans report (transcripts included) and provide his side of the story.
- 13 At his disciplinary inquiry Mr Khuba was legally represented by a firm of attorneys whose name I cannot recall. The IPID was represented by Hogan Lovells Incorporated and the inquiry was chaired by an independent chairperson, Adv. Patrick Ngutshana from the Johannesburg Society of Advocates.
- 14 Prior to the conclusion of the disciplinary hearing, the details around which I will fully discuss later in this affidavit, on 19 June 2015 Mr Khuba deposed to an affidavit in support of an application brought by Mr McBride in the High Court (Gauteng Provincial Division, Pretoria), under case no. 6588/15. In this affidavit his version is the following:

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"[18] 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 investigation. I always intended to supplement the docket with the outstanding evidence and to send an updated report when my investigation was properly completed."

8

[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 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 credible evidence that would withstand scrutiny in court. [Emphasis added]

15 Mr Khuba does not specifically state what the nature of his incomplete investigation was and the Commission is not informed as to what exactly Mr Khuba had to further investigate. The Commission is not informed of this because there is nothing outside of his warning statement that can be demonstrated to support Mr Khuba's claim that he indeed continued with the investigation.

16 Having said what he said in the supporting affidavit referred to above, on 23 September 2015, Mr Khuba reached a settlement agreement with the IPID in terms which the following was agreed:

SA
SS

"INTRODUCTION**9**

1. The First Employee, Innocent Khuba ("Khuba"), was charged with dishonesty and defeating the ends of justice as more fully set out in the charges sheet attached hereto marked "A".

2. Pursuant to the institution of disciplinary action against Mr Khuba, the parties have reached agreement on 23 September 2015.

3. The Parties wish to record in writing the terms of the agreement, which terms they record below.

TERMS OF AGREEMENT

4. Mr Khuba being legally represented, freely and voluntarily pleads guilty to the charges proffered against him as set out in annexure A.

5. The Employer will impose a sanction of a final written warning valid for 6 months against Mr Khuba.

6. Mr Khuba's suspension will be uplifted and he will report for duty on Monday, 28 September 2015..."

- 17 In pleading guilty and signing the settlement agreement, Mr Khuba recanted and contradicted what he stated in his supporting affidavit to Mr McBride's application. He also admitted to all the elements of the charge put to him. To summarise, Mr Khuba admitted that-

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- 17.1 the report (first report) he submitted to the NPA on 22 January 2014 was a final report of the IPID;
- 17.2 the report was submitted to the NPA for the latter body to take a prosecutorial decision;
- 17.3 notwithstanding that he had submitted the first report as a final report, Mr Khuba accompanied by Mr Glen Angus, approached the DPP South Gauteng's office, and collected the docket and the report from the DPP, South Gauteng;
- 17.4 he, Messrs Sesoko and McBride altered the report which had been handed over to the NPA by deleting information incriminating Lieutenant General Anwa Dramat (Dramat); and
- 17.5 by altering the first report through deletion he (Mr Khuba) and Sesoko have made themselves guilty of dishonesty, and defeating the ends of justice.
- 18 In light of the above, Mr Khuba admitted that he together with Messrs McBride and Sesoko, were guilty of the acts of misconduct that Werksmans had accused them of in the Werksmans report. This Mr Khuba did so freely, voluntary and with legal advice from his legal representative.



19 Whether a warning was commensurate to the nature of the transgression admitted to was appropriate is something that I cannot speak to as it is within the employer's prerogative to determine what an appropriate sanction would be in such circumstances. In any event, the nature of settlement agreements is that parties move away from their original positions and adopt a new and sometimes more relaxed or in this instance, lenient position to that which they held prior.

20 After pleading guilty to the charges proffered against him in the disciplinary enquiry and when confronted by Mr Sesoko, Mr Khuba on 25 September 2015 deposed to an affidavit in which he sought to explain the circumstances of his guilty plea. I attach a copy of this affidavit as annexure "SJ3". In this affidavit Mr Khuba contradicted the contents of his guilty plea and subsequent settlement agreement referred to above. He stated the following:

"[15] I wish to state categorically except for what I stated above that neither McBride nor Sesoko instructed me to either make any specific changes in the report or to exonerate any person in the report.

[16] During January or February 2015 I was phoned by Mr Sesoko inquiring whether I have knowledge of the signed report dated January 2014 (The January Report).

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[17] I could not immediately recall this specific report and only did so when two pages of the report were sent to our spokesperson. One Mr Dlamini, a Journalist by the name Mr Mzilikazi wa Africa.

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[18] It was only at this time that remembered that it is the report I had previously sent to Advocate Mosing.

[19] Hitherto Mr Sesoko and McBride were not aware of this fact or existence of the January report. Both gentlemen became aware of the unfolding events when an inquiry was made by the journalist aforesaid.

[20] In respect of my plea to the charges that I was facing I do not in any way given the manner in which the charge/s are phrased implicate or intend to implicate or in any manner suggest that Mr Sesoko is also guilty of the charges/s that he is facing.

[21] In fact in my plea bargain with my employer, it was also agreed though same is not included as a term in the settlement agreement that I am free to testify for Mr Sesoko should he find it necessary to call me as a witness." [sic]

- 21 In this affidavit Mr Khuba went against the essence of his guilty plea and sought to shield Mr Sesoko from being found guilty of the same offence he (Mr Khuba) pled guilty to. Mr Khuba, who was under legal representation, signed the settlement agreement voluntarily and without coercion from IPID. He knew what

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the nature and wording of the charge he had pled guilty to was and that the charge similarly accused Mr Sesoko of serious misconduct.

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22 Mr Khuba was confronted by Mr Kgamanyane about his subsequent conduct of deposing to the aforesaid affidavit in support of Mr Sesoko. The conduct was viewed as a serious violation of the trust relationship because although Mr Khuba received a lenient sanction for misconduct, he deposed to an affidavit supporting an employee who is charged with the same misconduct he pled guilty to. The issue was not only limited to supporting Mr Sesoko in his case but included saying that the latter did not commit the misconduct he had been charged with.

23 He was given an opportunity to make written representations as to why he should not be dismissed in light of the perpetuation of his dishonest conduct. He was subsequently summarily dismissed on the grounds of the employment relationship having irreparably broken down, after his written representations were considered.

24 What is evident in Mr Khuba's affidavit is that he never sought to distance himself from the conduct he pled guilty to in his settlement agreement. In other words, whatever he admitted to and stated therein still stands to date.

25 Subsequent to his dismissal, Mr Khuba referred an unfair dismissal dispute to the General Public Service Sector Bargaining Council ("GPSSBC"). His referral to the GPSSBC was dismissed and his dismissal was confirmed to have



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been procedurally and substantively fair. I attach as annexure "SJ4" a copy of the arbitration award. In his analysis of evidence the arbitrator dealt with the affidavit Mr Khuba deposed to at the insistence of Mr Sesoko and states as follows:

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"10. By pleading guilty to the said allegation one can safely conclude that indeed the applicant committed the said transgression. And the applicant in deposing to an affidavit contradicted what he had already consented to. At paragraph 19 of his affidavit: The applicant stated that before the enquiry by a journalist, Sesoko and McBride were not aware of the existence of the January report whereas he had already pleaded guilty to the fact that he was accompanied by, amongst others, Sesoko, when submitting the said January report.

11. Another discrepancy appears on paragraph 8 of the applicant's affidavit, wherein he alleged that Sesoko was not present or aware that he had submitted the report to Adv. Mosing, whereas he had already pleaded guilty to the allegations that he was accompanied by Sesoko when submitting the said report to Adv Mosing...

12. On the penultimate contradiction, the applicant stated that at the time of submitting the January report, Adv. Mosing was aware of the outstanding investigations, yet he pleaded guilty to the allegations that the investigations were concluded in January and that he and Sesoko submitted a final report to the NPA for a final decision to prosecute.

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13. The applicant further at paragraph 15 of his affidavit, stated that neither McBride nor Sesoko instructed him to either make any specific changes in the report or to exonerate any person in the report. Contradictorily the applicant pleaded guilty that himself, Sesoko and McBride altered the report that was handed over to the NPA and deleted information incriminating Dramat and Sibiva...

19. As the Provincial Head the applicant ought to have known that he owed the respondent a duty of ultimate good faith (bona fides) in all his dealings with the respondent and its stakeholders. Under the circumstances, I find that no any other degree of remorse shown by the applicant or personal circumstances can manage to outweigh these factors. In the premises, I find that the sanction of dismissal herein was appropriate.

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 gives the respondent a leeway to dispense with the formalistic processes of a disciplinary hearing...

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26. The destruction of trust in an employment relationship renders the continuation of employment intolerable. In the circumstances I cannot interfere with the sanction imposed by the respondent, as I do not consider it inappropriate... [Emphasis added]

16

26 It is apparent from the arbitration award that Mr Khuba never sought to cancel what had been agreed to with the IPID in terms of the settlement agreement. This is because he knew that the facts contained in his guilty plea were true. All he sought to do was to insist on not being disciplined for perpetuating dishonesty in deposing to the affidavit supporting Mr Sesoko.

27 Mr Khuba subsequently launched a review application at the Labour Court under case number JR1057/2016, wherein he challenged the arbitration award on several grounds. The merits of the review application were never determined by the Labour Court, instead Mr Khuba was retrospectively re-instated to IPID by Mr McBride upon his return from suspension. I deal with the impropriety of this re-instatement herein below.

Was Mr Khuba's re-instatement appropriate?

28 The employment conditions of employees at the IPID are primarily regulated by the Public Service Act of 1994 read together with the Regulations to the Public Service Act prescribed by the Minister of Public Service and Administration.

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- 29 Regulation B.3 deals with the circumstances under which former employees may be re-appointed into the public service and provides: **17**

"B.3 Re-appointment of former employees

B.3.1 An executing authority may not re-appoint a former employee where-

(a) the former employee left the public service earlier on the condition that she or he would not accept or seek re-appointment;

(b) the original grounds for termination of service militate against re-appointment; or

(c) the former employee left the public service due to ill health and cannot provide recent and conclusive evidence of recovery."

- 30 The pertinent question before Mr McBride when he made the decision to reinstate Mr Khuba retrospectively with no loss of benefits, was whether the original grounds upon which employment was terminated militated against or permitted Mr Khuba's re-appointment? The answer to this a question is that the original grounds of termination militated against reinstatement.

- 31 Mr Khuba gave false evidence under oath on the two occasions namely, in his confirmatory affidavit in support of Mr McBride and in his affidavit in support of Mr Sesoko. Mr McBride ought to have taken Mr Khuba's conduct in giving false evidence under oath into account when taking his decision to re-appoint

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Mr Khuba. This he clearly did not and could not have done given that Mr McBride himself was central in Mr Khuba giving false evidence under oath. The authority for this proposition is found in **Maepa v CCMA and Others** [2008] 8 BLLR 723 (LAC) where the court said:

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"[19] In my view, the same principle applies to this case. The appellant gave false evidence under oath. Reinstatement was going to mean that he was reinstated to a position in which he had to expect others to respect an oath when he himself had been found to have shown no respect for the same oath. In my view, it was going to be reasonably impracticable for the first respondent to reinstate the appellant to such a position. On what basis could he expect parties and witnesses giving evidence before him to show respect for the oath they would take before giving evidence when he had shown no respect for such oath himself? In my view that state of affairs would be such that the appellant could not perform his duties effectively and when an employee cannot perform his duties effectively, it seems to me that it is reasonably impracticable within the meaning of that phrase in sec 193(2)(c) of the Act to order the employer to reinstate the employee. And when it is reasonably impracticable to order the employer to reinstate an employee, an order of reinstatement is incompetent. Once the commissioner had become satisfied, as he obviously became at some stage, that the appellant had given false evidence under oath, he ought to have considered what the effect thereof, if any, was in regard to relief in the light of the type of institution that the first respondent is, the position which the appellant

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held in the first respondent and the appellant's functions or duties in the position in which he was employed.

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[20] The fact that the appellant gave false evidence under oath in the arbitration means that he showed no respect for the oath to speak the truth which he took in the arbitration. His breach of that oath and the implied finding of the commissioner that he gave false evidence under oath would have left him without any integrity in the eyes of the public who know his position as a convening senior commissioner in the first respondent. How would he, for example, administer an oath to a party to a dispute or to a witness and expect such party or witness to respect that oath when he himself has been found not to have respected that oath? The party to the dispute or the witness to whom the appellant would be administering the oath may well be aware that the appellant was previously found to have given false evidence under oath in an arbitration. In a particular case his position as a commissioner may well require him to show his disapproval of the conduct of a witness who may give false evidence before him under oath. How would he deal with that situation when he himself has been found wanting in that regard? If he refrained from dealing with it, he could be falling in his duties. If he showed his disapproval, his disapproval would carry no weight with those who use the services of the first respondent.

[22] Without integrity the appellant simply could not carry out his functions or perform his duties as a convening senior commissioner or

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even as an ordinary commissioner effectively. He could not lead the rest of the commissioners in the Eastern Cape Province whom he was required to lead in his position as a convening senior commissioner before his dismissal. The integrity of the first respondent as an institution would be intolerably compromised. In those circumstances I am of the view that this is a case which falls under sec 193(2)(c) of the Act and that, consequently, it was not competent for the commissioner to order the first respondent reinstate the appellant. In my view the commissioner's failure to take into account the appellant's conduct in giving false evidence under oath in the arbitration when he considered the issue of relief constituted a gross irregularity which justified the setting aside of the order of reinstatement which the commissioner had made."

20

31.1 A copy of this judgment is attached hereto as annexure "SJ5".

32 I cannot put better what the Labour Appeal Court has done in the case referred to above. Mr Khuba is an officer of the court and this Rendition investigation has revealed that he actually administers an oath in the course of conducting his investigations. Mr Khuba is a senior employee of the IPID whose integrity must be beyond reproach for the nature of cases he investigates. The law and society expects no more than integrity and honesty on the part of Mr Khuba in carrying his duties as Chief Director and Provincial Head of the IPID. Mr Khuba breached his oath of office by giving false evidence under oath on two occasions. It was unreasonable and highly irregular of Mr McBride to reinstate

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Mr Khuba on the face of a scathing arbitration award which had not been set aside on review. **21**

33 In irregularly reinstating Mr Khuba, Mr McBride committed government resources in circumstances where this was not warranted. The IPID is a public entity listed in schedule 3 of the Public Finance Management Act of 1999 ("PFMA"). In terms of section 7(1)(b) it is the responsibility of the Executive Director to ensure that the financial affairs of the Directorate comply with the PFMA.

34 The arbitration award was a product of costly litigation for the IPID as the matter has its genesis from the disciplinary hearing settled by the IPID and Mr Khuba and the latter's unsuccessful urgent application before the Labour Court under case no. J2031/15. I attach hereto a copy of the application as annexure "SJ6". IPID having successfully defended its decision to dismiss Mr Khuba for gross dishonesty, had no justification to conclude a settlement agreement with the very same employee who has proven to be dishonest.

35 All the resources which had been expended in defending the fair dismissal of Mr Khuba had gone to waste and instead he was rewarded for shielding Messrs McBride and Sesoko with a retrospective reinstatement. The second settlement agreement was an abuse of IPID resources for Mr McBride's selfish ends.

36 Notwithstanding my misgivings on the propriety or otherwise of the second settlement agreement, in the said agreement Mr Khuba and IPID confirm that

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validity of the plea bargain Mr Khuba took which resulted in the conclusion of the first settlement agreement in the following clauses:

22

"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, that paragraph 10 of the 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 this 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 sanction imposed by the Chairperson concluded the disciplinary enquiry relating to the charges proffered by the employer against Khuba on 23 September 2015 in accordance with the collective agreement and the DPSA Ministerial Directive regulating misconduct and enquiries against SMS members."

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- 37 This settlement agreement is attached to Mr Khuba's supplementary affidavit as annexure HIKW14. **23**
- 38 It is apparent from the above that regardless of the manner and the circumstances under which Mr Khuba returned to the IPID, the first settlement agreement is to date binding upon him and the IPID.
- 39 When regard is had to the events referred to above especially Mr Khuba's material admissions, what Mr Khuba has said in his statements and his oral evidence before the Commission cannot be true. I would go as far as saying that Mr Khuba is liar.
- 40 Mr Khuba's dishonest conduct explained above, especially his affidavit in support of Mr Sesoko wherein he claims the latter was not aware of the existence of the first report, is contradicted by Mr Sesoko himself in his supplementary affidavit before the Commission. At page 4 paragraph 19 of his supplementary affidavit, Mr Sesoko states as follows:

"19. Ad para 3.2.1.9

Khuba had already sent me a report in January to facilitate handing over to the Secretary of Police. I do not recall giving McBride any report prior to the final report submitted to him for consideration and signature, I also do not recall Khuba asking me to pass a report to McBride."

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41 This is an admission by Mr Sesoko that he received the first report, he was aware of its contents, and was to facilitate a hand over to the Secretary of Police. This is consistent with what Mr Khuba had stated in his guilty plea that Mr Sesoko was aware of the first report. **24**

42 This further exposes the patent falsehoods and contradictions contained in Mr Khuba's affidavit deposed to support Mr Sesoko.

43 In the paragraphs below I further deal with other unnecessary falsehoods that Mr Khuba gave under oath in different proceedings.

The contradictory versions that Mr Khuba has given regarding his appointment to investigate the Rendition.

44 During the interview with Werksmans on 26 March 2015, Mr Khuba stated that the Rendition investigation was brought to him by Mr Sesoko who indicated to him that he had to investigate the case. A copy of the transcript is attached hereto as annexure "SJ7".¹

45 At page 25 of both the first and second report, Mr Khuba states:

¹ 27 March 2015 page 2 line 11 to 17.

"On 23 October 2012 he received a case docket from Mr Sesoko and appointment letter to conduct investigations in all cases of alleged assault by Major General Sibiya."

25

46 In his supporting affidavit before the High Court (6588/15) in dealing with his appointment to conduct the investigation he stated the following:

"[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..."

47 In his affidavit deposed to in support of Mr Sesoko referred to above, Mr Khuba states:

"I was appointed on or about 2012 as the lead investigator in the rendition matter by Ms K Mbeki (Ms Mbeki)..."

48 I am advised by Ms Mbeki that Mr Khuba was appointed by Mr Francois Beukman in 2011 and not by Mr Sesoko or herself.

49 Finally, Mr Khuba, McBride and Sesoko have given the Commission the impression that Mr Sesoko was at some stage Mr Khuba's case supervisor or actual supervisor at IPID. This is false and Mr Khuba has not taken it upon himself to correct the false impression that has been created. During interviews

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held with Mr Khuba on 26 March 2015 and 13 April 2015 attached hereto as annexure "SJ7" and "SJ8" respectively, Mr Khuba stated as follows:

26

"I was worried, and I then phoned ADVOCATE MOSING, 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."² [SJ7 page 22 lines 10 to 16]

50 Mr Khuba further emphasized that Mr Sesoko was not his supervisor during his interview with Werksmans on 13 April 2015 when he said the following:

"I want to tell you that a report that has a recommendation can be regarded as a final report on the basis that there is nothing else you need to do. You need to understand the procedure which I outlined previously, to say when you compile a report with recommendations it has to be assessed by the senior person, who signs it. I was in the predicament where firstly the Acting Head - SESOKO was a senior, but he was still at the same rank as I was. He was acting in that position, but I was also acting, so there was not much difference. We were all Acting Chief Directors anyway."³ [SJ8 page 12 line 1 to 14]

51 During the interview held with Mr Khuba on 23 April 2015 Mr Khuba informed Werksmans that the meeting held on 6 March 2014 in the presence of Mr Glen

² SJ7 page 22 lines 10 to 16.

³ SJ8 page 12 line 1 to 14.

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Angus, was all about the Rendition and not really an update about high profile matters that were being handled by IPID.

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"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." [SJ10 page 11 line 4 to 15]

52 As such the meeting in question was about the Rendition because Mr McBride had been interested in that particular case.

53 I now turn to deal with Mr Khuba's affidavit ad seriatim herein below.

Ad paragraph 1 and 2

54 Save to note Mr Khuba's position at the IPID, I deny that the facts contained in his supplementary affidavit are true and correct.

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Ad paragraph 4**28**

55 I deny that the Werksmans report does not reflect the total facts uncovered during the investigation.

56 I further deny that Werksmans report reflects an unbalanced assessment of the facts 'which seeks to present a specific picture which is not devoid of the truth'.

57 It is correct that Werksmans recommended both disciplinary and criminal proceedings be pursued against Mr Khuba. Both the disciplinary and criminal proceedings presented Mr Khuba an opportunity to rebut the allegations made against him.

58 As I have indicated above, Mr Khuba pled guilty to the allegations levelled against him in his disciplinary hearing. The allegations he pled guilty to stem from the recommendations expressed in the Werksmans report. On this basis, I fail to understand the basis upon which Mr Khuba contends the Werksmans report was unbalanced and devoid of the truth. The Werksmans report obviously summarises and analyses the evidence adduced by an individual who participated in the investigation.

Ad paragraph 5

59 I deny that anybody in the Werksmans investigation team including myself, made an assurance to the effect that the information gathered in the investigation will not be used against Mr Khuba. I invite Mr Khuba to point the Commission to the instance (in the transcripts or audio records) where such



assurance was given to him. During the interview with Mr Khuba on 23 April 2015 which is attached hereto as annexure "SJ9", I indicated to Mr Khuba that in the absence of an indication regarding who effected the deletions in the first report, I would be forced to say the three of them did. Mr Khuba never indicated that I could not use the information gathered during the interviews against him.

29

"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 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 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.

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 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." [SJ9 page 19 line 7 to page 20 line

4]

60 Importantly and having been provided with the terms of reference (as explained in my answering affidavit to Mr McBride's supplementary affidavit) at no stage

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did Mr Khuba indicate to me that I could not 'say that it's the three of them who deleted the information'.

30

61 This conduct on the part of Mr Khuba (in other words claiming that I assured him that the information gathered in the investigation will not be used against him) is concerning and simply false as I never gave him such an assurance.

62 The fact that the report was produced the next day has no effect on the recommendations expressed therein especially in relation to Mr Khuba. There were five professionals working on the report and evidence of other witnesses including that of Mr Khuba had been analysed by the time he was interviewed for the third time. The purpose of the last interview was to afford Mr Khuba an opportunity to just tell me the truth about what really transpired. On the one hand I had difficulties with his account of events but a part of me and my team felt that he was capable to telling us the truth. But he did not.

63 Mr Khuba agreed with Werksmans in his disciplinary hearing and subsequent proceedings that he was guilty of dishonesty.

Ad paragraph 6

64 The content of this paragraph is denied.

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Ad paragraph 7**31**

65 Save to admit that an interview was held with Mr Khuba on 26 March 2015, I have no knowledge of who gave him the transcript of the interview. I assume that he received it from Adams and Adams.

Ad paragraph 8

66 The contents of this paragraph are denied.

67 I deny that I ever said in my affidavit that the interview held with Mr Khuba on 26 March 2015 was not recorded. Nowhere in the said affidavit do I say that the interview in question was not recorded. I put Mr Khuba to the proof of this untruthful claim.

68 It is apparent from my affidavit referred to by Mr Khuba that I provided all the transcripts that were in my possession at the time including typed out notes of the interview held with Mr Khuba. The audio recordings of all interviews with the exception of Mr Sesoko's interview, had always been available. Mr Khuba could have requested the audio recording if he so wished.

Ad paragraph 9 and 10

69 I deny that I ever gave Mr Khuba an assurance that the information gathered in the interviews would not be used against him.

70 I further deny that any conversation between Werksmans and Mr Khuba was deleted or removed from the transcript. Such a claim is false. What I recall is


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that certain discussions regarding Mr Khuba's view of the suitability or otherwise of Mr McBride for the position of Executive Director were held off record all at his instance. During those off the record discussions Mr Khuba also told of how he was scared of Mr McBride given the latter's struggle credentials. Mr Khuba further informed me of how he was bullied by Mr McBride in relation to his investigation on the Rendition. The assertion that Mr Khuba made was that Mr McBride's interest was on the Rendition and nothing else. As such, Mr Khuba was under pressure from Mr McBride regarding his (Khuba's) investigation of the Rendition which led Khuba to have sleepless nights. The only reason why such discussions are not in any of the transcripts is because they were off record discussions. Indeed Mr Khuba was assured that those discussions will never be used against him and that assurance was kept.

71 Nowhere in the Werksmans report do I refer to those discussions. I am reluctantly revealing some details about the discussion because Mr Khuba unfairly attacks my integrity and that of Werksmans for no reason. As an officer of the Court, I take issue with such accusations.

Ad paragraph 11

72 I maintain what is stated in paragraph 3.1.20 of the Werksmans report and deny that what is stated therein is not true. I do so for the reasons I provide herein below.

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73 On 30 March 2015, Werksmans interviewed Col. Moukangwe. A copy of the transcript of the interview with Col. Moukangwe is attached hereto as annexure "SJ10". Regarding the status of the first report Col. Moukangwe stated:

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"MR JULY: This was the final report?"

COL. MOUKANGWE: That I know about. It was the final one.

MR JULY: You say you were involved in the actual drafting?

COL. MOUKANGWE: Yes.

MR JULY: Meaning that you ..." [At page 3 of the transcript, annexure "SJ10"]

73.1 When I further asked Col. Moukangwe whether the report submitted to the NPA was preliminary, incomplete or final, he stated:

"It was a final, because we wanted warrants there, really, that's why we took our legal person, MR SESOKO. We were worried about why it seemed they were dragging their feet in giving us warrants of arrest for these people, because the people never wanted to cooperate." [At page 5 of the transcript, annexure "SJ10"]

73.2 During an interview with Mr Khuba on 13 April 2015 he confirmed that the report dated 22 January 2014 was a final report.

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"MR KHUBA: I want to tell you that a report that has a recommendation can be regarded as a final report on the basis that there is nothing else you need to do." [At page 12 of the transcript of his interview annexure SJ8]

34

74 Mr Khuba went on to state the following:

"MR KHUBA: What you are talking about I don't think is an issue of only departmental procedure. It's an issue of common sense. that once you have made a recommendation you have done your investigation. If new evidence surfaces to rebut that, then you are able to advance: Now I have this and that and that. But you need to understand that when I was requested to submit the report, which I had already updated." [Page 13 of the transcript, annexure "SJ8"]

74.1 Mr Khuba also confirmed that he, Col. Moukangwe and Mr Sesoko attended at the NPA to request arrest warrants to be issued against the Generals. This transcript is attached as "SJ8". The relevant passages appear at pages 1 line 16 to 25 of the transcript.

"MR JULY: We are going to record this. I was saying to you that when we interviewed MR MOUKANGWE, he said you, him and SESOKO went to the NPA.

MR KHUBA: Yes.

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MR JULY: And the reason you went to the NPA is you wanted a warrant of arrest.

MR KHUBA: Yes.

MR JULY: He said it was taking time and you guys wanted to find out why.

MR KHUBA: Yes."

35

75 At no stage did Mr Khuba indicate to Werksmans that the first report was an interim report, as he claims. I deny that the first report is an interim report. Mr Khuba's recent claim is contradicted by Mr Khuba himself in the above passages of the transcripts.

76 I say it's a recent claim because it was never brought to the attention of Werksmans during the interviews with Mr Khuba. Be that as it may, I nonetheless dispose of this claim hereunder.

76.1 The IPID Standard Operating Procedure of 2013/2014 ("SOP") defines an Interim Case Investigative Report as-

"A case investigative report where the investigation has been completed but where a recommendation cannot be made to the DPP due to outstanding technical reports; however recommendations may be made to SAPS:"

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76.2 In light of this definition, the first report as submitted to the NPA by Mr Khuba cannot be an interim report as Mr Khuba submitted his recommendations to the NPA and SAPS. This was no accident. **36**

76.3 As a senior employee of the IPID is it inconceivable that Mr Khuba does not understand what an interim report means at the IPID. It's either Mr Khuba is totally ignorant of the relevant framework applicable to IPID or he makes his claims to deliberately mislead the Commission.

77 I deny that General Dramat's warning statement was outstanding when the first report was submitted to the NPA. Although this is what Mr Khuba advised Werksmans during the all the interviews held with him, the first report included General Dramat's statement at page 29 paragraph 1. General Dramat's statement was filed as attached to the first report marked A94.

78 I maintain what is stated at paragraphs 3.1.24 to 3.1.29 of the Werksmans report and the information contained therein is based on the evidence provided to Werksmans during the investigation. Col. Moukangwe during his interview with Werksmans stated the following regarding warning statements:

"COL. MOUKANGWE: In the report in which I was involved I never saw them, but in the report in which I was involved there were no warning statements of GENERAL SIBIYA, GENERAL DRAMAT or Cpt. MALULEKE. As I said before, they didn't want to give a statement. GENERAL SIBIYA wanted

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questions to be sent to him. GENERAL DRAMAT said he was still going to speak to his lawyer, and Cpt. MALULEKE refused. And they didn't speak directly with me, he's the one who spoke to me, but I was with him when he spoke to them. So the issue of how they now decided to bring statements - maybe it was just after I was a far distance from the investigation.

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MR JULY: Do you remember if you asked for those statements from them before you finalised the report...

COL. MOUKANGWE: Yes, we did.

MR JULY: ... which is dated 22 January?

COL. MOUKANGWE: We did. I even went to the office of GENERAL DRAMAT with MR KHUBA..." [At page 9 of the transcript, annexure "SJ13"]

79 Mr Khuba informed Werksmans during the interview held on 26 March 2015, that General Dramat and Sibiya did not immediately provide him with statements when he requested them. With General Dramat not responding to the questions sent to him and telling Mr Khuba and Col. Moukangwe that he wants to involve his attorney and would give a statement after discussing same with his attorneys.⁴ Mr Khuba further told us that General Sibiya requested that

⁴ SJ7.

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he sends questions to him and would thereafter respond to such questions. Capt. Maluleke on the other hand refused to give a statement and advised that he will answer all the questions in court.

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Ad paragraph 12 and 13

80 The contents of these paragraphs are denied.

81 While it is true that Mr Khuba submitted a report on 22 January 2014 and same was marked 'draft' by Adv. Mosing, what Mr Khuba is concealing from the Commission are the reasons behind marking the report as a draft. What Mr Khuba is also concealing from the Commission is the fact that the documents referred to in paragraph 7.6 of Adv. Moeletsi's affidavit is the same document which was marked 'draft' by Adv. Mosing. Furthermore, Mr Khuba is not telling the commission that the report marked 'draft' by Adv. Mosing does not have his statement as an investigator who conducted the investigation. This conduct is calculated to deceive and inhibit the Commission from understanding the true reasons why Adv. Moeletsi states what he states at paragraph 7.6 of his affidavit. I demonstrate why Adv. Moeletsi recognised the document attached to his affidavit as annexure "AM2" as a 'draft' herein below.

81.1 Annexure "AM2" is a draft because it was marked 'draft' by Adv Mosing. This report although submitted as final by Mr Khuba on 22 January 2014 has 26 pages whereas the report which was submitted approximately 2 days later has 35 pages.

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81.2 Annexure "AM2" does not have Mr Khuba's statement as an investigator whereas the first report has Mr Khuba's statement. Mr Khuba is well aware of the reasons why Adv. Mosing marked "AM2" 'draft' and he is deliberately withholding this information from the Commission with the intention to deceive.

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81.3 On 22 January 2014, Adv. Mosing advised Mr Khuba that in order to complete the investigation, it was required of him to incorporate his statement as the investigator appointed in terms of the Act, regarding how he conducted his investigation, into the report. As such, Adv. Mosing wrote the word 'draft' on the report not containing Mr Khuba's statement. Mr Khuba duly prepared a statement and incorporated it into the report. Having incorporated his statement, Mr Khuba signed the report and submitted it to the NPA on or about 24 January 2014. He did not update the report to reflect the actual date on which his report was submitted to the NPA. During the interview with Werksmans on 14 April 2015 at page 58 and line 16 to line 21 of page 59, Adv. Mosing stated the following:

"MOSING: And I know his statement is supposed to be in that thing, in the one we gave. Now I remember. That's why on this copy that I have, I wrote "draft", because it lacked his statement. Once he did that - and like I said, in not making a copy I didn't anticipate something like this happening. Because we thought in good faith KHUBA would stand by that investigation and wouldn't be made to change it. In other words the original report that he signed - although he had signed this one and I wrote "draft" on it - we said: This one is incomplete and you need to

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summarise your statement. I think maybe if you look at the docket, when was his statement commissioned? It was commissioned more or less at the same time, because it was the last thing he also did. Because he said although he had a draft of what he had done, we said: Do an investigating officer's statement, so to speak, explaining, because in this case he really needed to explain how this case unfolded, because it would help anyone reading the docket to understand what was going on. They could be easily confused, because there is a version here which we have to disprove. Now I remember. I think that's why we didn't even have this. You see, he didn't even change the date, he kept the date. It took him a day or two basically to finalise that. I was a bit worried as to that one."

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82 I attach a copy of the transcript of the interview with Adv. Mosing as annexure "SJ11". In the same interview Adv. Mosing confirmed that the first report was according to him, Adv. Moeletsi, Mr Khuba and Col. Moukangwe a final report:

"MOSING: It was just to make sure: Finish your investigation so that there is nothing extra to go and get. So by the time he then wrote the final report, which we then had agreed in terms of who would be charged, and so on - as I said, where we had agreed, and we mentioned names as well, as was mentioned in this report dated 22 January 2014. Based on this report, which we understood to be the final report, with the investigation being final as far as we were concerned, the matter was now ready to be submitted to a prosecutor to make a decision on whether to prosecute anyone or not. BILLY MOELETSI and myself drafted a memorandum to the Deputy National Director of Public Prosecutions, ADVOCATE JIBA, attaching – let me just get that report, first of all." [SJ11 page 24 line 18 to page 25 line 10]

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83 As such, there is no truth in Mr Khuba's averment that that Adv. Mosing and Moeletsi regarded the first report as a 'draft', there is a clear distinction between what was recognised as 'draft' and the final report. Mr Khuba knows this distinction yet he gives the impression that he is not aware of it. This is deliberately done to mislead this Commission.

Ad paragraph 14 to 15

84 I admit the contents of these paragraphs.

Ad paragraph 16

85 I deny that Adv. Mosing stated in his memorandum that there were 'matters outstanding in the investigation at the time of compiling the memorandum'. There is no such statement in Adv. Mosing's memorandum at all.

86 Adv. Mosing in paragraph 2 of the memorandum states the following:

"2. BACKGROUND

The investigation has now been finalised and a report from the IPID has been submitted for the purposes of considering the merits. The case 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, is also enclosed."

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87 This statement by Adv. Mosing is consistent with what he told Werksmans during the interview held on 17 April 2015.

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88 Mr Khuba's reliance on paragraph 6.3 to support the contention that there were 'outstanding matters' is misplaced because that is not what Adv. Mosing says in his memorandum. Adv. Mosing states:

"6.3...The cell phone evidence however, does not corroborate his presence during the operations. This can be looked at again more closely after an expert 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."

89 This statement by Adv. Mosing although immaterial, omits the fact that Mr Khuba was in possession of a handwritten expert report by the time he submitted the first report. In terms of this handwritten expert report General Sibiyá's cell phones were in Pretoria and not at the crime scene in Diepsloot as alleged by eye witnesses.

90 During an interview with Werksmans on 27 March 2015, Mr Khuba stated the following in relation to an analysis of Sibiyá's cell phone records:

"MR KHUBA: So we did everything; we did an investigation, but we were let down by the person who was doing the cell phone records. The person who was doing the cell phone records could not come to us in time with a report. He sent a draft report, which was handwritten

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somewhere, and I wanted the original report. 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 MOSING said to me - and that was after I had done the report - the report with which COL. MOUKANGWE was also in agreement, this is the report, signed. [SJ7 page 34 line 24 to page 35 line 13]

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- 91 From Mr Khuba's version he was in possession of an expert analysis of Sibiya's evidence at the time he submitted his first report. He may not have been happy with it in light of the fact that there were eye witnesses who could testify that Sibiya was at the crime scene. I wish to emphasize that expert analysis is not new evidence, it is merely an interpretation and analysis of existing evidence.
- 92 In paragraph 5.5 of the first report Mr Khuba deals with an analysis of Sibiya's cell phone records and explained what was discovered after Sibiya's records were analysed. That analysis revealed that Sibiya was kept updated on the progress made in the three operations which led to the Rendition of Zimbabwean Nationals.
- 93 Furthermore, at page 32 of the first report, Mr Khuba incorporated the very analysis he received from the expert regarding Sibiya's cell phone records. Mr Khuba states:

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"There is evidence and witnesses corroborate each other that **44**
General Sibiya was both at the scene and planning venue. The meeting held between the IPID and General Dramat on 2013/03/07 confirmed that General Sibiya was appointed to be the Head of TOMS which he created to trace wanted suspects. The telephone records of both Captain Maluleke and Major General Sibiya show interaction between them at various milestones of the operation. Following suggest the involvement of General Sibiya:

Witness stated that he was seen during the operation that took place on 22/11/2010 which led to the arrest of Pritchard Chuma

In other operations cell phone records 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 witnesses claim to have heard that General Sibiya was in the car rather than seeing him personally.

The meeting held in Zimbabwe wherein General Sibiya was appointed as coordinator on cooperation matters involving the two countries suggests that the operation could not have been

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done without his knowledge more so because his Gauteng Team was involved in the operation. However this inference cannot provide a prima facie case that he was involved." [Emphasis added]

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In light of the above, I maintain that there were no 'outstanding matters or investigations' at the time the first report was submitted together with the docket. Evidently the position regarding General Sibiya's cell phone records remained the same even when the second report was produced showing that the second report in relation to the cell phone record analysis was no different.

Ad paragraph 17

94 I admit the content of this paragraph.

Ad paragraph 18

95 The contents of this paragraph are denied. I have already explained why in terms of the IPID SOP, the first report could never be an interim report. I repeat that herein.

96 The claim that the first report was submitted as an interim report is contradicted by Mr Khuba himself when he unequivocally pled guilty to the disciplinary charge of gross dishonesty and defeating the ends of justice. In his guilty plea and settlement agreement he admitted that the first report was submitted to the NPA as a final report of the IPID. Importantly this settlement agreement was entered into after Werksmans issued its report.

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97 I deny that Mr Khuba ever explained, let alone fully as he now claims, that the first report was an interim report. I invite Mr Khuba to direct the Commission to the section of the transcript of the interview held on 26 March 2015 where he informed Werksmans that first report was preliminary. This claim by Mr Khuba is far from the truth.

Ad paragraph 19

98 I deny that the deletions Mr Khuba was referred to only related to Col. Madilonga's statement. In fact during the interview with Werksmans on 26 March 2015, Mr Khuba sounded surprised by the fact that deletions were effected in the first report in order to produce the so called second report. In the passages below I demonstrate how Mr Khuba told Werksmans that he was concerned with the deletions affected in the first report.

"MR KHUBA: 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 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. 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 at this, is what really happened? I really have a problem. But I also have a challenge that

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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." [SJ7 page 93 line 17 to page 94 line 19]

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99 I deny that Col. Madilonga's statement was not credible. Even if it were to be said that his account of events was unbelievable, which is denied, this did not justify the deletion of portions of his statement from the report. It was not open to Mr Khuba, Sesoko and McBride to delete that information from the summary of Col. Madilonga's statement.

100 The fact that Col. Madilonga's statement only referred to the entry of Zimbabwean police into South Africa does not make it less credible at all. Mr Khuba forgets that in his interview with Werksmans on 26 March 2015, he stated that Col. Madilonga statement was credible and consistent with the phone records which he (Khuba) obtained in terms of section 205 of the Criminal Procedure Act 51 of 1977. Mr Khuba stated as follows:

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"MR KHUBA: It was done around September - I think McBRIDE started last year, in 2014. In September 2013 I sent a statement analysis to an expert.

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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. [SJ7 page 38 line 23 to page 39 line 16].

- 101 It is important to mention that Col. Madilonga's statement viewed with other evidence pointed to a *prima facie* case of criminal liability against General Dramat. As such deleting a portion of Col. Madilonga's statement (which was included in the first report) was an attempt to reach a conclusion different from the conclusion arrived at in the first report.

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Ad paragraph 20

102 I deny the contents of this paragraph other than to defeat the ends of justice and commit dishonesty, there was no justification to delete information implicating General Dramat from the second report. In compiling the first report Mr Khuba was assisted by experienced prosecutors in the NPA, Adv. Mosing and Moeletsi. The investigation which informed the production of the first report took over a year and Mr Khuba received regular advice from Adv. Mosing and Moeletsi. The second report, with no new evidence gathered, was produced by three IPID employees with no legal qualification whatsoever. The flawed recommendations made in second report were not implemented by the NPA. I deal with the specific paragraphs in Mr Khuba's confirmatory affidavit to Mr McBride's replying affidavit under case no. 6588/15 herein below.

102.1 Ad paragraph 26 to 28 thereof

102.1.1 I deny that there was a justification for the deletion of averments contained in Col. Madilonga's statement. Col. Madilonga's statement was made under oath and the actual call was corroborated by the phone records obtained through section 205 of the Criminal Procedure Act of 1977 as amended.

102.1.2 There was evidence confirming General Dramat's knowledge on the Rendition, this evidence is properly summarised at page 29 of the first report. On 29 July 2010 General Dramat addressed a letter to Commissioner Chibage of Zimbabwe requesting a meeting on 5 August 2010 to discuss operational matters but

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limited to fugitives of serious crime like robberies, cash-in-transit and extradition.

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102.1.3

Mr Khuba further states the following in the first report regarding General Dramat's knowledge of the rendition:

"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 with the purpose of arresting the wanted Zimbabwean National and Lt General Dramat directed that they be allowed to proceed since they were coming to see him. The statement of Lt Col. Madilonga clearly spell out that the police from Zimbabwe were received by him and he contacted General Dramat who confirmed that they were coming to see him..."

102.1.4

At page 30 of the first report Mr Khuba goes on to state the following about General Dramat:

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

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102.1.5 As such the phone call made by Col. Madilonga was not an isolated incident, it must be viewed in the context of other evidence concerning General Dramat's interactions with Zimbabwean police officers. This was deliberately deleted from the summary to create an impression that it was inconsequential.

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102.2 **Ad paragraph 30 to 32 thereof**

102.2.1 The contents of these paragraphs defy logic, they do not make sense at all. Mr Khuba does not explain the method of analysis he used to arrive at the conclusion that the credibility of the success reports seized from Capt. Maluleke laptop was doubtful. There was no explanation as to what made such success reports doubtful.

102.2.2 I invite Messrs Khuba, Sesoko and McBride to take the commission into their confidence and provide the evidence which rebutted what was contained in the success reports generated by Capt. Maluleke. They must further explain what made success reports generated by a DPCI officer and signed by DPCI officers (Vester) inherently unreliable? There is no basis whatsoever for this conclusion reached by Messrs Khuba, Sesoko and McBride.

102.3 **Ad paragraph 34 thereof**

102.3.1 I have no knowledge of when Mr McIntosh Polela joined the DPCI, however what is apparent from his statement is that during

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December 2010 he was introduced to police officers from Zimbabwe who were having a meeting with General Dramat. Mr Polela is certainly not referring to the meeting held on 5 November 2010, he is referring to another meeting which was held with General Dramat during between December 2010 and January 2011. There is no explanation in the second report regarding why the summary of his statement which implicates General Dramat was deleted.

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102.4 Ad paragraph 35 thereof

102.4.1 This statement is startling to say the least and evinces a complete misapprehension of what success reports are. The success reports record events and General Dramat's name appears in these success reports. The success reports do not have to be sent to General Dramat in order to prove knowledge of what is recorded therein especially when such reports record meetings attended to by General Dramat himself.

102.5 Ad paragraph 36 thereof

102.5.1 The contents of this paragraph are denied. This is gross misrepresentation of the success report by Messrs Khuba, Sesoko and McBride. For example at page 30 of the first report Mr Khuba states the following:

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"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: 3/12/2020: AND ZIMBABWE (BULAWAYO CR 348/09/2010):...This 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 office: about the Nationals who shot and killed on of their senior officers. He appointed Captain Maluleke to be a lead person during the operation.

102.5.2

The underlined portion of the success report was deleted from the second report and the following flawed analysis is provided by Messrs Khuba, Sesoko and McBride:

"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 this basis that a prima facie case cannot be premised on speculation but need corroborated facts"

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102.5.3 Messrs Khuba, Sesoko and McBride make the above finding as if there was never such meeting. It is a fact that the meeting was convened on 5 November 2010 and they have not deleted the very detail they claimed was lacking. If this conduct does not amount to a form of gross dishonesty, then I do not know what it is. **54**

102.5.4 This success report directly contradicts the finds made by Messrs Khuba, McBride and Sesoko in the second report about the meeting held on 5 November 2010. The success report provides detail of what was discussed in the meeting and was signed by Col. Leonie Verster. As such it is dishonest to claim, as the authors of the second report do, that the success report did not provide details of what was discussed.

102.6 **Ad paragraph 38 to 41 thereof**

102.6.1 The contents of these paragraphs are denied. During the interviews with Werksmans as explained above, Mr Khuba indicated that he was concerned that information was deleted from the first report.

102.6.2 The emails in question were sent to General Dramat's secretary, Zimbabwean Police and members of Crime Intelligence. General Dramat's secretary had nothing to do with the arrest of suspects. It is obvious that these emails are sent to her for

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General Dramat's attention. To delete information from a report because it is sent to a PA of the suspect really demonstrates lack of appreciation of our criminal law on the part of Messrs Khuba, Sesoko and McBride. This is a deliberate misdirection on their part.

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102.7 **Ad paragraphs 43 to 57 thereof**

102.7.1 The contents of these paragraphs are denied. Mr Khuba could not explain many of the deletions affected on the first report to produce the second report. He indicated that he was concerned that information was deleted from the first report.

102.7.2 Significantly on 3 months after Mr Khuba deposed to the supporting affidavit, he admitted to the following:

102.7.2.1 the report (first report) he submitted to the NPA on 22 January 2014 was a final report of the IPID;

102.7.2.2 the report was submitted to the NPA for the latter body to take a prosecutorial decision;

102.7.2.3 notwithstanding that he had submitted the first report as a final report, Mr Khuba accompanied by Mr Glen Angus, approached the DPP South Gauteng's office, and

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collected the docket and the report from the DPP, South Gauteng; **56**

102.7.2.4 he, Messrs Sesoko and McBride altered the report which had been handed over to the NPA by deleting information incriminating Lieutenant General Anwa Dramat (Dramat); and

102.7.2.5 by altering the first report through deletion he (Mr Khuba) and Sesoko have made themselves guilty of dishonesty, and defeating the ends of justice.

102.7.3 Mr Khuba made these admissions with full knowledge of the fact that he had deposed to an affidavit in support of Mr McBride's case before the High Court.

103 Now I return to Mr Khuba's supplementary affidavit hereunder.

Ad paragraph 21 and 22

104 I note what is stated in these paragraphs, however I reiterate that IPID reports are not insignificant to the process of making a prosecutorial decision. As indicated by Adv. Mosing and Baloyi, such reports are a useful guide to the decision maker to understand how the investigation was conducted.

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Ad paragraph 23 to 24**57**

104.1 The contents of these paragraphs are denied.

104.2 I deny that Adv. Mosing advised Mr Khuba to get the docket from the South Gauteng DPP's office. On a careful reading of the email in question, it is apparent that the email containing General Sibiya's response to questions sent by IPID, was forwarded to Mr Khuba by Mr Sesoko on 27 February 2014. The body of the email is blank. On 28 February 2014, Mr Khuba forwarded the same email to Adv. Mosing with no message in the body of the email. Importantly, nowhere in this email did Mr Khuba express a desire or understanding to 'collect', remove or 'get' the docket from the NPA offices.

104.3 Adv. Mosing responded to Khuba's email as follows:

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

104.4 Nowhere in the aforesaid response did Adv. Mosing advise Mr Khuba to get or collect the docket from the DPP of South Gauteng. To the contrary, Adv. Mosing advised Mr Khuba to file the evidence in the docket and in future forward additional evidence directly to the DPP for South Gauteng. On this basis alone Mr Khuba's understanding is flawed.

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104.5 In his interview with Werksmans Mr Khuba stated that he had contacted the NPA on 28 February 2014 and advised them that he wished to attach further information to the docket. The information that he needed to attach, was inconsequential and, in any event, did not require him to remove the docket. He could quite easily have placed such information on the docket without having to remove it.

"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 MOSING, to say: There is a 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..." [SJ8 page 42 line to 25]

104.6 Furthermore, during an interview with Mr Khuba on 23 April 2015 attached hereto as annexure "SJ9", Mr Khuba stated that:

"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

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situation was that I couldn't talk to McBRIDE. I still remember now, I spoke to SESOKO, and said: Why can't I attach all these things and return the docket? [SJ9 page 12 line 17 to page 13 line 3]

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104.7 As such, it is not true that on 28 February 2014 Mr Khuba understood there to have been a need to collect the docket.

105 General Sibiya's warning statement wherein which he denied any knowledge of the Rendition cannot constitute knew information or evidence for that matter. Mr Khuba was aware of General Sibiya's denial before he submitted the first report. That denial adds no value whatsoever to the investigation.

Ad paragraph 25

106 The contents this paragraph are disputed.

107 An expert analysis of General Sibiya's cell phone records was not outstanding. Mr Khuba, Col. Moukangwe and Adv. Mosing were in possession of the expert analysis of General Sibiya's cell phone records during the period when the first report was submitted. An expert analysis of general Sibiya's cell phone records revealed that he was not at the crime scene (Diepsloot where suspects were assaulted), but rather a different location (Pretoria).

108 During an interview with Werksmans on 26 March 2015, Mr Khuba stated the following in relation to an analysis of Sibiya's cell phone records:

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"MR KHUBA: So we did everything; we did an investigation, but we were let down by the person who was doing the cell phone records. The person who was doing the cell phone 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. 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 MOSING said to me - and that was after I had done the report - the report with which COL. MOUKANGWE was also in agreement, this is the report, signed." [SJ9 page 34 line 24 to page 35 line 13]

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- 109 From Mr Khuba's version he was in possession of an expert analysis of Sibiya's evidence at the time he submitted his first report. He may not have been happy with it in light of the fact that there were eye witnesses who could testify that Sibiya was at the crime scene. I wish to emphasize that expert analysis is not new evidence, it is merely an interpretation and analysis of existing evidence.
- 110 In paragraph 5.5 of the first report Mr Khuba deals with an analysis of Sibiya's cell phone records and explained what was discovered after Sibiya's records were analysed. That analysis revealed that General Sibiya was kept updated on the progress made in the three operations which led to the Rendition of Zimbabwean Nationals.

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111 Furthermore, at page 32 of the first report, Mr Khuba incorporated the very analysis he received from the expert regarding Sibiya's cell phone records. Mr Khuba states:

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"There is evidence and witnesses corroborate each other that General Sibiya was both at the scene and planning venue. The meeting held between the IPID and General Dramat on 2013/03/07 confirmed that General Sibiya was appointed to be the Head of TOMS which he created to trace wanted suspects. The telephone records of both Captain Maluleke and Major General Sibiya show interaction between them at various milestones of the operation. The following suggests the involvement of General Sibiya;

Witness stated that he was seen during the operation that took place on 22/11/2010 which led to the arrest of Pritchard Chuma.

In other operations cell phone records 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.

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The meeting held in Zimbabwe wherein General Sibiya was appointed as 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 a prima facie case that he was involved. [Emphasis added]

111.1 In the memorandum prepared by Adv. Mosing on 13 February 2014 annexed to Mr McBride's affidavit as RMB.W.8, Adv. Mosing confirms that they (Khuba, Moukangwe and Mosing) were in possession of a hand written expert report regarding Sibiya's cell phone records. At paragraph 4, Adv. Mosing records:

"4. SUMMARY 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

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CIG members

TRT members

Home affairs officials

Wierdabrug police officers

Police officials based at Beit Bridge border post

Cellphone records

AVL of DPCI members vehicles

Success reports of the DPCI

Itinerary and travelling claims of Maluleke

Handwriting expert reports..." [Emphasis added]

- 111.2 Adv. Mosing's reference to 'Handwritten expert reports' refers to the handwritten expert report which Mr Khuba indicated in the interview held on 27 March 2015 had been sent him prior to submitting the first report. That expert report relates to Sibiya's cell phone records.

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111.3 During his interview with Werksmans on 30 March 2015 attached hereto as "SJ10", Col. Moukangwe confirmed that when the first report was submitted to the NPA they were in possession of and knew about the expert analysis of General Sibiya's cell phone records. The said analysis of cell phone records placed General Sibiya in Pretoria and that they (Moukangwe and Khuba) questioned the eye witnesses about this issue before submitting the report. Col. Moukangwe vehemently disputed that the said analysis constituted new evidence. The following appears on page 7 line 16 to page 8 line 12 of SJ10:

"COL. MOUKANGWE: In that one maybe he forgot something, because we knew before that GENERAL SIBIYA's cell phone shows he was in PRETORIA, but the people who were operating with him said he is not using one cell phone. So it might happen that the official cell phones were at home, and maybe he used the other one, which is just recorded here on the statement. That is according to what they said. But we knew about the information before, because we questioned them: How can you say SIBIYA was involved. the cell phone shows that..."

MR JULY: And how did you know about this information that SIBIYA's cell phones were in SUNNYSIDE?

COL. MOUKANGWE: Because of the detailed billing that we did. We did a detailed billing on the two cell phone numbers that we

SJ 10

were given, to show where the cell phones were at that time. They showed that he was in PRETORIA at the time they mentioned in their statements.

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COL. MOUKANGWE: After the discussion with the prosecutors, they made a suggestion whether we should do the mappings. Cell phone mapping is where an analysis will show us that this was done at this, and make some points in a chart form. That's what we were requested to do." [SJ10 page 31 line 7 to 12]

- 112 In his memorandum of 13 February 2014 to Advocates Jiba and Chauke, Advocate Mosing confirms at paragraph 6.3 that the cell phone evidence does not corroborate General Sibiya's presence during the operations. He further states that this can be looked at again more closely after an expert witness has been procured to analyse the cell phone data. In this paragraph, Adv. Mosing is not saying the investigation team is not in possession of a handwritten expert report.
- 113 In any event, the typed out expert report later obtained by Mr Khuba from the expert confirmed what was contained in the handwritten report, because its conclusions regarding General Sibiya remained the same.
- 114 In the second report the analysis of evidence relating to the General Sibiya's cellphone records did not change. The second report like the first report concludes that General Sibiya's cellphone records place him in Pretoria as

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opposed to where the eye witnesses claim he was. There is nothing new about this conclusion, as the same observation was made in the first report.

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115 When regard is had to the totality of the facts above, it is apparent that Werksmans was given an incorrect impression owing to Mr Khuba's several versions, that General Sibiyi's cellphone records had to be interpreted by an expert, while this had already been done when the first report was submitted to the NPA.

Ad paragraph 27 to 29

116 I deny that there was nothing deleted from the first report. Werksmans has demonstrated the deletions in section B of the Werksmans report and beg to have same incorporated herein by reference.

117 I further deny that Mr Khuba or anyone from the IPID during the interviews with Werksmans had satisfactorily explained why certain portions of information were deleted from the first report. The explanations tendered by Mr Khuba in his supporting affidavit to Mr McBride smack of dishonesty and contradiction are not legally and factually sound. I deny that the deletion of information from the first report was justified.

Ad paragraph 30 to 33

118 Mr Khuba's averments miss the whole point of submitting investigation reports to the NPA. While it is true that an investigator's recommendation does not bind a prosecutor, the way Mr Khuba presents this argument seeks to suggest that

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IPID reports are insignificant. This cannot be true given the constitutional mandate of the IPID. The IPID is established in terms of section 3 of the Act. The objects of IPID are set out in section 2 of the Act and they, *inter alia*, are –

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- “(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:...
 “[Emphasis added]

119 It is important to note from the above provisions of the IPID Act that IPID is an institution established to give effect to section 206(6) of the Constitution; as such, IPID performs a constitutionally mandated function. This constitutional function is performed in the manner set out in the IPID Act and Regulations to the IPID. One of the functions of IPID is to refer matters of a criminal nature investigated by it to the NPA or Provincial Prosecutions Authority for further action. These matters are referred to the prosecutions authority by the submission of a docket, together with recommendations that are contained in

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an investigation report. Each of these procedures is designed to give effect to section 206(6) of the Constitution.

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120 Although the prosecutions authority is not bound by the recommendations made by IPID in its reports, such reports are a useful tool in guiding the NPA in making a prosecutorial decision. The recommendations by IPID are not some insignificant recommendations which can be rejected by the NPA without consideration. The NPA must consider the recommendations in making its decision. If this was the case then the IPID could simply submit the docket with no accompanying recommendations.

Ad paragraph 34 to 36

121 I have no knowledge of the discussions between Mr Khuba and Adv. Baloyi, I can neither confirm such discussions nor deny them.

Ad paragraph 37 to 39

122 I stand by what is stated at paragraph 5.4.14 of the Werksmans report. What is contained in this paragraph is based on the following passages extracted from the interview with Adv. Baloyi and Mzinyathi, a copy of which is attached hereto as annexure "SJ12":

"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

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later on - the other report which was given to you later by the NDPP? Have you ever looked at it to do the comparison?

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 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. [SJ12 page 21 line 7 to page 22 line 5]

123 The above passage and other passages in the transcript confirms that both reports were read by Adv. Baloyi and Mzinyathi, they may not have made their recommendations based on the reports but had read them prior to making their decision.

124 The obstruction of justice recommendation stems from the fact that in effecting the deletion from the first report, Messrs Khuba, McBride and Sesoko intended to shield General Dramat and Sibiya from criminal accountability.

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Ad paragraph 40

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125 I do not know what is the meaning of a 'prosecution driven investigation' at all. I deny that the Werksmans investigation was a 'prosecution driven investigation'. What Mr Khuba confirms in this paragraph is that when he submitted the first report to Adv. Mosing and Moeletsi, he submitted it for the purpose of a prosecutorial decision.

126 There is nothing sinister about the involvement of the NPA, an organ of state, in the investigation process to guide the IPID. I have explained this in detail in my response to Mr McBride's supplementary affidavit.

Ad paragraph 41

127 I note the content of this paragraph.

Ad paragraph 42

128 I fail to understand Mr Khuba's issue with paragraph 3.1.21 of the Werksmans report. The report says no more than the decision to prosecute is that of the NPA and Mr Khuba expected the NPA to take further action based on the recommendations made in the first report.

Ad paragraph 43 to 47

129 I note the content of these paragraphs in so far as it is consistent with that which is recorded in the Werksmans report. I would like to make it clear that it is not Werksmans who said Mr Khuba complained about the fact that Adv. Baloyi seemed to have changed his initial decision to charge Generals Dramat and

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Sibiya, but Adv. Baloyi himself as evident from the following passages of the transcript:

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"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.

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. 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. I said: Look. I think you misunderstood me. 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

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the cell phone 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 ATTERIDGEVILLE - as to on what basis he withdrew the charges, and was there any Interpol warrant at that stage?
[SJ12 page 31 line 4 to page 32 line 19]

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Ad paragraph 48 and 49

130 I stand by what is recorded in paragraph 5.1.3.2.3.5.4 of the Werksmans report. During our interview with Khuba on 23 April 2015, I put a question to Khuba regarding McBride and Sesoko having to sign the so called second report. Khuba responded that he does not know why McBride and Sesoko signed the second report.

"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 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?

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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.⁵

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131 There was never mention of Regulation 5(1) of the IPID Regulations in any of the interviews with Mr Khuba. I deny that the provisions of regulation 5(1) applied to the investigation conducted by Mr Khuba.

132 It is disingenuous of Mr Khuba to now claim that the provisions of regulation 5(1) applied to his investigation. I deal with this herein below.

132.1 Mr Khuba as an investigator appointed in terms of the IPID Act was empowered by Regulation 4(9)(c) of the IPID Regulations to submit the report to the NPA. Mr McBride testified before the commission that the Rendition investigation also pertained to the murder of Zimbabwean nationals as a result of police action or omission or both. That was correct. An investigation of this kind falls under Regulation 4(8) and (9).

132.2 It is a matter of public record that a death certificate in respect of one of the Zimbabwean nationals was in the public domain through a story published by the *Sunday Times* newspaper.

⁵ SJ9, page 1 line 20 to page 2 line 18.

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132.3 Even if Regulation 5 did apply to this type of case (which it did not), I disagree that the so called second report had to be signed by Mr McBride pursuant to regulation 5(3)(i). This contention is misleading. The first report was submitted by Mr Khuba who during that period was the acting Provincial Head of IPID. He was empowered by Regulation 5(3)(1) to submit the report to the NPA with no co-signatories. **74**

132.4 Mr Khuba's novel reliance on section 7(4) of the IPID Act ignores the fact that the Provincial Head also had powers in terms of section 21(d) to refer matters investigated by his office to the NPA or the relevant provincial prosecuting authority. Section 7(4) does not divest the Provincial Head of those powers. Regulation 5(3)(i) can be equally read with section 21(d).

132.5 I wish to stress that nowhere in regulation 5 is it stated that the Executive Directors must sign or approve a report submitted to him. I have dealt with this issue extensively in my response to Mr McBride's supplementary affidavit where similar claims are made.

Ad paragraph 50

133 I stand by what is contained in paragraph 5.1.3.2.1.6 of the Werksmans report. In this paragraph Werksmans made it clear that the acceptance of Mr Khuba's version *is not without difficulty* and that he failed to explain the discrepancies between the first and second report. Mr Khuba's explanation of how the second report came to existence is extremely problematic. On a holistic reading of all

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three transcripts his interviews with Werksmans, he was vacillating and contradictory on many occasions.

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Mr Khuba's explanation for the deletions at pages 85 and 86 of the transcript of the interview held on 26 March 2015, was poor and dishonest. Mr Khuba says they deleted a summary of Col. Madilonga's statement because although a call was made they do not know what the discussion was about. To the contrary, Col. Madilonga stated in detail what the discussion was about in Col. Madilonga's telephone conversation with General Dramat. For the sake of completeness Col. Madilonga stated as follows:

"I told Superintendent Ncube that I am going to verify with my seniors about the arrangements. He then gave me the number of General Dramat but I told him that protocol does not allow us to call General straight. ...

"I phoned General Dramat on his cell phone and he responded by saying that he is aware of the Zimbabwean police and I must let them come. I used my landline. if I did not use my official cell phone..."

133.1 A copy of Col. Madilonga's statement is attached hereto as annexure "SJ13".

133.2 There is no truth in Khuba's claim that Col. Madilonga's statement did not provide details on what was discussed in the telephone conversation with General Dramat.

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133.3 To further demonstrate that the reasons proffered by Mr Khuba for the deletions do not make sense at all at page 89 of the transcript

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"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 could not have known about the presence of the ZIMBABWEANS.

MR KHUBA: Yes, that's true."

134 Mr Khuba admitted that the deletions were effected in order to exonerate Generals Dramat and Sibiya from wrongdoing.

Ad paragraph 51 to 52

135 I stand by what is stated in paragraph 3.1.19 of the Werksmans report. Mr Khuba told Werksmans that General Dramat, Sibiya, Capt. Maluleke and Col. Leonie Verster all refused to provide warning statements or respond to his questions at the time he approached them. Mr Khuba acknowledges that he was not given warning statements by the time he requested them from all these officers. The fact that he was later furnished with warning statements does mean that there was no refusal.

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Ad paragraph 53

136 I maintain what is contained in paragraph 3.2.1.19 of the Werksmans report. Mr Khuba does acknowledge that the content of paragraph 3.2.1.19 is directly taken from the evidence which was before Werksmans at the time. I deny that Mr Khuba's words were interpreted in any way.

Ad paragraph 54

137 The content of this paragraph is admitted.

Ad paragraph 55

138 The content of this paragraph is denied. This reasoning on the part of Mr Khuba, Sesoko and McBride is problematic. I have already explained above, why it was inappropriate for the three IPID employees to delete information without any explanation or justification regarding why such information is found to be irrelevant. The evidence of Col. Madilonga was always to be viewed in context of other objective evidence showing General Dramat's involvement in the Rendition, such as success reports etc.

Ad paragraph 56 and 57

139 Mr Khuba is misguided in his reliance on the alleged mutual cooperation agreement between DPCI and Zimbabwean police, because such an agreement if it exists, should never allow Zimbabwean police to come to South Africa and perform arrests on citizens of any nationality. That cooperation agreement is unlawful if it permits the deportation of Zimbabwean nationals in

South Africa to a country where their human dignity and right to life is not guaranteed. Mr Khuba knows that General Dramat cannot be said to have been unaware of the Rendition of Zimbabwean nations from beginning to end.

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Ad paragraph 58 to 60

140 This admission on the part of Mr Khuba further confirms that information, as Mr Khuba admitted in his disciplinary hearing, was deleted to ensure that General Dramat and Sibiya are not implicated in the Rendition. It was not open to Mr Khuba to delete a summary of a statement obtained under oath. Instead what should have been done was to explain why certain information by Col. Madilonga should be disbelieved. There was no alternative evidence from anybody to dispute Col. Madilonga's statement under oath.

141 I hasten to stress that Col. Madilonga was employed at the border post, he knows that there is no Extradition Agreement between South Africa and Zimbabwe. There is nothing false about this fact. The reason for the deletion does not withstand legal scrutiny at all.

142 Tellingly, Mr Khuba neither states nor provides evidence which disputes, contradict, or rebuts Madilonga's account of events. The only thing he has done, is to refer the Commission to the views held by Mr Sesoko, which is not evidence but views not supported by any evidence.

Ad paragraph 61 to 62

143 The content of this paragraph is denied.

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144 If the information did not implicate General Dramat, why was it then deleted from the first report? The answer to this question is obvious and it is because the success reports directly implicated General Dramat.

145 I reiterate what is stated at page 36 of the Werksmans report and demonstrate what has been deleted hereunder:

"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."

146 This information was crudely deleted or removed in the second report without any explanation.

Ad paragraph 63

147 I have no knowledge of when Mr McIntosh Polela joined the DPCI. What I can say is that he made a statement and recalled the meeting of 5 November 2010. There is no explanation in the second report regarding why the summary of his statement was deleted.

Ad paragraph 64

148 The contents of this paragraph are denied. During the interviews with Werksmans as explained above, Mr Khuba indicated that he was concerned that information was deleted from the first report.

149 The emails in question were sent to General Dramat's secretary, Zimbabwean Police and members of Crime Intelligence. General Dramat's secretary had nothing to do with the arrest of suspects. It is obvious that these emails are sent to her for General Dramat's attention. To delete information from a report because it is sent to a PA of the suspect really demonstrates a lack of appreciation of our criminal law on the part of Messrs Khuba, Sesoko and McBride. The secretary receives information on behalf of General Dramat. This is a deliberate misdirection on their part.

Ad paragraph 65

150 The contents of this paragraph are denied. Mr Khuba's remarks regarding the relevance of the meeting held in August 2010 are astonishing. This meeting happened approximately 3 months prior to the meeting between General Dramat and Zimbabwean police on 5 November 2010 as recorded in the success report referred to earlier in this affidavit. It once again mentions Dramat and there is no explanation in the report as why the summary of the letter had been taken out or deleted in the second report.

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Ad paragraph 66 to 67**81**

151 I do not know what is meant by cross-border cooperation but what I understand is that illegal immigrants suspected of violent crimes in their country of origin cannot be extradited in the absence of guarantees to effect that their right life and human dignity will be protected.

152 The fact that the evidence was on the docket does not justify the misconduct committed by Mr Khuba. He knew that in altering the first report by deletion he was committing serious misconduct and dishonesty.

Ad paragraph 68

153 The contents of paragraph are denied.

154 I deny that there was any justification for the deletion of information contained in a document not authored by Mr Khuba or Sesoko. I reiterate that when I showed Mr Khuba the deletions he indicated to me that he was concerned that information was deleted from the first report.⁶ Curiously, today Mr Khuba all of a sudden has an explanation, as dubious as it may be, for the deletions. The explanation is dubious because the only reason information was deleted is because the name of General Dramat appears on whatever was being referred to in the first report. That is the only reason why information has been deleted. As soon as information was deleted a recommendation is made that no charges should be brought against General Dramat.

⁶ See SJ7 page 93 line 15 to 25 of Transcript of 26 March 2015.

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Ad paragraph 69 to 70

155 The contents of these paragraphs are denied. I call upon Mr Khuba to disclose the expert analysis of General Sibiya's cell phone records. It is my view that Mr Khuba may be misrepresenting the said expert analysis.

156 The issue or controversy around cell phone evidence only related to the alleged assault of the suspects and theft of their belongings in Diepsloot while they were being arrested. According to the expert analysis General Sibiya was not present during the arrest in Diepsloot. This has nothing to do with the SMSes General Sibiya sent to General Dramat during the three operations.

157 General Dramat received the SMSes from General Sibiya, the fact that he did not respond does not mean that he did not receive the SMSes. Mr Khuba himself admits that the SMSes were received by General Dramat. This is crucial information to guide any prosecutor tasked with making a prosecutorial decision. These SMSes have nothing to do with general Sibiya's physical presence at the crime scene. He did not have to be present for him to sanction and command the actions by the police. Once again the reason for which the information was deleted makes no sense at all.

Ad paragraph 71 to 72

158 The contents of these paragraphs are noted.

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Ad paragraph 73 to 74**83**

159 This content of this paragraph is denied. The statement by Col. Neethling is self-explanatory. He believed that he must have reported such arrests to Major General Sibiya. There was no basis upon which to delete this information.

160 In relation to what Mr Khuba states at paragraph 74, Mr Khuba says it was entirely usual for Col. Neethling to report to General Sibiya in the normal course of his duties. These duties include the operation which led to the arrest of suspects in Diepsloot as mentioned in Col. Neethling's statement. This makes the information contained in Col. Neethling's statement and cell phone records more useful to the investigation than irrelevant as Mr Khuba would like the Commission to believe. This information, where direct reference is made to General Sibiya has been deleted in the second report with no explanation whatsoever. The second report has no analysis of Col. Neethling's cell phone records at all owing to being deleted by Mr Khuba and Sesoko.

Ad paragraph 75

161 The content of this paragraph is denied and Mr Khuba is put to the proof thereof.

Ad paragraph 76 to 77

162 The contents of these paragraphs are denied. I have dealt with the deletion of the telephone call made by Col. Madilonga to General Dramat elsewhere in this affidavit and repeat same herein.

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Ad paragraph 78**84**

163 The content of this paragraph is denied.

164 It is not true that the success reports lacked detail about what was discussed in the meeting of 5 November 2010. To the contrary the success report stated the following:

"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: 3/12/2020: AND ZIMBABWE (BULAWAYO CR 348/09/2010):...This 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 office: about the Nationals who shot and killed one of their senior officers. He appointed Captain Maluleke to be a lead person during the operation.

164.1 It is clear from the above that what Mr Khuba is telling the Commission cannot be true. The success report contained sufficient detail regarding what was discussed in the meeting.

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Ad paragraph 79 to 80

165 I agree with the prosecutors who were guiding Mr Khuba during his investigation that there was a *prima facie* case of criminal liability against General Dramat. I do not know what qualifications Mr Sesoko has but what I am sure of is that Adv. Mosing and Moelestsi who were prosecutors during the period the first report was released were far better qualified to advise on whether a *prima facie* case existed against General Dramat.

166 Importantly another set of prosecutors tasked with making the decision came to the conclusion that a *prima facie* case existed against Generals Dramat and Sibiya.

167 In any event Mr Khuba did provide the true reasons for him and Mr Sesoko's conduct and that was to dishonestly shield General Dramat and Sibya from criminal prosecution.

Ad paragraph 81 to 82

168 I deny that the evidence was not credible simply because it came from Crime Intelligence. Mr Khuba and Sesoko have not obtained an iota evidence to dispute the version by Constable's Mkasibe and Ngwenya made under oath. No charges of perjury have been laid against these two constables. All there is a conspiracy peddled by Mr Khuba and Sesoko with no evidence whatsoever, that the evidence from Crime Intelligence is tainted. This simply cannot be the

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correct way of dealing with evidence. Accusations must be based on facts and not conspiracy theories. **86**

169 I need to remind the Commission that it is the very Crime Intelligence officers who assisted the DPCI in arresting the suspects. All the commission is told is that Mr Khuba and Sesoko with no evidence to back their claims, deleted information because it came from Crime Intelligence.

170 These statements by Constable Mkasibe and Ngwenya required no corroboration from Mr Polela, they never claimed that he was present at such meeting. Instead of dealing with facts Mr Khuba and Sesoko decided to exclude information on the basis of theories. I mean what does Mr Polela's dismissal have to do with deletions effected by Mr Khuba and Sesoko.

171 Furthermore, the aforesaid statement was taken by Mr Khuba himself as the investigator of the Rendition case. He prepared the statements for the witnesses.

Ad paragraph 83 to 91

172 The explanations tendered by Mr Khuba in these paragraphs are for the reasons stated in this affidavit denied. Mr Khuba was afforded ample opportunity to explain all his actions he never at any stage provided the reasons he now provides to the Commission. He could not do so because those reasons were not there at the time he was interviewed. It is clear to me that Mr Khuba,

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Sesoko and McBride went on and reflected on the Werksmans report and now seek to challenge it based on information which was not before Werksmans.

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173 I reiterate my submissions; there was no justification for the deletion of information. Curiously the information which neither mentioned General Sibiya or Dramat was not deleted but rather retained in the second report. Mr Khuba's entire explanation deals with General Sibiya and Dramat, no one else. As I have explained, deletions were effected to shield General Dramat and Sibiya from criminal liability.

Ad paragraph 92 to 93

174 I maintain what is stated at paragraph 3.2.1.24.2 of the Werksmans report save to correct the reference to General Dramat's cell phone records as being outstanding. This is not correct as no cell phone records were outstanding by the time the first report was issued. Not even the expert analysis of General Sibiya's cell phone records was outstanding at the time.

175 I deny that a *'number of statements had been obtained which were analysed and indicated that General Dramat was not involved in or aware of the rendition'* as Mr Khuba puts. I invite Mr Khuba to take Commission into his confidence and reveal those additional statements which evidence what he claims.

176 To the extent that such additional statements exist, same were not placed before Werksmans at any point during the interviews.

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177 In the event that Mr Khuba refers to additional statements which pertain to the warning statements by General Dramat, Sibiya, Capt. Maluleke, Ms Irish-Qobosheane and Loenie Verster, then he is deliberately misleading the Commission.

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177.1 General Dramat's statement was not outstanding, it was submitted in November 2013 and included as annexure A94 to the first report. Notably General Dramat denied any knowledge of the Rendition or events leading to the Rendition.

177.2 General Sibiya similarly denied any knowledge and/or involvement in the Rendition or events leading the Rendition.

177.3 Capt. Maluleke exercised his right to remain silent.

177.4 Ms Irish-Qobosheane, who was not a suspect, just provided an explanation of the genesis of the Rendition investigation and how the matter was referred to the IPID.

178 None of these warning statements provided evidence to rebut the conclusions reached in the first report, other than providing bare denials. No documentary evidence was furnished by the above officers to rebut what was contained in the first report and the docket.

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179 I deny that Mr Khuba was able to explain the reasons for the deletions in any satisfactory manner.

89**Ad paragraph 93**

180 I maintain what is stated at paragraph 3.2.1.25 of the Werksmans report.

181 I deny Mr Khuba's justification for deleting or removing information referring to General Dramat. Given that Mr Khuba is conveniently able to explain away the deletion of information relating to cell phone records by merely claiming that General Dramat and Sibiya were colleagues, therefore making it usual for them to communicate in that way during the operation.

182 I invite Mr Khuba to reveal the evidence he and Mr Sesoko utilised to arrive at this conclusion. I also invite him to explain why in his view the said possibilities would not have been considered by Adv. Mosing and Moeletsi who were guiding him when he submitted the first report.

183 I further invite Mr Khuba to produce the evidence (in other words cell phone data) upon which his and Mr Sesoko's conclusion is based. Mr Khuba should produce evidence of a period other than the period during which the Rendition was carried out.

Ad paragraph 95

184 I maintain what is stated in paragraph 5.1.1.5 of the Werksmans report and deny that Mr Khuba's justification for deleting information is true.

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185 The mere allegation that the members of Crime Intelligence have conspired against General 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 cellphone records.

186 General Sibiya's cell phone records shows that he 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 points of the Rendition.

187 I do not understand why Messrs Khuba and Sesoko think that no conviction can be secured through the use of circumstantial evidence or that circumstantial evidence is of no use in criminal matters. Their view to this effect is obviously wrong.

188 Mr Khuba could not satisfactorily explain his reasons for deleting the above information from the report.

Ad paragraph 96

189 I am not aware of Mr Sesoko's experience and qualifications however what I can state in this affidavit is that he was not the appointed investigator in relation to the IPID. I dispute that Mr Sesoko's alleged advice to Mr Khuba was legally sound. In fact the constant reference to Mr Sesoko's name whenever Mr Khuba

SJB

is required to explain his conduct is concerning. It fortifies the reasonable assumption that Mr Khuba was coerced or made to change the first report. With the greatest of respect to Mr Sesoko, there was no new analysis in the second report to justify the conclusions reached. What is in the second report is a deletion of crucial information linking General Dramat and Sibiya to the Rendition.

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190 Mr Khuba speaks as if Mr Sesoko has a better understanding of criminal law than the NPA prosecutors themselves.

Ad paragraph 97

191 Although it is true that charges were withdrawn against Generals Dramat and Sibiya, I deny that there was no *prima facie* case against them based on the evidence.

Ad paragraph 98

192 The contents of this paragraph are denied.

193 I am not sure what Mr Khuba means when he says the Rendition investigation was '*prosecution driven*'. This is a serious allegation that is made without any substantiation whatsoever. Mr Khuba seems to trivialise the seriousness of constitutional violations perpetrated by those responsible for the Rendition of Zimbabwean nationals. The sovereignty of South Africa was compromised by the conduct of DPCI officers who had no regard whatsoever for the Constitution. Police from another country were permitted to enter South Africa and carry out

S J JB

arrests and illegal deportation of crime suspects from South Africa to Zimbabwe. **92**

194 What Mr Khuba fails to appreciate with his reckless claims (that the Rendition was prosecution driven) is that the NPA, like any other organ of state, has a responsibility in terms of section 4 of the IPID Act to assist the IPID to perform its functions effectively. There is nothing untoward about the NPA providing guidance to the IPID in a matter as serious as the Rendition which had far reaching implications for South Africa.

195 It is disingenuous of Mr Khuba to pretend as if Mr Sesoko only came to his assistance during the period when the second report was being compiled. Mr Sesoko has been assisting Mr Khuba since 2011.

195.1 At page 28 of the first report Mr Khuba confirms Mr Sesoko's involvement in the investigation as follows:

"In October 2011 he approached the Head of DPCI accompanied by Mr Sesoko who was Acting Head of Investigation for IPID requested his warning statement..."

195.2 Mr Sesoko was sent a copy of the first report on 23 January 2014 by Khuba.

195.3 Mr Sesoko was given the first report by Mr Khuba during January 2014 which he (Mr Sesoko) had requested to facilitate a hand-over to the Civilian Secretariat. **93**

195.4 During February 2014, Messrs Sesoko and Khuba accompanied by Col. Moukangwe attended at the NPA offices to demand arrest warrants for Generals Dramat and Sibiya on the basis of the first report.

196 As such there is no truth in the allegation that Mr Sesoko was excluded from the investigation.

197 I have no knowledge regarding whether Mr Khuba was pressurised to sign the first report, however when regard is had to the interview with Adv. Mosing on 17 April 2015, Mr Khuba's account of events is questionable. Adv. Mosing stated the following:

"MR MOSING: Yes, they recommend. But I'm saying our role in the matter we made clear to them, that this report is not given to me so that I can make a decision, we would submit it to the relevant DPP office, who would take it, and we were merely guiding that investigation and assisting them. As I said, we had continuous discussions with the investigating team, so at no stage did he disagree really as to what was happening. I think there was a lot of pressure as well to terminate the investigation. to move over to arrest. We basically had to say: Make your investigation complete first. make sure you've got all the evidence, which

SS JB

at least indicates a prima facie case so that a prosecutor can take it forward and at least is assured of getting a conviction. But really there wasn't any pressure from anybody to say: Arrest this person and arrest that person, in a sense. But I'm saying of course this matter happened some time ago already, and there was some delay in really getting to the nitty-gritty, to the truth of the whole event, until we started making progress. It was just to make sure: Finish your investigation so that there is nothing extra to go and get. So by the time he then wrote the final report, which we then had agreed in terms of who would be charged, and so on - as I said, where we had agreed, and we mentioned names as well, as was mentioned in this report dated 22 January 2014. Based on this report, which we understood to be the final report, with the investigation being final as far as we were concerned,.." [SJ9 page 23 line 19 to page 25 line 4]

94

198 Adv. Mosing clearly states that there was no pressure from anybody and at no point did Mr Khuba disagree as to what was happening. Tellingly Mr Khuba does do not specify whether of the kind of pressure he was placed under related to the content of the report or the collection of evidence.

Ad paragraph 99

199 The contents of this paragraph are admitted.

SS AB

Ad paragraph 100

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200 The contents of this paragraph are denied. I reiterate what is stated at paragraphs 184 to 188 above.

Ad paragraph 101

201 The content of this paragraph is denied.

Ad paragraph 102

202 I maintain what is stated at paragraph 5.1.3.2.1.3. The content of paragraph 5.1.3.2.1.3 in the Werksmans report are borne out from the transcript of the interview held with Mr Khuba on 26 March 2015 and appears on the following passages of the transcript.

"MR JULY: Yes, it's left out, even (indistinct) is there, and then the cell phone record of DRAMAT. But it doesn't say anything about the cell phone records.

MR KHUBA: You see when you say the cell phone records of DRAMAT are not part of this, I still remember 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:" [SJ7 page 78 line 4 to 10]

203 It is clear from the above that what is recorded in paragraph 5.1.3.2.1.3 of the Werksmans report is not inaccurate as alleged by Mr Khuba as it is based on what he said during the interview with Werksmans.

SS

Ad paragraph 103

204 I deny that at the point when the first report was submitted there was outstanding analyses of cell phone records. I reiterate what is stated in paragraphs 90 to 93 of this affidavit.

Ad paragraph 104 to 105

205 The contents of this paragraph are denied. I have dealt with this allegation elsewhere in this affidavit. The cell phone records only contradicted Sibiya's physical presence at the crime scene and not his knowledge of the arrest of the suspects in Diepsloot. In fact Mr Khuba confirms that on that day in question General Sibiya was contacted by Col. Neethling who was present in Diepsloot and Soweto where the suspects were arrested.

206 The cell phone records of Col. Neethling corroborate what the latter stated under oath in his statement as summarised in page 11 of the first report, which reads as follows:

"He also remembers receiving a call from Captain Maluleke requesting [the] 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."

S J 

207 Once again a crude attempt was made by Mr Khuba and Mr Sesoko to present evidence in a dishonest manner by deleting material information from the first report to produce the second report.

97

Ad paragraph 106

208 I stand by what is stated in paragraph 5.1.3.2.1.5 of the Werksmans report. There is nothing misleading in that paragraph of the Werksmans report. It is only now that Mr Khuba and Sesoko seem to take responsibility for deleting information from the first report to Mr McBride's satisfaction. During his interviews with Werksmans on 26 March 2015, Mr Khuba stated as follows regarding knowledge of material deletions effected on the first report:

"MR KHUBA: 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 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. 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 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

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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." [SJ7 page 93 line 17 to page 94 line 19]

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209 It is clear from the above that what is stated in paragraph 5.1.3.2.1.5 of the Werksmans report is based on evidence given by Mr Khuba himself.

Ad paragraph 107

210 The contents of this paragraph are denied. I have dealt with the averments contained in this paragraph elsewhere in this affidavit.

Ad paragraph 108

211 The contents of this paragraph are denied, there was no rational connection between the evidence before Mr Khuba and the recommendations made in the second report.

212 I deny that the first report was a preliminary report. Mr Khuba's understanding of what a preliminary investigation means at the IPID is at odds with the IPID SOP. The IPID SOP defines a preliminary report as follows:

SJ 

"Preliminary investigation – refers to an enquiry of limited scope undertaken to verify whether or not an allegation merits full investigation" **99**

213 In light of the aforesaid definition it is misleading to suggest that that the first report was a preliminary report.

Ad paragraph 109

214 The contents of this paragraph are denied. The first report was collected at the NPA by Messrs Khuba and Glen Angus together with the docket on 7 March 2015. In any event deletions and alterations were made on the electronic copy of the first report in Mr Sesoko's laptop.

215 At page 22 of the transcript of the interview held with Khuba on 23 April 2015 he explained what the docket he collected at the NPA, contained.

"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 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. 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 had that part. When we did a review, the concentration on a (?), which is a

SS B

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 that part, I do not know. But my common sense is that they (Sesoko and McBride) would have removed it (22 January 2014 report), because they wouldn't send it (22 January 2014 report) with it (docket)." [SJ9 page 22 line 3 to 23] **100**

Ad paragraph 110

216 I reiterate what is stated at paragraph 5.1.3.2.3.5.2 of the Werksmans report as that statement is based on the following passages of the transcript to the interview held with Mr Khuba on 13 April 2015.

"MR JULY: The question that I want to ask is this. When McBRIDE asked you for a report, you gave him the report that you had already submitted to the NPA?"

MR KHUBA: Let me tell you that the report which I had given to him, which I emailed - I don't know whether he read it or did not read it - is the report that I sent the NPA." [SJ8 page 7 line 10 to 17]

217 At page 8 line 21 to page 9 line 24 SJ8, Mr Khuba stated as follows:

"MR JULY: And you know there is a reason why you would not have deleted the information. For instance, what was said by the people – for you to change it, you would have a reason, and you would put that reason in your report. So that information was removed. But if it was not you and it was not SESOKO, we have not yet been able to talk to MR McBRIDE, although we wrote him an email to come and talk to us, who then would have deleted that information?"

SJ 110

KHUBA: That is a very difficult question. But I need to say as the investigating officer I was over-trusting with the report. Because when SESOKO asked for the report, I never withheld the report. I emailed it to him. When we were working on the report I used his computer. Whether he showed McBRIDE - but I remember McBRIDE, if there is one person who read that report extensively it was McBRIDE. He read it extensively. Then the progress which I was doing on the report itself, I was only adding stuff. He was sitting next to me. I was adding things, I was doing things, but whether that part was cut out by him or by me, I will not say, but I don't remember removing it."

218 It is apparent from the above passage that Mr Khuba informed Werksmans that Mr McBride was furnished with the first report which he (McBride) read extensively. I deny that the use of the word 'evident' is patently misleading

219 During the interview held on 13 April 2015, Mr Khuba further stated:

"MR KHUBA: My understanding, from my view, when I sat with SESOKO I started to see it in another light, and I was very firm with my view. But SESOKO with his prosecutorial background said: Mr Khuba, you can't take it this way. You need to know that when McBRIDE arrived and read the report, we did a new report. he had an option to say: Guys, let's leave the prosecutors (indistinct). He had an option. And he also exercised the other option to say: You will go and work on this report to reflect the content. That's why when this document was sent I was never part of it."

[SJ8 page 14 line 15 to page 15 line 2]

SJ AB

220 This passage in the transcript further shows Werksmans Mr McBride not only **102** had regard to the first report, he actually read it.

Ad paragraph 111

221 The contents of this paragraph are denied. Mr Khuba is not being truthful to the Commission and is perpetuating dishonesty. I have dealt with Mr McBride's claim that his involvement was limited to grammatical issues in my response to Mr McBride's supplementary affidavit. I beg leave to incorporate what is stated in my response to Mr McBride's claims herein.

Ad paragraph 112

222 The decision to charge Mr Khuba criminally was that of the NPA and was taken by that institution after having applied its mind to the matter. I elected not to testify as my testimony would largely be regarded as hearsay, as I relied on what people told me during the interviews. I further elected not to testify as my report contains all of my findings. Any testimony on my part would have been a regurgitation of my findings.

223 The Werksmans investigation was not a criminal investigation as claimed by Messrs McBride, Khuba and Sesoko. The fact that the report recommended a criminal investigation does not transform the status of the report into a criminal investigation. In my own experience, employers routinely refer outcomes of disciplinary enquiries and internal investigations for criminal investigation. This does not mean that the disciplinary enquiry has been turned into a criminal enquiry.

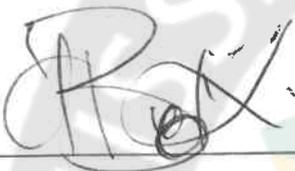
SSB

Ad paragraph 113 to 114

224 I have no knowledge of the facts contained in these paragraphs. I can neither dispute them nor confirm their truthfulness.


DEPONENT

The deponent has acknowledged that he knows and understands the contents of this affidavit, he has no objection to taking the prescribed oath and that he regards the prescribed oath as binding upon his conscience, the deponent having sworn to this affidavit on this the 15TH day of JUNE 2020.



COMMISSIONER OF OATHS

Name:

Business Address:

Capacity:

ITUMELENG BOKABA
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COMMISSIONER OF INQUIRY
INTO STATE CAPTURE





"SS1"

104

MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA

Private Bag X463 PRETORIA 0001, Tel: (012) 393 2800, Fax: (012) 393 2819/20 • Private Bag X9060 CAPE TOWN 8000, Tel: (021) 467 7021, Fax: (021) 467 7033

To : Mr Sandile July
Werksmans Attorneys
Sandton

From : The Minister of Police

Date : 23 February 2015

Ref : INV/1/02/2015

Dear Mr July

Re: YOUR APPOINTMENT TO CONDUCT AN INVESTIGATION ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT; MAJOR GENERAL SHADRACK SIBIYA; AND OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES INVESTIGATION ("DPCI") IN THE ILLEGAL RENDITION OF THE ZIMBABWEAN NATIONALS IN 2010

1. Serious allegations of misconduct and possible criminal acts have been made against the Head of the Directorate for Priority Crime Investigations ("DPCI"), Lieutenant-General Dramat; the Provincial Head of DPCI, Gauteng, Major-General Shadrack Sibiya, and other members of the DPCI. It has been reported

SS JB

in the media and elsewhere that these members of the DPCI have authorised, and participated in the illegal rendition of Zimbabwean nationals, i.e. Shepard Chuma; Maqhawe Sibanda; Prichard Chuma; Johnson Ndoni; Gugu Dube and Bongani Moyo.

2. Mr I H Khuba, who was the Provincial Head of Independent Police Investigative Directorate, Limpopo at the time, led a task team that was commissioned to conduct an investigation into these allegations. Mr Khuba and his team conducted an extensive investigation and produced a report which was signed by Mr Khuba on page 35 of the report with the following recommendations:

"1) Based on the available evidence the Independent Police Investigative Directorate recommends that Lieutenant-General Dramat, Major-General Sibiya, Lieutenant Colonel M Maluleke, constable Radebe, Captain S E Nkosi and Warrant Officer Makoe be charged criminally for:

- 1.1 kidnapping;*
- 1.2 defeating the end of justice;*
- 1.3 assault and theft (only applicable to Captain M L Majuleke, Warrant Officer Makoe, Constable P M Radebe and Captain S E Nkosi)."*

3. The above mentioned report was submitted to the National Prosecuting Authority ("NPA") for a decision to prosecute. No decision was taken by the NPA to date. After Mr Khuba had submitted his report, another report surfaced, also signed by Mr Khuba. The said report is dated at the bottom by Mr M Sesoko and Mr R J McBride 9 April 2014. In this report the recommendation had been changed to the following:

"Based on the available evidence, the Independent Police Investigative Directorate recommends that no charges should be brought against Lieutenant-General Dramat and Major-General Sibiya. The investigation established that there is no prima facie case against them. However with regard to Lieutenant

SS JB

Colonel M Maluleke, there is a prima facie case to sustain charges of kidnaping and defeating the ends of justice."

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4. In the report which purports to exonerate Lieutenant-General Dramat and Major-General Sibiya, there is also no longer any mention of Constable Radebe; Captain Nkosi and Warrant Officer Makoe and whether they have been exonerated as well or not.
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-General Dramat; Major-General Sibiya; and any other officers mentioned in the original report;
 - 5.4 the circumstances under which the 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 is relevant to your conclusions and findings.
6. In your investigation, you will interview the relevant witnesses at your own discretion and have access to all relevant documentation including the two reports, the docket and witness statements made so far.

SS JB

7. I require your report within two weeks from the date of your appointment, an extension may however be granted at your request.

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Yours faithfully,



NP Mhleko

Minister of Police

Date: 23/02/2015



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**IN THE DISCIPLINARY HEARING
(HELD AT PRETORIA)**

"S52"

In the disciplinary enquiry between:

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Employer

and

INNOCENT KHUBA

1ST Employee

MATTHEWS SESOKO

2ND Employee

CHARGE SHEET

CHARGE 1

1. You, Mr Khuba ("first employee") are currently the Provincial Head of IPID in Limpopo. During 2012, you were appointment as the Lead Investigator in the matter relating to the illegal rendition of Zimbabwean nationals by certain members of the Directorate for Priority Crimes Investigation ("DPCI") which occurred during November 2010 and January 2011. The investigation was concluded on or about January 2014 and you submitted a final investigation report to the National Prosecuting Authority ("NPA") for a decision. In submitting the said report to the National Prosecuting Authority, you were accompanied among others by Matthews Sesoko, Head of Investigations at IPID, who provided legal assistance to you and your team during the investigation. In submitting your January 2014 report to the NPA, you met with

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AB

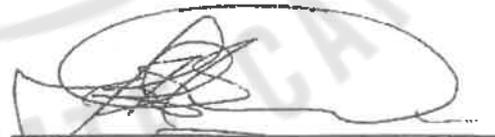
A8

109

Advocate Anthony Mosing of the NPA and handed a final report to him for the NPA to take a decision to prosecute.

2. Notwithstanding that you had submitted the final report to the NPA, which the NPA subsequently referred to the Director of Public Prosecutions, South Gauteng ("Advocate Chauke") you, accompanied by Angus approached the DPP South Gauteng's office, and collected the docket and the report from the DPP, South Gauteng.
3. You, Sesoko, and McBride altered the report which had been handed over to NPA, and deleted information incriminating Lieutenant General Anwa Dramat ("Dramat"), the former National Head of DPCI, and/or Sibiya, the Provincial Head of DPCI Gauteng, from the report in order to reach a conclusion that Dramat and Sibiya had been exonerated by IPID when you knew or ought to have known that the final IPID report of January 2014 recommended that Dramat and Sibiya be criminally charged.
4. By altering the report of January 2014, you and Sesoko have made yourselves guilty of dishonesty, and defeating the ends of justice.

DATED AT JOHANNESBURG ON THIS THE 06TH DAY OF JULY 2015



Hogan Lovells Attorneys
Initiators and pro-forma Prosecutors

SS AB



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IN THE DISCIPLINARY HEARING
(HELD AT PRETORIA)

"533"

In the disciplinary enquiry between

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE Employee

And

INNOCENT KHUBA 1ST Employee

MATTHEWS 2ND Employee

AFFIDAVIT

I the undersigned

Innocent Khuba

Do hereby declare as follows that

1. I am an adult male currently employed by Independent Police Investigative Directorate (IPID) as a Provincial Head for the Limpopo Province.
2. The facts deposed hereto are within my personal knowledge and I believe same to be both true and correct and binding on my conscience.

Handwritten initials and signatures: "SS", "C.L.M.", "H.I.", and "M.L.M."

3. I will in this affidavit set out brief background facts regarding matters explained herein and thereafter explain circumstances in relation to Mr Sesoko.

Background Facts

4. I was immediately prior to making this sworn statement facing certain charges of misconduct relating to a matter that came to be commonly known as illegal rendition of Zimbabwean Citizens (rendition or rendition matter).
5. I was appointed on or about 2012 as the lead investigator in the rendition matter by Ms K Mbeki (Ms Mbeki). Upon my assignment to this matter Ms Mbeki gave me specific instruction not to involve Mr Sesoko in the investigations and that I should instead co-operate with Colonel Moukangwe of SAPS Crime Intelligence, Advocate Mosing and one Adv Moeletsi.
6. In the normal course of events in terms of IPID processes I must liaise with Mr Sesoko when conducting the investigations.
7. I must also state that Advocate Mosing and Advocate Moeletsi are not IPID employees.
8. In the course of my rendition investigation I submitted various progress reports to Ms Mbeki and Advocate Mosing. In respect of one of the progress reports, with which I also surrendered the docket, Advocate

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#1
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Mosing insisted that it should be signed. Mr Sesoko was not present or aware that I had submitted the report to Adv Mosing.

9. In view of the fact that Ms Mbeki had gone awol and therefore not available to sign, Advocate Mosing advised that I should append my signature to it. Normally Ms Mbeki would have been the person legible to sign this report as required by Advocate Mosing. Upon Mosing's insistence I voluntarily signed this report before handing same to him. For purposes of convenience, I would refer to this report as the January report.

10. At the time of submitting the January report Advocate Mosing was aware of the outstanding investigations.

11. At or about this time which was about March 2014, Mr Robert McBride (McBride) was appointed as the new Executive Director. Like all other persons who were dealing with what is termed high profile cases, I gave a briefing to him on the high profile matters that I was investigating including the renditions matter and also that I was instructed by Ms Mbeki not to include Mr Sesoko in the investigation. I further advised McBride that I have now completed all outstanding investigations as requested by Advocate Mosing and that I have already requested retrieval of the docket from the Director of Public Prosecution (DPP).

12. McBride instructed me to henceforth include Mr Sesoko in the further investigations if any and in finalising the renditions report.

C.L.M

H. I

SB
SJ

W.L.M

13. After retrieving the docket from the DPP I proceeded to work with Mr Sesoko in finalising the renditions report. This was in March 2014. I emailed one of the progress reports to Mr Sesoko's computer from which we proceeded to finalise the renditions report based on all the evidence available. I worked on Mr Sesoko's computer when finalising the report.
14. In compiling the final report Mr Sesoko would assess the evidential value of assertions made in the report and I would input into the report submissions that are supported by the evidence available.
15. I wish to state categorically except for what I stated above that neither McBride nor Sesoko instructed me to either make any specific changes in the report or to exonerate any person in the report.
16. During January or February 2015 I was phoned by Mr Sesoko inquiring whether I have knowledge of the signed report dated January 2014 (The January Report).
17. I could not immediately recall this specific report and only did so when two pages of the report were sent to our spokesperson, one Mr Dlamini, by a Journalist by the name Mr Mzilikazi wa Afrika.
18. It was only at this time that remembered that it is the report I had previously sent to Advocate Mosing.
19. Hitherto Mr Sesoko and McBride were not aware of this fact or existence of the January report. Both Gentlemen became aware of the unfolding events when an inquiry was made by the Journalist aforesaid.

SS
ALM
H1
M-LM

My Guilty Plea

20. In respect of my plea to the charges that I was facing I do not in any way given the manner in which the charge/s are phrased implicate or intend to implicate or in any manner suggest that Mr Sesoko is also guilty of the charge/s that he is facing.

21. In fact in my plea bargain with my employer, it was also agreed though same is not included as a term in the settlement agreement that I am free to testify for Mr Sesoko should he find it necessary to call me as a witness.

[Signature]

DEPONENT

THIS DONE AND SIGNED BEFORE ME AT Polokwane THIS 25 DAY OF September 2015. AFTER THE DEPONENT DECLARED THAT HE/SHE IS FAMILIAR WITH THE CONTENTS OF THIS AFFIDAVIT AND REGARDS THE PRESCRIBED OATH AS BINDING ON HIS/HER CONSCIENCE AND HAS NO OBJECTION AGAINST TAKING THE SAID PRESCRIBED OATH. THERE HAS BEEN COMPLIANCE WITH THE REQUIREMENTS OF THE REGULATIONS CONTAINED IN GOVERNMENT GAZETTE R1258 DATED 21 JULY 1972 (AS AMENDED).

[Signature]
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C/L pro/0187
COMMISSIONER OF OATHS

SOUTH AFRICAN POLICE SERVICE
POLOKWANE
2015-09-25
COMMUNITY SERVICE CENTRE
015 290 6577/8
SOUTH AFRICAN POLICE SERVICE

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SJ
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m.l.m



"S34"

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ARBITRATION AWARD

Panelist/s: NELSON MATSOBANE LEDWABA
 Case No.: GPBC 2606/2015
 Date of Award: 21 April 2016

In the ARBITRATION between:

INNOCENT HUMBULANI KHUBA

(Union / Applicant)

and

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE - LIMPOPO

(Respondent)

Union/Applicant's representative: MR. NM LEKOLOANE

Union/Applicant's address: c/o PO BOX 1747

POLOKWANE

Telephone: 015 295 0503

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Respondent's representative: ADV. T MOKHATLA

Respondent's address: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

PRIVATE BAG X941, PRETORIA 0001

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DETAILS OF HEARING AND REPRESENTATION

1. The arbitration was held at the Respondent's premises in Polokwane, Limpopo Province, on the 04 March 2016. Mr. NM Lekoloane, an admitted from Moloko Phooko Attorneys, represented the applicant while Advocate T Mokhatla, instructed by the State Attorney, appeared for and/ on behalf of the respondent.

ISSUES IN DISPUTE

2. The applicant filed an application in which he claims to have been unfairly dismissed by the respondent. The applicant alleged that his dismissal was unfair on both the substantive and procedural grounds.
3. I am enjoined by the Labour Relations Act 66 of 1995 (the Act) to determine whether or not the dismissal of the Applicant was unfair, and to further determine the appropriate relief, should I find that the dismissal was unfair.

SURVEY OF EVIDENCE AND ARGUMENT

4. The parties agreed to submit their written heads of argument, and they both complied. Both the respondent and the applicant party further handed in their bundles of documents which were accepted and accordingly marked as Exhibit A and B respectively. The parties held a pre-arbitration conference and agreed on the following common cause factors:

Common cause factors:

- 4.1. The applicant was charged for misconduct as per the notice of disciplinary hearing/ charge sheet.
- 4.2. The applicant pleaded guilty to all the charges.

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- 4.3. Both the applicant and the respondent entered into an agreement, on 23 September 2015, that the applicant be issued with a final written warning valid for a period of six (06) months.
- 4.4. The applicant subsequently deposed to an affidavit in support of one Matthews Sesoko.
- 4.5. The applicant was invited by the respondent to make representations, in terms of the letter dated 29 September 2015, as to why his final written warning should not be revoked and be replaced with a sanction of dismissal.
- 4.6. The applicant made written representations as per the letter dated 30 September 2015.
- 4.7. The applicant was subsequently dismissed from work on 30 September 2015.

5. The Respondent's case

It was submitted for the respondent as follows:

- 5.1. On or about 7 July 2015 charges were preferred against the applicant by the respondent as follows:
1. *You Mr. Khuba (the first employee) are currently the Provincial Head of IPID in Limpopo. During 2012, you were appointed as the Lead Investigator in the matter relating to illegal rendition of Zimbabwean nationals by certain members of the Directorate for Priority Crimes Investigation (DPCI) which occurred during November 2010 and January 2011. The investigation was concluded on or about January 2014 and you submitted a final report investigation report to the National Prosecuting Authority (NPA) for a decision. In submitting the said report to the National Prosecuting Authority, you were accompanied amongst others by Matthews Sesoko, Head of Investigations at IPID, who provided legal assistance to you and your team during the investigation. In submitting your January 2014 report to the NPA you met with Adv. Anthony Mosing of the NPA and handed a final report to him for the NPA to take a decision to prosecute*
 2. *Notwithstanding that you had submitted the final report to the NPA, which the NPA subsequent referred to the Director of Public Prosecutions, South Gauteng (Adv Chauke) you, accompanied by*

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Angus approached the DPP South Gauteng's office, and collected the docket and the report from the DPP, South Gauteng

3. You, Sesoko and McBride altered the report which had been handed over to NPA, and deleted information incriminating Lieutenant General Anwa Dramat (Dramat), the former National Head of DPCI, and/or Sibiya, the Provincial Head of DPCI Gauteng, from the report in order to reach a conclusion that Dramat and Sibiya had been exonerated by IPID when you knew or ought to have known that the final IPID report of January 2014 recommended that Dramat and Sibiya be criminally charged.

4. By altering the report of January 2014, you and Sesoko have made yourself guilty of dishonesty, and defeating the ends of justice.

- 5.2. Subsequent to being charged, on or about the 23 September 2015 the applicant represented by his attorney, freely and voluntarily pleaded guilty to charges preferred against him in terms of the charge sheet.
- 5.3. The applicant and the respondent entered into an agreement dated the 23 September 2015, wherein it was agreed, inter alia, that the applicant be issued with a final written warning valid for six months. On or about the 25 September 2015 the applicant deposed to an affidavit on behalf of his co-accused, Mr. Matthews Sesoko.
- 5.4. The applicant was employed as the Respondent's Provincial Head in the Limpopo Province and that he occupied a position of trust and as a result it was expected that his conduct should be beyond reproach.
- 5.5. The charges preferred against the applicant were of a serious nature; given the fact that the applicant was the lead investigator in the matter, which involved the investigation of misconduct by senior members of the Director for Priority Crime Investigation, commonly known as the "Hawks".

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- 5.6. The applicant was charged together with Mr. Sesoko based on the same facts and incident. The significance of the applicant and Mr. Sesoko being charged together was that they were co-accused and they participated in the same misconduct, thereby further implying that any evidence against the applicant would have been utilized again against the other.
- 5.7. A guilty plea by the applicant constituted an unequivocal admission of the misconduct faced during the disciplinary hearing. This further meant that the applicant unreservedly admitted to all the allegations that were leveled against him in respect of the charge sheet.
- 5.8. The respondent issued the applicant with a sanction of a final written warning valid for a period of six months as form of leniency.
- 5.9. The terms of the agreement entered into between the applicant and the respondent are clear and there's nowhere in which it was agreed that the applicant was free to testify for Mr. Sesoko should it be necessary. This according to the respondent, is another indication of dishonesty on the part of the applicant
- 5.10. The applicant perpetuated the charge of defeating the ends of justice by deposing to an affidavit on behalf of Mr. Sesoko the contents of which contradict what he had already pleaded guilty to. The applicant repeated the very same act of misconduct that he was initially charged for and the respondent was entitled to dispense with the pre-dismissal procedures based on the conclusive proof of the misconduct as well as the serious nature of the charges.
- 5.11. The continued employment relationship between the applicant and the respondent will be intolerable. And same negates the relief of reinstatement sought by the applicant during these proceedings.

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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.

6. **The Applicant's case**

It was submitted for the applicant as follows:

6.1. The applicant occupied the position of the Provincial Head-Limpopo Province. The applicant was on Salary Level 14 with an Annual Salary of R1 042 500.00 prior to his dismissal.

6.2. The applicant was charged, amongst others, for altering the report which had been handed over to NPA, and deleted information incriminating Lieutenant General Anwa Dramat the former National Head of DPCI, and/or Sibiya, the Provincial Head of DPCI Gauteng, from the report in order to reach a conclusion that Dramat and Sibya had been exonerated by IPID when he (the applicant) knew or ought to have known that the final IPID report of January 2014 recommended that Dramat and Sibiya be criminally charged.

6.3. The applicant altered certain witness statements as instructed by the Director of Public Prosecution (DPP) South Gauteng. The respondent viewed same as the transgression of defeating the ends of justice and acts of dishonesty attracting a disciplinary hearing.

6.4. The applicant deposed to an affidavit in which he exonerated the suspended Director, Mr. Robert McBride (McBride) and his colleague Mr. Mathews Sesoko (Sesoko) from any wrongdoing in the case of the so called illegal rendition of the Zimbabweans

6.5. During the disciplinary hearing held on the 23 September 2015, the applicant pleaded guilty to the allegations and was issued with sanction of a final written warning valid for a period of six (06) months.

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- 6.6. The applicant was not prevented from testifying in any disciplinary hearing involving one of his co-accused. It's quite unfair for the respondent to terminate the services of the applicant for having deposed to an affidavit for Mr. Sesoko. He never meant to implicate and or exonerate the co-accused, Mr. Sesoko in his affidavit.
- 6.7. The chairperson of the disciplinary hearing had the delegated powers to impose a final penalty to the applicant, and that for anyone to substitute same would amount to a procedural irregularity. The respondent has violated Clause 6 and 7 of Resolution 1 of 2003, which provides that "the employer in cases of serious misconduct which would warrant a dismissal may institute a disciplinary enquiry. The employer must appoint an employee as a representative, who as far as possible should be the manager for the employee, to initiate the enquiry. The employer must also appoint the chair of the hearing".
- 6.8. The Senior Management Handbook which applies to the applicant, by virtue of his position, provides same requirements as the Resolution 1 of 2003 at its Clause 2 .6. (1) & 4 (a).
- 6.9. The Collective Agreement and the SMS handbook do no regard the findings of the chairperson as a mere recommendations. The respondent's Mr. Kgamanyana did not have authority to revoke and or substitute the findings of the disciplinary hearing chairperson and his conduct should be found as procedural irregularity and invalid.
- 6.10. The applicant was denied an opportunity to state his case, and his dismissal should be found to have been both procedurally and substantively unfair. The applicant prays for retrospective reinstatement.

ANALYSIS OF EVIDENCE AND ARGUMENT

7. The applicant faced allegations of misconduct and a disciplinary hearing was convened. The applicant pleaded guilty to the charges which included dishonesty and defeating the ends of justice.

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8. The applicant was charged for allegedly having committed the following:
1. You Mr. Khuba (the first employee) are currently the Provincial Head of IPID in Limpopo. During 2012, you were appointed as the Lead Investigator in the matter relating to illegal rendition of Zimbabwean nationals by certain members of the Directorate for Priority Crimes Investigation (DPCI) which occurred during November 2010 and January 2011. The investigation was concluded on or about January 2014 and you submitted a final report investigation report to the National Prosecuting Authority (NPA) for a decision. In submitting the said report to the National Prosecuting Authority, you were accompanied amongst others by Matthews Sesoko, Head of Investigations at IPID, who provided legal assistance to you and your team during the investigation. In submitting your January 2014 report to the NPA you met with Adv. Anthony Mosing of the NPA and handed a final report to him for the NPA to take a decision to prosecute
 2. Notwithstanding that you had submitted the final report to the NPA, which the NPA subsequent referred to the Director of Public Prosecutions, South Gauteng (Adv Chauke) you, accompanied by Angus approached the DPP South Gauteng's office, and collected the docket and the report from the DPP, South Gauteng
 3. You, Sesoko and McBride altered the report which had been handed over to NPA, and deleted information incriminating Lieutenant General Anwa Dramat (Dramat), the former National Head of DPCI, and/or Sibiya, the Provincial Head of DPCI Gauteng, from the report in order to reach a conclusion that Dramat and Sibiya had been exonerated by IPID when you knew or ought to have known that the final IPID report of January 2014 recommended that Dramat and Sibiya be criminally charged.
 4. By altering the report of January 2014, you and Sesoko have made yourself guilty of dishonesty, and defeating the ends of justice.
9. An agreement was entered into between the applicant and the respondent. The terms of the said agreement were recorded as follows:
- (4) Mr. Khuba being legally represented, freely and voluntarily pleads guilty to the charges proffered against him as set out in Annexure A.
 - (5) The employer will impose a sanction of final written warning valid for 6 months against Mr. Khuba.
 - (6) Mr. Khuba suspension will be uplifted and he will report for duty on Monday, 28 September 2015.

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10. By pleading guilty to the said allegation one can safely conclude that indeed the applicant committed the said transaction. And the applicant in deposing to an affidavit contradicted what he had already consented to. At paragraph 19 of his affidavit: The applicant stated that before the enquiry by a journalist, Sesoko and MacBride were not aware of the existence of the January report whereas he had already pleaded guilty to the fact that he was accompanied by, amongst others, Sesoko, when submitting the said January report.
11. Another discrepancy appears on paragraph 8 of the applicant's affidavit, wherein he alleged that Sesoko was not present or aware that he had submitted the report to Adv. Mosing, whereas he had already pleaded guilty to the allegations that he was accompanied by Sesoko when submitting the said report to Adv Mosing.
12. On the penultimate contradiction, the applicant stated that at the time of submitting the January report, Adv. Mosing was aware for the outstanding investigations, yet he pleaded guilty to the allegations that the investigations were concluded in January and that him and Sesoko submitted a final report to the NPA for a final decision to prosecute.
13. The applicant further at paragraph 15 of his affidavit, stated that neither McBride nor Sesoko instructed him to either make any specific changes in the report or to exonerate any in the report. Contradictorily the applicant pleaded guilty that himself, Sesoko and McBride altered the report that was handed over to the NPA and deleted information incriminating Dramat and Sibiya.
14. In *Sidumo & another v Rustenburg Platinum Mines & others* (2007) 28 ILJ 2405 (CC) it was held, that:
"in approaching the dismissal dispute impartially a Commissioner will take into account the totality of circumstances. He /she will necessarily take into an 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 an 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

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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".

15. The principle established in this case emphasizes 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.
16. Accordingly, I find that in this case the rule involved was aimed at protecting the integrity of the respondent and that the applicant did not have such a long service with the respondent – just about two years in the service of the respondent. Furthermore, the applicant occupied the position of trust in that he was the Provincial Head of IPID in Limpopo. This is a position which calls for a higher degree of honesty let alone responsibility to manage other employees. Thus the applicant was setting a bad example to his subordinates. He breached the trust the employer vested in him as an incumbent of that office. As such it goes without saying that the respondent will no longer trust the applicant as this is a type of breach which cannot be mended.
17. A valuable definition of dishonesty appears in *Nedcor Bank v Franck & Others [2002] 7 BLLR 600 (LAC)* wherein it was described as: "*Dishonesty entails a lack of integrity or straightforwardness and, in particular, a willingness to steal, cheat, or act fraudulently...*" I agree with the respondent that the applicant perpetuated acts of dishonesty by deposing to an affidavit which contradicts his guilty plea in support of Sesoko.
18. In *Canadian case of Lynch & Co v United States Fidelity & Guaranty Co [1971] 1 OR 28 at 37, 38 (Ont. SC)* the following was said (per Fraser J)
"Dishonesty is normally used to describe an act where there has been some intent to deceive or cheat. To use it to describe acts which are merely reckless, disobedient or foolish is not in accordance with popular usage or the dictionary meaning"
19. As the Provincial Head the applicant ought to have known that he owed the respondent a duty of an ultimate good faith (*uberrima fides*) in all his dealings with the respondent and its stakeholders. Under the circumstances, I find that no any other degree of remorse shown by the applicant or personal circumstances can manage to outweigh these factors. In the premises, I find that the sanction of dismissal herein was appropriate.

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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.

21. The Code of Good Practice: Dismissal sets out the requirements for a fair pre-dismissal procedure in the following terms (item 4 (1)):

Normally, the employer should conduct an investigation to determine whether there are grounds for dismissal. This does not need a formal enquiry. The employer should notify the employee of all the allegations using a form and language that the employee can reasonably understand. The employee should be allowed the opportunity to state a case in response to the allegations. The employee should be entitled to a reasonable time to prepare a response and to the assistance of a trade union representative or fellow employee. After the enquiry, the employer should communicate the decision taken, and preferably furnish the employee with written notifications of the decision.

22. In *Moropane v Gilbey's Distillers & Vinters (Pty)Ltd & another* (1998) 19 ILJ 635 (LC) it was held that the requirement of procedural fairness under the current Labour Relations Act demands less stringent and formalized processes than in the past. Again the said principle was emphasized by the Courts in *Avril Elizabeth Home for the Mentally Handicapped v CCMA and Others* [2006] 2 BLLR 118 (LAC), wherein it was held that the employers are merely required to conduct investigation, accord the employee an opportunity to respond to allegations after a reasonable period and thereafter to take a decision and give the employee notice thereof.

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 utilized effectively or not, same does not make his dismissal to be procedurally unfair.

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24. The respondent 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.
25. It is trite that dismissal sanction should be reserved for very serious acts of misconduct. The applicant's conduct is inherently a very serious misconduct and undoubtedly constitutes a breach of trust. 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.
26. The destruction of trust in an employment relationship renders the continuation of employment intolerable. In the circumstances I cannot interfere with the sanction imposed by the respondent, as I do not consider it inappropriate

AWARD

27. The case of Innocent Humbulani Khuba is herewith dismissed;
28. Accordingly, I find that the dismissal of the applicant by the respondent was not unfair, and consequently he won't be entitled to any remedy in law.
29. There is no order as to costs.

Thus done and signed at Polokwane on this the 21 Day of April 2016.



NELSON MATSOBANE LEDWABA
GPSSBC PANELLIST

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**IN THE LABOUR APPEAL COURT OF SOUTH AFRICA
HELD IN JOHANNESBURG.**

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Case No. JA 48/04

In the matter between

EDWIN MAEPE**Appellant****And****COMMISSION FOR CONCILIATION,
MEDIATION AND ARBITRATION****First Respondent****RICHARD LYSTER N.O****Second Respondent**

JUDGMENT

ZONDO JP**Introduction**

[1] I have had the benefit of reading the judgment prepared by Jappie JA in this matter. I agree with the order which he proposes as well as the reasons he gives for it. However, in this judgment I wish to expand on certain matters and, possibly, add to the reasons relied upon by Jappie JA.

Basic facts and background

[2] The facts of this case and the evidence upon which it must be decided have been dealt with adequately by the commissioner of the CCMA in his arbitration award and by Jappie JA in his judgment. For that reason I do not propose to set the facts out in

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this judgment nor to deal with the evidence in any great detail.

However, it is necessary to state some basic facts. They are that:

- (a) the first respondent is the Commission for Conciliation Mediation and Arbitration, legal entity created by sec 112 of the Labour Relations Act, 1995 (Act 66 of 1995) (“the Act”).
- (b) in terms of sec 113 of the Act the first respondent is independent of the State, any political party, trade union, employer, employers’ organisation, federation of trade unions or federation of employers’ organisations.
- (c) in terms of sec 114(1) of the Act the first respondent has jurisdiction in all provinces of the Republic and in terms of sec 114(3) it has to maintain at least one office in every province.
- (d) in terms of sec 115 of the Act the first respondent has many functions the most important of which is the resolution of certain labour disputes through conciliation and arbitration; indeed, the bulk of labour disputes which are required to be referred to conciliation – other than those that fall under the jurisdiction of bargaining councils – get referred to the first respondent for conciliation;
- (e) to perform its dispute resolution functions, the first respondent employs commissioners (sec 117(1) of the Act); in terms of sec 117(2)(a)
 - (i) of the Act some commissioners are employed on a part-time basis whereas others are employed on a full-time basis.
- (f) in terms of sec 117(2)(a)(ii) of the Act there are two categories of commissioners, namely, commissioners and senior commissioners;
- (g) there is no provision in the Act for the office or position of convening senior commissioner but it would seem that, this notwithstanding, certain senior commissioners are designated by the first respondent as convening senior commissioners;
- (h) in terms of sec 118(4) of the Act, the director of the first respondent, appointed in terms of sec 118(1) of the Act, automatically holds the office of senior commissioner.
- (i) it would seem that those senior commissioners whom the first respondent has designated as convening senior commissioners are in charge of groups of commissioners; I don’t know whether always, but it seems that, at least in some cases, convening senior commissioners are

effectively provincial leaders of the first respondent in the provinces in which they operate and that they are not simply leaders of commissioners but are also senior managers responsible for all the staff of the first respondent in those provinces.

- (j) the appellant was employed by the first respondent as a **“convening senior commissioner”** in the Eastern Cape Province and, as such, was the most senior official of the first respondent in that province.
- (k) part of the duties of a commissioner is to sit as an arbitrator in arbitrations conducted under the Act, administer the prescribed oath to witnesses who are about to give evidence in an arbitration in which the commissioner is the arbitrator, hear evidence and argument, weigh up evidence led at arbitrations, make, where necessary, credibility findings against or in favour of witnesses, make findings of fact and make value judgments about the fairness of dismissals, issue arbitration awards and make orders for reinstatement or re-employment or for the payment of compensation; this is not intended as an exhaustive list of the functions of commissioners.
- (l) following upon a disciplinary inquiry, the appellant was found guilty of, and dismissed for,
 - (i) sexual harassment, and,
 - (ii) improper or disgraceful conduct.
 In respect of the charge of sexual harassment, the allegation was that during or about October 2000 the appellant had **“sexually harassed receptionist V. Nunwana in that you-**
 - (a) **made unwelcome comments that you loved her and/or that you wanted to kiss her and or you wanted to keep her photograph to put on your**

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chest when you sleep at night.

- (b) made unwelcome gestures of kisses and love towards her.”**

In respect of the second charge, namely, that of **“improper or disgraceful conduct”**, it seems that the charge against the appellant was that on the 13th November 2000 **“you conducted yourself in an improper and/or disgraceful manner unbecoming of a convening senior commissioner, in that you undermined the authority and integrity of the registrar, T. Fikizolo, by telling the said Nunwana that;**

- (a) you had not complained to Fikizolo about Nunwana in the manner in which [Ms Nunwana] was reported ... to Fikizolo.**
- (b) Fikizolo is a liar;**
- (c) She should not disclose to Fikizolo your visit to her and the nature of your conversation with her.”**
- (m) in his disciplinary inquiry the appellant put up a false version of the events in respect of the allegations of misconduct levelled against him in the disciplinary inquiry;**
- (n) the appellant’s version of events was rejected by the chairman of the disciplinary inquiry and he was found guilty of both charges. In respect of the sexual harassment charge the sanction of dismissal was imposed. In respect of the second charge a final written warning was imposed.**
- (o) in a subsequent arbitration conducted under the auspices of the first respondent under the Act in respect of a dispute about the fairness or otherwise of his dismissal, the appellant, under oath, also gave false evidence about the events for which he had been dismissed and the second respondent herein, being the commissioner who was the arbitrator**

in that case, rejected his version in such terms that, although he did not say so in so many words in his award, it is clear that he could not but have regarded the appellant as having been dishonest in giving the evidence that he gave; indeed, a reading of the record reveals that, if the version that the appellant put up in the arbitration was not true, the appellant must have deliberately given false evidence; it is not a case in which it could be said that the appellant could have been genuinely mistaken about what had happened between himself and Ms Nunwana.

(p) despite his finding that the appellant had given false evidence under oath in the arbitration, the commissioner, after finding that dismissal was unfair, ordered the first respondent to reinstate him but to give him a final written warning on condition that, if the appellant was found guilty of similar misconduct within a period of 12 months, he would be dismissed.

(q) the first respondent subsequently brought a review application in the Labour Court to have the commissioner's arbitration award reviewed and set aside on the basis that, when he was considering whether the dismissal of the appellant had been fair or not or, if he found that it was unfair, when he considered what relief, if any, should be granted to the appellant, he had failed to take into account the fact that the appellant had given false evidence both in his disciplinary inquiry and in the arbitration proceedings and that this constituted a gross irregularity; in this regard the first respondent drew attention to the position in which the appellant had been employed by the first respondent and the special position of the first respondent as a dispute resolution institution.

(r) the Labour Court granted the review application, set the award aside, and declared that the appellant's dismissal had been fair.

(s) the appellant applied to the Labour Court for leave to appeal but the application was refused; he then petitioned this Court for leave to appeal. This Court granted him leave to appeal. Hence, this appeal.

Consideration of certain aspects of the appeal

- [3] The main ground of review upon which the first respondent relied in support of its application for the review and setting aside of the commissioner's award was contained in par 6.1 of the first respondent's founding affidavit. That was that, although the commissioner had found that the appellant had given false evidence under oath in the arbitration proceedings, he had failed to

take that fact into account in determining either the fairness of the dismissal or in determining whether or not the appellant should be granted any relief and that this constituted a gross irregularity justifying the reviewing and setting aside of either the entire award or at least the reinstatement order in the award. The appellant's response to this, as given in his answering affidavit, was that the finding that he had given false evidence was not relevant to a determination of whether the misconduct with which he had been charged was serious or not. That response deals only with part of the point. That is the point about the fairness of the dismissal. It does not deal with the point that the fact that he was found to have given false evidence under oath is relevant to the issue of relief and that the commissioner ought to have taken it into account in deciding what relief, if any, the appellant should have been granted and that his failure to do so constituted a gross irregularity.

- [4] The appellant has added another answer in the alternative to par 6.1 of the first respondent's founding affidavit. His answer in the alternative was that he disputed the contents of par 6.1. Disputing the contents of par 6.1 means that the appellant was contending that the commissioner did take into account the fact that he had given false evidence. The appellant specifically said that this was the case even though the commissioner did not in his award say expressly that he had taken this fact into account. The appellant stated that it was improbable that the commissioner would have made such a finding "and then remove it from his later deliberations (sic)." This statement is based on the assumption that the commissioner regarded the fact that the appellant had

given false evidence as relevant to the question of what relief, if any, the appellant had to be granted. If he regarded it as irrelevant to that issue, he would not have taken it into account. If he regarded it as relevant, he may or may not have taken it into account. He did not expressly indicate that he took it into account nor did he indicate whether he considered it relevant to the determination of relief.

[5] The appellant did not in his affidavit challenge the finding made by the commissioner that he had given false evidence. His Counsel submitted that, although the commissioner did not state in terms that the appellant had been a dishonest witness, **“it can hardly be contended that the commissioner proceeded to assess the matter as if Maepe had been entirely honest.”** Counsel for the appellant argued the matter on the basis of an acceptance of the conclusion that the appellant had given false evidence under oath. Although the first respondent’s case in the review application in the Labour Court and at the hearing before this Court was based on the appellant having given false evidence under oath both in the disciplinary inquiry and in the arbitration, in the view I take of the matter, I propose to base this judgment only on the appellant having given false evidence under oath in the arbitration.

[6] I have pointed out above that the first respondent contended first and foremost that the fact that the appellant had given false evidence under oath was relevant to the question whether or not his dismissal was fair and that the commissioner’s failure to take it into account in determining the fairness or otherwise of the dismissal constituted a gross irregularity. I am unable to uphold this contention. The commissioner’s

failure in this regard could not constitute a gross irregularity because the appellant's conduct in giving false evidence under oath was not relevant to whether his dismissal was fair. It was only relevant to the issue of relief. The order that was made by the Labour Court suggests that that Court took the view that the appellant's conduct in giving false evidence under oath was relevant to the question whether the dismissal was fair and yet in the body of its judgment that Court did express agreement with the submission that that factor was only relevant to the issue of relief. As already stated, this factor is only relevant to the issue of relief.

[7] With regard to the question whether or not the commissioner failed to take into account the fact that the appellant had given false evidence when he considered the issue of relief, Counsel for the appellant submitted that simply because the commissioner did not specifically refer to this fact in his award when considering relief and whether to order reinstatement does not necessarily mean that he did not take it into account. In support of this submission Counsel for the appellant referred to Conradie JA's judgment in **County Fair Foods (Pty) Ltd v CCMA & others (1999) 20 ILJ 1701 (LAC) at 1717 C-E** where it was, inter alia, said:

"Awards are expected to be brief. It seems to me to be destructive of the whole concept of CCMA arbitrations over individual dismissals that a commissioner should be held not to have applied his mind to a particular fact because it is not explicitly dealt with in his award."

[8] I agree, at a general level, with what Conradie JA said in this passage. Indeed, I have probably said the same thing myself in some or other judgment in the past. Although a commissioner is

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[Signature]

required to give brief reasons for his or her award in a dismissal dispute, he or she can be expected to include in his or her brief reasons those matters or factors which he or she took into account which are of great significance to or which are critical to one or other of the issues he or she is called upon to decide. While it is reasonable to expect a commissioner to leave out of his reasons for the award matters or factors that are of marginal significance or relevance to the issues at hand, his or her omission in his or her reasons of a matter of great significance or relevance to one or more of such issues can give rise to an inference that he or she did not take such matter or factor into account. In the present matter the appellant's conduct in giving false evidence under oath was so critical to the issue of relief that, in my view, the only explanation for the commissioner's failure to mention it in his reasons as one of the factors that he took into account is that he did not take it into account. If the commissioner had considered such a critical factor, he definitely would have mentioned this in his award. In my view the fact that the commissioner did not mention this very critical factor in his award justifies the drawing of the inference that he did not take it into account. Furthermore, his award is very comprehensive and cannot be said to have been intended to be brief. Accordingly, the matter must be decided on the basis that the commissioner did not take this fact into account in considering what relief, if any, should be granted to the appellant. In the light of the conclusion I have reached above that the commissioner did not take into account the fact that the appellant had given false evidence under oath in the arbitration proceedings in dealing with

the matter, the next question to consider is whether or not the commissioner's failure to take this fact into account constituted a gross irregularity.

[9] In its judgment the Labour Court did not expressly make any finding that the commissioner had committed a gross irregularity in any way in failing to take into account the appellant's conduct in giving false evidence under oath. Nor did it state what ground of review it found to have been established in the matter. It indicated in its judgment that the fact that it was not manifest from the award whether or not the commissioner had applied his mind to the fact that the appellant had given false evidence under oath in the arbitration did not itself "**render the award reviewable**".

[10] The first respondent contended that the commissioner's failure to take the appellant's conduct of giving false evidence into account constituted a gross irregularity. I have said above that the appellant's answer to this in the answering affidavit was that his giving false evidence under oath was irrelevant. However, before us his Counsel did not persist with this contention in so far as relief is concerned. Counsel for the appellant disputed the first respondent's contention that the commissioner's aforesaid omission constituted a gross irregularity justifying the setting aside of the order of reinstatement granted by the commissioner. In support of his contention in this regard, Counsel for the appellant pointed out that the first respondent did not as part of its argument invite the commissioner to take the appellant's conduct in giving false evidence under oath into account in determining what relief, if any, should be granted to the appellant if he was found to have given false evidence under oath and if his dismissal was found to have been unfair. The argument advanced by the appellant's Counsel was that the commissioner's failure to take the fact of the giving of false evidence under oath into account could not constitute a gross irregularity because in effect it was not raised in the arbitration and the commissioner could not be criticised for not doing what he was never asked to do.

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[11] The answer to this argument is that where the law is that a commissioner must take into account a certain factor in deciding a certain question, he is obliged to take that factor into account even if none of the parties asks him to take it into account. When he is obliged to take it into account, it is no defence to say that he was not asked to take it into account. If the factor was a critical one and he did not take it into account, he may well have committed a gross irregularity justifying the reviewing and setting aside of his award. Accordingly, the commissioner's omission under discussion is capable of constituting a gross irregularity even if the first respondent did not ask the commissioner to take into account the appellant's conduct in giving false evidence under oath. Accordingly, I am unable to uphold the submission advanced by Counsel for the appellant in this regard.

[12] Another argument advanced by Counsel for the appellant was that the commissioner's omission could not constitute a gross irregularity because the commissioner was not entitled to take into account the appellant's conduct in giving false evidence because the first respondent had failed to put it to the appellant during cross-examination that the fact that he had given false evidence under oath or was giving false evidence under oath disqualified him from being granted reinstatement or any relief at all if the commissioner found that his dismissal was unfair. It is common cause that the first respondent did not put this to the appellant when the latter was under cross-examination. I consider Counsel's contention in this regard below.

[13] In considering Counsel's submission on the issue at hand, it is important to have regard to the provisions of sec 193(1) and (2) of the Act in so far as they relate to reinstatement and the powers of the CCMA (in arbitrations) and the Labour Court (in adjudications). Secs 193(1) and (2) read as follows:

- “(1) If the Labour Court or an arbitrator appointed in terms of this Act finds that a dismissal is unfair, the Court or the arbitrator may-**
- (a) order the employer to re-instate the employee from any date not earlier than the date of dismissal;**

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(b) order the employer to re-employ the employee, either in the work in which the employee was employed before the dismissal or in other reasonably suitable work on any terms and from any date not earlier than the date of dismissal; or

(c) order the employer to pay compensation to the employee.

(2) The Labour Court or the arbitrator must require the employer to re-employ the employee unless –

(a) the employee does not wish to be re-instated or re-employed;

(b) the circumstances surrounding the dismissal are such that a continued employment relationship would be intolerable;

(c) it is not reasonably practicable for the employer to re-instate or re-employ the employee; or

(d) the dismissal is unfair only because the employer did not follow a fair procedure”

Sec 193(2) of the Act obliges - it uses the word “**must**” – the Labour Court or an arbitrator to order the employer to reinstate or re-employ an employee whose dismissal it or he has found to be unfair for lack of a fair reason or whose dismissal it or he has found to be automatically unfair unless one or more of the situations set out in sec 193(2)(a) – (d) applies.

[14] The situation envisaged in par (a) is where the employee does not wish to be reinstated or re-employed and it does not apply in this case. The situation envisaged in par (b) is where “**the circumstances surrounding the dismissal are such that a continued employment relationship would be intolerable.**” It is possible that in so far as the giving of false evidence under oath may have occurred in the disciplinary inquiry before the dismissal,

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it could be said that it is one of the circumstances surrounding the dismissal, particularly where it was one of the factors that were taken into account in making the decision to dismiss. However, it does not appear to me that the same can be said of a situation where the giving of false evidence only occurs in the arbitration or at the trial subsequent to the dismissal. Paragraph (c) envisages a situation where **“it is not reasonably practicable for the employer to reinstate or re-employ the employee.”** Paragraph (d) is a situation where **“the dismissal is unfair only because the employer did not follow a fair procedure.”** Paragraph (d) does not apply in this case.

[15] The effect of sec 193(1) and (2) is that in those cases in which the arbitrator or the Labour Court has found the dismissal to be either automatically unfair or unfair for lack of a fair reason and none of the situations contained in sec 193(2)(a) – (c) is present, the arbitrator or the Labour Court has no discretion to order the employer to reinstate the employee but is obliged to do so. I am here not referring to a case where the Court or arbitrator must decide whether to grant the relief of reinstatement or that of re-employment. I am referring to a situation where the issue is whether to order the employer to reinstate the employee or to order the employer to pay compensation to the employee. In those cases where the Court or the arbitrator has found that the dismissal is automatically unfair or is unfair for lack of a fair reason and one or more of the situations set out in sec 193 (2)(a) – (c) is present, the Labour Court or the arbitrator has no power to order the employer

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to reinstate the employee. The same applies where the dismissal is unfair only because the employer did not follow a fair procedure.

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[16] What I have just said in the preceding paragraph means that, if a case falls under one or other of the situations listed in sec 193 (2) (a) – (d), it is not competent for the Labour Court or an arbitrator to order reinstatement or re-employment. This is because sec 193(2) makes provision as to when reinstatement or re-employment must be ordered and when it must not be ordered. In effect it says that reinstatement or re-employment must be ordered in all cases except those listed in sec 193(2)(a)-(d). This is mainly because of the use of the words “must require the employer to reinstate or re-employ the employee ...” which appear at the beginning of sec 193(2) of the Act. The Act uses the word “**must**” in many areas and it is clear from an analysis of most parts where “**must**” is used that it is used to impose an obligation. In the cases which fall under sec 193(2)(a) – (d) the Labour Court or arbitrator may order relief other than reinstatement or re-employment such as the payment of compensation to the employee as envisaged in sec 193(1)(c) of the Act. I now return to the submission advanced by Counsel for the appellant the commissioner’s failure to take into account the appellant’s conduct in giving false evidence under oath could not constitute a gross irregularity because the first respondent had failed to put it to the appellant during cross-examination that the fact that he had given false evidence under oath disqualified him from being granted an order of reinstatement so that he could deal with that proposition.

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[17] This submission must be considered against the background of the effect of sec 193(2) on reinstatement. That effect is that, if, as a matter of fact, the evidence that was placed before the arbitrator was such that it would not be “**reasonably practicable for the employer to reinstate**” the appellant as envisaged in sec 193(2)(c), then an order of reinstatement would have been incompetent and the first respondent’s failure to put that to the appellant under cross-examination would not and could not have rendered it competent for the arbitrator to order reinstatement where it was otherwise incompetent for him to make such an order. The arbitrator could not suddenly be competent to make a reinstatement order in a sec 193 (2)(c) situation just because one party failed to put that to the other party under cross-examination. In those circumstances it seems to me that, while the proposition that Counsel for the appellant advanced with regard to a cross-examiner’s obligation to put certain matters to a witness may on the face of it seem good, it cannot be accepted in the context of this case because this is about what the arbitrator or the Court was competent or not competent to do.

[18] Let me illustrate the point made above by way of an example. If the evidence before an arbitrator or the Labour Court in an unfair dismissal dispute between A, and B where A who had been employed by B as a driver, established that his driver’s licence was withdrawn after his dismissal with the result that he could no longer drive lawfully, it would definitely be “**reasonably**

S J B

impracticable” within the meaning of that phrase in sec 193(2)(c) for the employer to reinstate such employee because in such a case the employer would not be able to require the employee to perform his duties without requiring the employee to commit a criminal offence. If in such a case the employer did not put this to the employee under cross-examination would not change the fact that it would be reasonably impracticable for the employer to reinstate such employee. It could not be argued in such a case that, because the employer did not put it to the employee under cross-examination that, as he had lost his driver’s licence, he could no longer be reinstated, the Court could order the employer to reinstate him in his position as a driver.

[19] In my view, the same principle applies to this case. The appellant gave false evidence under oath. Reinstatement was going to mean that he was reinstated to a position in which he had to expect others to respect an oath when he himself had been found to have shown no respect for the same oath. In my view, it was going to be reasonably impracticable for the first respondent to reinstate the appellant to such a position. On what basis could he expect parties and witnesses giving evidence before him to show respect for the oath they would take before giving evidence when he had shown no respect for such oath himself? In my view that state of affairs would be such that the appellant could not perform his duties effectively and when an employee cannot perform his duties effectively, it seems to me that it is reasonably impracticable within the meaning of that phrase in sec 193(2)(c) of the Act to order the employer to reinstate the employee. And when it is reasonably impracticable to order the employer to reinstate an employee, an order of reinstatement is incompetent. Once the commissioner had become satisfied, as he obviously became at some stage, that the appellant had given false evidence under oath, he ought to have considered what the effect thereof, if any, was in regard to relief in the light of the type of institution that the first respondent is, the position which the appellant held in the first respondent and the appellant’s functions or duties in the position in which

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he was employed.

[20] The fact that the appellant gave false evidence under oath in the arbitration means that he showed no respect for the oath to speak the truth which he took in the arbitration. His breach of that oath and the implied finding of the commissioner that he gave false evidence under oath would have left him without any integrity in the eyes of the public who know his position as a convening senior commissioner in the first respondent. How would he, for example, administer an oath to a party to a dispute or to a witness and expect such party or witness to respect that oath when he himself has been found not to have respected that oath? The party to the dispute or the witness to whom the appellant would be administering the oath may well be aware that the appellant was previously found to have given false evidence under oath in an arbitration. In a particular case his position as a commissioner may well require him to show his disapproval of the conduct of a witness who may give false evidence before him under oath. How would he deal with that situation when he himself has been found wanting in that regard? If he refrained from dealing with it, he could be failing in his duties. If he showed his disapproval, his disapproval would carry no weight with those who use the services of the first respondent.

[21] The first respondent is a very important statutory institution specially established to resolve certain labour disputes in the country. For it to function effectively, it requires to have integrity and enjoy the confidence of the users of its services. That is workers, trade unions, employers and employers' organisations. Its contact with those who use its services is, I have no doubt, often, through its commissioners who, throughout the length and breadth of this country, conciliate and arbitrate disputes every working day. By and large commissioners are the face of the institution. If commissioners do not have integrity and do not enjoy the confidence of society and the users of the first respondent's services, the first respondent, as a dispute resolution institution, will fail. Everything possible must be done to avoid that eventuality.

[22] Without integrity the appellant simply could not carry out his functions or perform his duties as a convening senior commissioner or even as an ordinary commissioner effectively. He could not lead the rest of the commissioners in the Eastern Cape Province whom he was required to lead in his position as a convening senior commissioner before his dismissal. The integrity of the first respondent as an institution

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would be intolerably compromised. In those circumstances I am of the view that this is a case which falls under sec 193(2)(c) of the Act and that, consequently, it was not competent for the commissioner to order the first respondent to reinstate the appellant. In my view the commissioner's failure to take into account the appellant's conduct in giving false evidence under oath in the arbitration when he considered the issue of relief constituted a gross irregularity which justified the setting aside of the order of reinstatement which the commissioner had made.

[23] I am not unmindful of the submission advanced by Counsel for the appellant that the first respondent failed to lead evidence that the appellant's conduct in having given false evidence under oath rendered a continued employment relationship intolerable and that, for that reason, the first respondent could not rely on the intolerability of a continued employment relationship to argue that the commissioner committed a gross irregularity in ordering the appellant's reinstatement. In the light of the conclusion I have reached above that the appellant's case fell under sec 193(2)(c) of the Act, it is unnecessary to deal with the appellant's Counsel's contention in this regard. That is because I am basing my decision on another argument and not on the intolerability of a continued employment relationship.

[24] Counsel for the appellant also urged this Court to adopt the same approach in this case as it adopted in **Flex-o-thene Plastics (Pty) Ltd v CWIU [1999] 2 BLLR 99 (LAC)** at paras 11 and 12. There this Court, through Froneman DJP, said:

"The effect of this approach is that the employees were deprived of reinstatement because of misconduct for which they were never charged nor disciplined by the appellant. The appellant never raised the fact of this misconduct in its statement of defence. It led no evidence of any breakdown of trust, let alone a break down caused by the alleged misconduct at the disciplinary enquiry. It was never suggested in cross-examination of the

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employees that their misconduct during the inquiry was the cause of any breakdown in the employment relationship.

The misconduct at the disciplinary hearing was thus not responsible for a breakdown in the employment relationship. The presiding officer should not have refuse reinstatement because of it.”

[25] In my view the Flex-0-theme case is distinguishable from the present case. In that case the alleged misconduct with which Froneman DJP was dealing, if established, would not have meant that it was incompetent to order reinstatement whereas in the present case the fact that the appellant gave false evidence under oath meant that, if he were reinstated, he would not have been able to do his job effectively and that an order for his reinstatement was not competent. I have said earlier that that renders it reasonably impracticable for the first respondent to reinstate him and the order of reinstatement that the commissioner made in those circumstances was not competent.

[26] Counsel for the appellant further submitted that, even if the commissioner could not or ought not to have ordered the appellant's reinstatement, this did not necessarily mean that the appellant ought not to have been granted any relief. He submitted that, if the appellant was not granted an order of reinstatement, he ought to have been granted compensation because his dismissal remained substantively unfair. In this regard my view is different from that of the Court a quo and I agree with Counsel for the appellant. In my view the appellant deserved to be awarded compensation. His dismissal was correctly found to have been substantively unfair even though his conduct was not appropriate. He had made some sexual advances to the receptionist which he should never

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equal to 12 months remuneration calculated at the appellant's rate of pay at the time of his dismissal would be appropriate relief for him. I accordingly agree with the order proposed by Jappie JA in his judgment.

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Zondo JP

**IN THE LABOUR APPEAL COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG**

CASE NO: JA48/04

In the matter between

EDWIN MAEPE

APPELLANT

(Second Respondent in the Court a quo)

And

**COMMISSION FOR CONCILIATION
MEDIATION AND ARBITRATION**

FIRST RESPONDENT

(Applicant in the Court a quo)

RICHARD LYSTER N.O

SECOND RESPONDENT

(First Respondent in the Court a quo)

JUDGMENT

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JAPPIE JA

[1] This appeal, with leave of this Court, is against a judgment of Pillay J sitting in the Labour Court. The *Court a quo* reviewed and set aside an arbitration award issued by the second respondent, Richard Lyster, N.O (“the commissioner”) in which award it was held that the dismissal of Edwin Maepe, the appellant, by the first respondent, the Commission for Conciliation Mediation and Arbitration (“the CCMA”) for misconduct was too harsh and directed that the appellant be reinstated with a final written warning valid for twelve months, with the forfeiture of all back pay.

Background

[2] The appellant was employed by the first respondent as a convening senior commissioner for the Eastern Cape in February 2003. On the 10th January 2001 the appellant was charged with sexual harassment and, in addition, improper or disgraceful conduct. The charges arose out of various incidents which occurred during October and November 2000. The incidents of sexual harassment involved Ms Vuyiswa Nunwana (“the Complainant”). The charge of improper or disgraceful conduct was in regard to a conversation that the appellant had had with Ms Nunwana about the registrar of the CCMA, in the Eastern Cape, Mr Fikizolo.

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- [3] At the time of being charged, the appellant was not suspended and he continued with his duties as a convening senior commissioner up until the time of his dismissal following a disciplinary enquiry under the chairmanship of a fellow commissioner, Mr Kenny Mosime. At the disciplinary enquiry the appellant was found guilty of both charges of sexual harassment and of improper or disgraceful conduct, and the chairman, Mosime, recommended that he be dismissed.
- [4] In April 2001 the first respondent adopted this recommendation and the appellant was dismissed from his employment. Although the appellant was found guilty of both charges, it was only the finding in relation to the charge of sexual harassment which carried the sanction of dismissal. On the second charge of improper or disgraceful conduct the appellant received a final written warning. The appellant disputed the fairness of his dismissal and this dispute was referred to the CCMA for conciliation. The conciliation process failed and the dispute proceeded to arbitration.

The Arbitration Proceedings

- [5] The arbitration proceedings commenced on the 26th September 2001 before the second respondent, also a commissioner of the CCMA.

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- [6] It was agreed by the parties that the evidence that was tendered at the disciplinary hearing before Mr Kenny Mosime would form part of the record of the arbitration. Nevertheless both the complainant and the appellant were called as witnesses as well as Mr Fikizolo and were subjected to cross-examination before the commissioner.

Complainant's Evidence

- [7] The complainant, Vuyiswa Nunwana, was employed as a receptionist at the offices of the CCMA in Port Elizabeth. She commenced employment in 1996 and fell under the supervision of the registrar, Mr T. Fikizolo. She testified that on the 24th October 2002 whilst at home she received a telephone call from the appellant. She received the call at approximately 17h24 and it lasted for 12 minutes and 22 seconds. During her conversation with the appellant he told her "*I love you*" and asked what she was doing. She informed him that she was in the bath. He repeated his statement that he loved her and told her "*I wish I can come and wash your back.*" She attempted to divert the conversation and ignored the appellant's remarks. She thought to herself that she "*could solve it.*" She testified that she had hoped that by ignoring the appellant he might stop this "*nonsense*" on his own.

- [8] On the 30th October 2000 the appellant called Ms Nunwana again on her cellphone. The time of the call was 18h18, and it lasted for 6 minutes and 24 seconds. During this call the appellant once again told her that he loved her. She testified that she asked herself

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what it is that he wanted from her. She again attempted to change the discussion by asking the appellant where he was calling from. After this call, she became worried and upset and decided that she was going to inform Mr Xolile Mani, a senior member of the staff association. After the second call she informed Mani and was told to speak to Mr Dyakala as to what the appellant had said to her on the telephone.

[9] The next incident occurred at the offices of the CCMA on a date she could not recall. The appellant was on his way from the toilets, which are situated outside the main entrance to the reception area, where she used to sit. He approached her desk and told her that he wanted to confess how he loved her. He said that he wished that he could come around the desk to hug and kiss her. As the switchboard was busy she ignored the appellant and continued with her duties. He then left her and went into his office.

[10] On another day, the date of which she could not recall, the appellant arrived at the reception area in the morning and instead of greeting her, gesticulated kisses in the air with his lips in her direction. Again she just ignored him and continued answering the phone.

[11] On Friday, the 25 October 2000, it was after working hours when Ms Nunwana found the appellant and other people in a lift. Ms Nunwana was showing photographs of her choir to a friend of hers, Ms Sulette Bonthus, when the appellant saw these and asked whether he could take a better look at them. The complainant obliged. Since, according to the appellant, it was awkward to look at the photographs in the lift, he asked whether he could take them home to look at them. The complainant agreed on the

understanding that he would return the photographs on the next Monday. On that Monday the appellant did not have the photographs with him, but returned them on the Tuesday. When the complainant went to fetch the photographs from the appellant, the latter told her *“you know, I wish I could keep these photos. I use[d] to put them here on my chest at night before I slept.”* Ms Nunwana stated that, although she felt upset, she did not show this to the appellant.

[12] Under cross-examination Ms Nunwana conceded that she had not objected to the appellant's advances nor did she tell him how she felt about his behaviour. Her only response was that the statements made by the appellant when he had phoned her and said that he loved her and wished that he could wash her back was to change the subject to something else. When asked how the appellant would have known how she felt about his amorous advances, her response was *“I don't know”*. She did not inform anyone else at work other than Mr Mani and then on the 13th November Mr Dyakala. She stated that her intention in speaking to Mr Mani was to get advice from him as she was upset by what was going on. She further stated that her understanding of sexual harassment was exactly what the appellant was doing to her.

The Appellant's Evidence

[13] Appellant's response to the five incidents was that he conceded making the phone calls but denied that he uttered any words of a

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sexual nature. He testified that he had been invited by the complainant to watch her sing with her choir. In regard to both telephone calls to the complainant the appellant admitted having made them but stated that he made them in order to compensate for his earlier failure to attend to watch the choir singing. In regard to the other three incidents, he denied that these ever took place and said that the complainant had fabricated these incidents as well as the accusation of sexual harassment by telephone as she was angry because of what he had said concerning her work performance to the registrar, Mr Fikizolo.

The Evidence of Mr Fikizolo

[14] Mr Fikizolo was the registrar of the CCMA in Port Elizabeth. Part of his job was to conduct performance appraisals of employees, including the complainant. Fikizolo said that he conducted an appraisal of the complainant on the 8th November 2000 and in his view the area in which the complainant was not performing well was in not responding promptly to incoming calls. During the course of his appraisal of her, he had mentioned to her that he had asked the appellant's view of her ability and the appellant had said that he was aware that she sometimes put the receiver on the table and did not answer the telephone. He said that the appellant had told him that he had at times seen a red light flickering indicating an incoming call that was going unanswered. When he had asked the complainant about this, the complainant had responded by saying that she had placed the receiver off the cradle because of the

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loudness of the ring when it was on the cradle as opposed to when it was off the cradle. According to Fikizolo, because of this particular complaint and other complaints he had received about the complainant's poor response time he had marked her 1 out of 5 in this area of her work. His overall assessment of her work was to mark her 3 out of 5. This was as far as Mr Fikizolo's evidence went.

[15] After the appraisal of the complainant's work performance by Mr Fikizolo, the appellant telephoned the complainant at her home. He said that he wanted to talk to her concerning her appraisal. The appellant came to the complainant's flat and they met in the parking lot. Thereafter, they drove to the beachfront where the appellant parked the car. Whilst they sat in his motor vehicle, the appellant spoke to the complainant about her performance appraisal. The complainant informed him of what Fikizolo had told her concerning what the appellant had said about her performance to Fikizolo. The appellant denied having said this to Fikizolo and asked the complainant not to mention to Fikizolo that they had a discussion about her appraisal.

[16] It was after this incident that the complainant decided to lodge a grievance against both Mr Fikizolo and the appellant. Having lodged her grievance the appellant was charged with misconduct which led to the disciplinary enquiry against the appellant.

The Arbitration Award

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[17] In arriving at his award, the commissioner was guided by the provisions of the Code of Good Practice (on the handling of Sexual Harassment) which envisages both an informal and formal procedure for addressing sexual harassment. The commissioner further relied on the decision in *Reddy vs University of Natal 1998 1 BLLR 20 LAC*. He cited, *inter alia*, the following passage:-

“Sexual harassment as a form of misconduct was considered by the Industrial Court in *J v M Ltd (1989) 10 ILJ 755 (IC)*. The court said at 757 I – 758 A: ‘Sexual harassment, depending on the form it takes, will violate that right to integrity of body and personality which belongs to every person and which is protected in our legal system both criminally and civilly. An employer undoubtedly has a duty to ensure that its employees are not subjected to this form of violation within the workplace. Victims of harassment find it embarrassing and humiliating. It creates an intimidating, hostile and offensive work environment.’ I may add that in terms of the Constitution, sexual harassment infringes the right to human dignity contained in section 6, which provides: - ‘Everyone has inherent dignity and the right to have their dignity respected and protected’ and the right to privacy enshrined in section 14.

It is obviously not every act of sexual harassment which will lead to dismissal. Dismissal was, nevertheless, the appropriate remedy in this case, where the harassment was of an aggravated kind.”

[18] After an analysis of all the facts and evidence placed before him, the commissioner came to the conclusion that the appellant’s conduct did not amount to sexual harassment as defined in the Code of Good Practice. He stated his conclusion as follows:-

“Did the applicant’s behaviour constitute sexual harassment, as we understand it? If one is guided solely by the definition of sexual harassment in the Code of Good Practice on the handling of sexual harassment cases, then it was not.

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Item 3.2 of the Code provides that sexual attention becomes sexual harassment if:

“

- a) the behaviour is persisted in
- b) the recipient has made it clear that the behaviour is considered offensive and/or
- c) the perpetrator should have known that the behaviour is regarded as unacceptable.”

[19] In his appraisal of the complainant's evidence the commissioner expressed the view:-

“...complainant can be said to have encouraged Applicant in his belief that complainant was enjoying his overtures. There are various examples of complainant's behaviour which are entirely contrary to what one would expect of a woman who is shocked by her boss's unwelcome sexual advances.”

This conclusion by the commissioner means that the elements of the definition of sexual harassment mentioned in (b) and (c) thereof in the preceding paragraph were not met and that, therefore, the appellant's conduct, unacceptable as it may be for a person in his position doing it to someone in the position of the complainant, did not constitute sexual harassment.

[20] Having concluded that the appellant was not guilty of sexual harassment, the commissioner turned his attention to the conduct of the appellant. In this regard he came to the following conclusion:-

“Be that as it may, I believe that there is still enough evidence to show that the applicant did make inappropriate sexual advances to the

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Complainant, which he himself should have known were unacceptable. (see clause 3.2 of the Code of Good Practice on the handling of sexual harassment). It goes without saying that I reject applicant's version of the incidents. It seems highly probable that the applicant did make the comments that complainant say that he made."

[21] In the context of the award, the sexual advances to which the commissioner refers in this passage constitute conduct which the appellant ought to have known was inappropriate for a person in his position. That is to say, the appellant ought not to have made any advances to the complainant irrespective of whether he knew his conduct was acceptable or unacceptable to the complainant. In this passage the commissioner is stating that he disbelieved the appellant when the latter denied that he had behaved towards the complainant in the manner testified to by the complainant. The effect of this is that by implication he found the appellant to be a dishonest witness.

[22] The commissioner then considered what would be an appropriate sanction. He stated that, if the misconduct is serious and of such gravity that it makes a continued employment relationship intolerable, then dismissal is an appropriate sanction. He said that the question was whether in any particular case the misconduct had made a continued employment relationship intolerable. This must be judged objectively and is a judgment which the arbitrator must make. The commissioner found that dismissal was not an appropriate sanction in this case and concluded that the appellant's dismissal was substantively unfair for this reason. The

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commissioner took into account the following in concluding that dismissal was not an appropriate sanction:

- “(a) there was no evidence led at the arbitration by witnesses of the first respondent that there was material damage to the employment relationship or that the employer regarded a continued employment relationship intolerable;
- (b) further there was evidence of the applicant’s trouble free five month service after the matter had been reported, which indicated that a continued relationship was possible;
- (c) the commissioner further pointed out that nothing had been placed before him to warrant a finding that it was not reasonably practicable to re-instate the appellant.”

He, accordingly, made an award reinstating the appellant in the CCMA’s employ subject to a final written warning on condition that, if the appellant was found guilty of any misconduct which amounted to sexual harassment or disgraceful or improper conduct within a 12 month period from the date of the award, he would be dismissed. The commissioner further held that the appellant was not entitled to any arrear salary which might otherwise have been due to him from the date of his dismissal.

Proceedings in the Labour Court

[23] The first respondent brought an application in the Labour Court in terms of section 145 of the Labour Relations Act No. 66 of 1995

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("the LRA") for the review and the setting aside of the commissioner's award. The order which it sought was in the following terms:-

1. **"Reviewing and setting aside the award of the [Second Respondent] under case number H02-01, dated 12 December 2001.**
2.
 - 2.1 **Declaring that the dismissal of the [appellant] was fair, and accordingly dismissing his unfair dismissal claim against the [first respondent];**
Or alternatively
 - 2.2 **Determining the dispute in a manner the above Honourable Court considers appropriate.**
3. **Granting further or alternative relief.**
4. **Ordering the [appellant] to pay the costs hereof".**

[24] The grounds upon which the first respondent challenged the award of the commissioner on review were twofold. Firstly, it was that the commissioner had committed a gross irregularity in failing to apply the *reasonable employer test* in assessing the sanction of dismissal. With regard to the first respondent's second ground of attack, it was argued that, in determining "*whether the dismissal was fair, and if not, whether [Maepe] should be entitled to any relief and whether he should be reinstated,*" the

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commissioner had committed a gross irregularity in that he had failed to consider and attribute weight to the fact that the appellant had given false evidence both in the disciplinary inquiry and in the arbitration proceedings. The first respondent submitted that, if the commissioner had done so, he would not have found the appellant's dismissal unfair, alternatively, he would not have granted the appellant any relief.

[25] The *Court a quo* dismissed the first ground of attack on the award. Citing the case of *Toyota South Africa Motors Limited v Radebe 2000 (21) ILJ 340 (LAC)* the *Court a quo* concluded that on the decided cases the "reasonable employer test" had been rejected and came to the conclusion that the commissioner did not apply an incorrect test in assessing the fairness of the dismissal.

[26] Dealing with the question whether or not the appellant had given false evidence at the disciplinary hearing and before the commissioner, the *Court a quo* was not prepared to interfere with either Mosime's or the commissioner's rejection of the appellant's evidence and stated that they were better placed to determine his credibility having observed his demeanour. However, proceeding on the premise that the appellant had given false evidence the *Court a quo* concluded that this in itself could not render the appellant's dismissal fair. The *Court a quo* stated the position as follows:-

"I accept for the purpose of this case that the giving of false evidence should go to determining the appropriate relief. It cannot render an invalid reason for dismissal valid."

[27] The *Court a quo* then dealt with the factual findings made by the commissioner which had led him to conclude that dismissal was inappropriate. The *Court a quo* observed that whether the

commissioner “applied his mind to the false evidence given by [the Appellant], is not manifest from the award. This in itself does not render the award reviewable.” Nevertheless, the *Court a quo* went on and stated the following:-

“In the circumstances of this case, the dishonesty of the employee was a highly relevant issue. If it had been pertinently considered by the Commissioner, he would have come to a different conclusion.”

Immediately after saying this, the *Court a quo* said:

“In the circumstances, I grant an order in terms of paragraph 1,2.1 and 4 of the notice of motion.”

[28] The effect of this finding by the *Court a quo* is that, if the commissioner had applied his mind to the fact that the appellant had given false evidence, the commissioner would not have granted the appellant any relief whatsoever or he would have granted him compensation rather than reinstatement. The *Court a quo* gave the following as its reasons as to why it regarded the giving of false evidence under oath as pertinent:-

1. The employee is not just any person employed in industry. He is a Commissioner, a person who is bound by the Code of Conduct for Commissioners which requires him to ‘act with honesty’ and maintain ‘the good repute of the mediation and arbitration processes and in particular the office of the CCMA.’
2. He is entrusted by law to, amongst other things, administer the oath and encourage those appearing before him to be honest. He cannot demand that of others if he himself has scant regard for the truth.
3. His dishonesty must impair his integrity and standing as a leader of the CCMA in the Eastern Cape. It would be indicative of a lax morality which, must be

SJ



discouraged. The fact that he was greeted enthusiastically when he arrived at the arbitration does not necessarily imply that he commands the respect of his subordinate or peers.

4. His dishonesty would be a barrier to reconciliation and corrective action which is one of the reasons the Commissioner advanced for reinstating him. The CCMA cannot begin to correct his conduct if he does not admit the wrongfulness of it.
5. Similarly the fact that the CCMA did not have in place a policy on sexual harassment or apply the sexual harassment code and counsel the applicant, ought not to have been weighed against it because counselling was not an appropriate process when the employee persisted in his denial of the misconduct.
6. Furthermore, as a convening senior commissioner the employee ought to have been aware of what conduct is prohibited in terms of the sexual harassment code. That also should have militated against his reinstatement."

[29] The *Court a quo* granted the first respondent the order sought in the review application which had the effect of upholding the appellant's dismissal.

[30] The appellant applied for leave to appeal against the judgment of the Labour Court. The application was refused. Thereafter, the appellant petitioned this Court for leave to appeal which petition was granted.

THE APPEAL

[31] Counsel for the appellant argued that the first respondent was not entitled to insist that the *Court a quo* have regard to the commissioner's alleged failure to apply his mind to the fact that the appellant gave false evidence. He pointed out that the first respondent had failed at the outset of the arbitration proceedings to inform both the appellant and the commissioner that it intended to

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contend that, quite regardless of the sanction to be imposed for misconduct, the appellant's dishonesty and lack of remorse had the effect that dismissal was either the only appropriate sanction or that reinstatement was no longer appropriate. He submitted that, that being so, the commissioner could not be faulted for having failed to consider an issue which had not been raised before him. Counsel submitted that, having omitted to pertinently raise the issue as aforesaid, the first respondent could not now rely upon it as a gross irregularity within the contemplation of section 145 of the LRA.

[32] It was further argued on behalf of the appellant that the *Court a quo* had correctly held that the appellant's conduct in giving false testimony under oath was relevant only in relation to the determination of what relief the appellant was to be granted. Counsel for the appellant submitted that the giving of false evidence could not convert an otherwise unfair dismissal into a fair dismissal. That being so, submitted Counsel, there was no basis in law for the *Court a quo*'s decision to deprive the appellant of all relief, which was the effect of the judgment of the *Court a quo*.

[33] The next argument was based on sec 193(2)(b) of the LRA .
Section 193(2)(b) reads:-

“ (2) The Labour Court or the arbitrator must require the employer to
reinstatement or re-employ the employee unless;

(b) the circumstances surrounding the dismissal are such
that a continued employment relationship would be
intolerable ”

It was submitted that, if the first respondent wanted to avoid the

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reinstatement of the appellant by relying on section 193(2)(b) of the LRA it ought to have led evidence to establish that a continued employment relationship would be intolerable. Counsel submitted that the first respondent failed to do this. It was argued that the mere reliance by an employer on the fact that an employee had given false evidence at a disciplinary enquiry or during the course of arbitration proceedings as a ground to establish that a continued employment relationship would be intolerable does not absolve an employer from the obligation to lead such evidence. Counsel submitted that in addition to leading such evidence, the accusation must be plainly put to the employee so that the latter can have an opportunity of defending himself in relation thereto. It was argued that the first respondent had failed to do so and that such failure meant that for the Court to deprive the appellant of reinstatement on this score alone would be both unjust and unfair.

[34] Counsel for the appellant also argued that this Court should follow the approach adopted in the case of *Flex-o-thene Plastics (Pty) Limited v CWIU [1999] 2 BLLR 1999 LAC*. Counsel cited the following passage which appears at paras [11] and [12]:-

“The effect of this approach is that the employees were deprived of reinstatement because of misconduct for which they were never charged nor disciplined by the appellant. The appellant never raised the fact of this misconduct in its statement of defence. It led no evidence of breakdown of trust, let alone a breakdown caused by the alleged misconduct at the disciplinary enquiry. It was never suggested in cross-examination of the employees that their misconduct during the

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enquiry was the cause of any breakdown in the employment relationship.

The misconduct at the disciplinary hearing was thus not responsible for a breakdown in the employment relationship. The presiding officer should not have refused reinstatement because of it.”

[35] In its response to the appellant’s argument, the first respondent argued that the *Court a quo* was correct in concluding that “in the circumstances of this case, the dishonesty of the employee was a highly relevant issue. If it had been pertinently considered by the commissioner, he would have come to a different conclusion.” That seems to suggest that the commissioner had omitted to pertinently consider the dishonesty of the appellant and had thus committed a reviewable irregularity. Counsel for the first respondent submitted that the *Court a quo* was thus correct in setting aside the commissioner’s award.

[36] It was further argued that the appellant’s dishonest denials and the passion with which he pursued those denials demonstrated overwhelmingly:-

- “1. That the first respondent could not reasonably have had confidence that the appellant would not commit further similar offence.
2. That the first respondent could not reasonably have retained confidence in the integrity of the appellant in the light of his dishonesty.
3. That the first respondent could not reasonably have continued to

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entrust to the appellant the and responsibilities of a convening senior commissioner to preside over arbitration proceedings and to lead the first respondent in the Province. The first respondent is a Public body. It must carry out functions and entrusted on it by the Constitution. These functions include the enforcement of constitutional rights, including the right to fair labour practices, statutory rights provided for in the LRA.

4. That the first respondent could not have continued to have enjoyed public confidence as an institution if it retains the appellant in its employ. Significantly, even in this appeal, the appellant still fails to grasp the seriousness of his misconduct and the fact that he lied under oath. This is a further indication that he is simply unsuitable to hold the office of a commissioner of the CCMA.”

[37] It was further submitted that the commissioner had failed in his duties and committed a gross irregularity by failing to take into account the following:-

1. the seniority of the position that was occupied by the appellant.
2. the significance of the second respondent as an institution and its role within the statutory framework for resolving labour disputes and
3. that the appellant’s misconduct was sufficiently serious in all of the circumstances to warrant an order that deprived him of remuneration for a period of some 8 months and which imposed the final written warning of 12 months on terms

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that, if he was found guilty of any behaviour amounting to sexual harassment or disgraceful or improper conduct during the 12 month period from the date of his award, he would be dismissed.

Discussion

[38] In terms of section 138 of the LRA, it is for the commissioner to determine whether a disputed dismissal was fair and he must do so fairly and quickly. In *Z. Sidumo and Another v Rustenburg Platinum Mines Limited and Others 2008 (2) BCLR 158* the Constitutional Court at paragraph 61 of the judgment stated the following :-

“There is nothing in the constitutional and statutory scheme that suggests that, in determining the fairness of a dismissal, a commissioner must approach the matter from the perspective of the employer. All the indications are to the contrary. A plain reading of all the relevant provisions compels the conclusion that a commissioner is to determine the dismissal dispute as an impartial adjudicator.”

[39] Once the Labour Court or an arbitrator has come to the conclusion that a dismissal is unfair, the Labour Court or the arbitrator must now determine what relief or remedy, if any, should be granted to the employee. The determination of what relief ought to be awarded to an employee is governed by the provisions of s 193 of the LRA. Once an award has been made, the award may be reviewed under limited grounds as set out in section 145 of the

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LRA.

[40] In addition to what is stated above, in *Z. Sidumo and Another v Rustenburg Platinum Mines Limited and Others* 2008 BCLR 158 (cc) the Constitutional Court concluded that a commissioner conducting CCMA arbitration is performing an administrative function. This notwithstanding, the Constitutional Court has rejected the justifiability of an arbitration award in relation to reasons given for it as a ground of review of CCMA awards. It held that CCMA awards can be reviewed on the ground of unreasonableness. It held that the test is whether the decision reached by the commissioner is one that a reasonable decision maker could not have reached. If it is one that a reasonable decision maker could have reached, such decision is reasonable. If it is not a decision that a reasonable decision maker could have reached, it is unreasonable and can be set aside on review on that ground. The Constitutional Court concluded that applying this standard would give effect not only to the constitutional right to fair labour practices but also to the right to administrative action which is lawful, reasonable and procedurally fair.

[41] The *Court a quo* interfered and set aside the commissioner's award on the basis that the commissioner had omitted to pertinently consider the dishonesty of the appellant when he gave false testimony. The *Court a quo* had concluded: -
".... the dishonesty of the employee was a highly relevant issue. If it had patently considered by the Commissioner, he would have come to a different conclusion."

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[42] It was argued on behalf of the first respondent that the commissioner did not consider the issue of the appellant having been found to have given false testimony before him. It was argued on behalf of the appellant that the commissioner was not obliged to do so as this issue had not been raised before him.

[43] In par 6.1 of its founding affidavit the first respondent (applicant in the *Court a quo*) stated the following:-

“6.1 The commissioner failed to take into consideration, and consequently failed to attach any weight to the fact that the Second Respondent (appellant) gave false evidence, both in the disciplinary proceedings and in the arbitration, in an attempt to defend himself against the charges of misconduct brought against him. The commissioner should have taken this fact into consideration and should have attached weight to it in determining whether the dismissal was fair, and if not, whether the Second Respondent should be entitled to any relief, and whether he should be re-instated. The commissioner’s failure to do so constituted a gross irregularity. Had he taken this fact into account, he would not have found the Second Respondent’s dismissal to be unfair, alternatively would not have granted relief to the Second Respondent.”

[44] In the opposing affidavit, the appellant contented himself with the following response: -

“ 8.1 A finding that I gave false evidence is not relevant a (sic) determination of whether the misconduct with which I was actually charged is serious or not.

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[47] The appellant was employed in a position of trust. He was a convening senior commissioner for the Eastern Cape. He was required to act with honesty and integrity in order to maintain and preserve the trust and confidence the public must have in the CCMA as an institution. He was entrusted by virtue of his position to administer the oath to parties appearing before him and he would legitimately expect those parties to abide by the oath. He cannot demand this of others if he himself has been shown not to have any respect for the oath. That is to say that a person who holds the position of a commissioner, not to speak of a convening senior commissioner, must be a person of integrity in order to be considered a fit and proper person to hold such a position. When circumstances are present which cast serious doubt on the integrity of a person holding a position such as that previously held by the appellant, then, in my view, such a person is not a fit and proper person to be entrusted with such a position.

[48] In determining what sanction to impose, it would appear that the commissioner focused only on the issue whether a continued employment relationship between the appellant and the first respondent had become intolerable and did not consider whether or not it would be "reasonably impracticable" within the meaning of that term as used in sec 193(2)(c) of the LRA for the first respondent to reinstate the appellant. This issue is also dealt with in more detail in the concurring judgment of Zondo JP in this matter.

[49] The commissioner had concluded that the appellant had given false evidence. The commissioner was aware of the position the appellant held with the first respondent. Accordingly, the commissioner ought to have appreciated the importance of the

appellant being a fit and proper person to occupy the position of a convening senior commissioner if he was to be reinstated in his position. The *Court a quo* was, therefore, correct in concluding that, had the commissioner applied his mind to the effect on his job of the appellant's conduct in giving false evidence, he would not have ordered reinstatement. This appears to be supported by what the commissioner said in reinstating the appellant, namely: -

“Let me say at the outset, that although the Applicant comes away from this arbitration with his job intact, he can count himself extremely fortunate that I am not confirming his dismissal.”

This suggests to me that, if the commissioner had taken into account the fact that the appellant had given false evidence under oath, he would not have ordered the appellant's reinstatement.

[50] I have said above that the *Court a quo* made an order the effect of which was to uphold the appellant's dismissal. Accordingly, the *Court a quo* set the commissioner's award aside and declared that the appellant's dismissal was fair. It is not clear from the judgment of the Labour Court why it concluded that the dismissal was fair. It cannot be that the *Court a quo* concluded that the dismissal was fair because the appellant gave false evidence because he had not been dismissed for giving false evidence. The *Court a quo*'s conclusion to the effect that the dismissal was fair is particularly strange because that court did say that the giving of false evidence could not render valid an otherwise invalid reason for dismissal. Indeed, the *Court a quo* said that the giving of false evidence was relevant to relief. However, when the *Court a quo* was supposed to consider the weight to be attached thereto in relation to relief, it did not do so but simply upheld the dismissal as having been fair despite the fact that it expressed no difficulty with the commissioner's finding that the dismissal was unfair.

[51] Despite his dishonesty, the appellant's dismissal for sexual harassment remains unfair. Although the appellant's conduct was unacceptable, it seems to me that it is unfair that he should be denied not only reinstatement but all relief. His reinstatement as a convening senior commissioner is impracticable for the reasons stated earlier and as stated in Zondo JP's concurring judgment. In my view it is just and equitable

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that he be granted some relief. I consider it to be just and equitable that the appellant be awarded compensation equivalent to 12 months remuneration calculated at the appellant's rate of remuneration at the date of his dismissal.

[52] With regard to costs it must be borne in mind that, while, on the one hand, the appellant succeeded in having the order of the Labour Court altered, he did not succeed in getting an order of reinstatement which he wanted. In this regard the first respondent has successfully resisted the restoration of the order of reinstatement which the commissioner had made. However, it must also be borne in mind that, while on the one hand, the first respondent sought an order to the effect that the dismissal was fair so that the appellant would receive no relief, it has failed in this regard and the appellant will be granted compensation equivalent to 12 months' remuneration. In these circumstances I am of the view that the requirements of the law and fairness dictate that there should be no order as to costs both in this Court and in the Labour Court.

[53] In the premises the order that I make is the following:

1. The appeal succeeds in part and fails in part.
2. There is to be no order as to costs on appeal.
3. The order of the Labour Court is set aside and replaced with the following order:.

“(a) That part of the arbitration award issued by the commissioner in this case which ordered the

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reinstatement of the second respondent is hereby reviewed and set aside.

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(b) The part of the arbitration award referred to in (a) above is replaced with the following order:-

'(i) the respondent (i.e the CCMA) is ordered to pay the applicant within 14 calendar days compensation that is equivalent to 12 months remuneration calculated at the applicant's rate of pay at the time of his dismissal'

(b) There is to be no order as to costs."

Jappie JA

I agree.

Zondo JP

I agree.

Patel JA

On behalf of the appellant:

Mr AT Myburgh

Instructed by

Allardyce & Partners
Parktown

On behalf of the respondent: Mr T Ngcukitobi

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Instructed by
Bowman Gilfillan
Sandton

Date of Judgment: 18 April 2008



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IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT BRAAMFONTEIN

Case No. J2031/15

In the matter between:

HUMBULANI INNOCENT KHUBA

ARBEIDSHOF	
PRIVAATSAK/PRIVATE BAG X52 BRAAMFONTEIN 2017	
C7	2015 -10- 07
85 JUTA STREET, ABOUR SQUARE BLD BRAAMFONTEIN 2017	
LABOUR COURT	

Applicant

and

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that the Applicant intends to make application to the above Honourable Court on 15 OCTOBER 2015 at 10:00 a.m. or so soon thereafter as the matter may be heard for an order in the following terms:

1. The applicant's non-compliance with the forms or service provided for in the Labour court is condoned and this matter is disposed of as urgent in terms of Rule 8.
2. Pending the outcome of an unfair labour practice dispute (which dispute is to be referred to the Public Service Co-Ordinating Bargaining Council within 5 days from date of this application) the first respondent is ordered to pay to the applicant his monthly remuneration each and every month.

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affidavit/s, if any, by no later than Monday the 12th October 2015 at 14H00 p.m.;

- (b) further that you are required to appoint in such notification to appoint an address at which you will accept notice and service of all documents in these proceedings.

failing which the matter will be heard in your absence.

KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY.

Signed and dated at Johannesburg on this the 7th day of October 2015



Applicant's Attorneys
Thabiso Maseko Attorneys
2nd Floor West Tower
Nelson Mandela Square
Maude Street, Sandton
Johannesburg
Tel: 011 881 5453
Fax: 011 881 5611
Ref: Thabang Mathibe

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9/10

TO: THE REGISTRAR OF THE LABOUR COURT
6th and 7th Floors, ABA Square Building
86 Juta Street Cnr. Melle Street
Braamfontein, Johannesburg

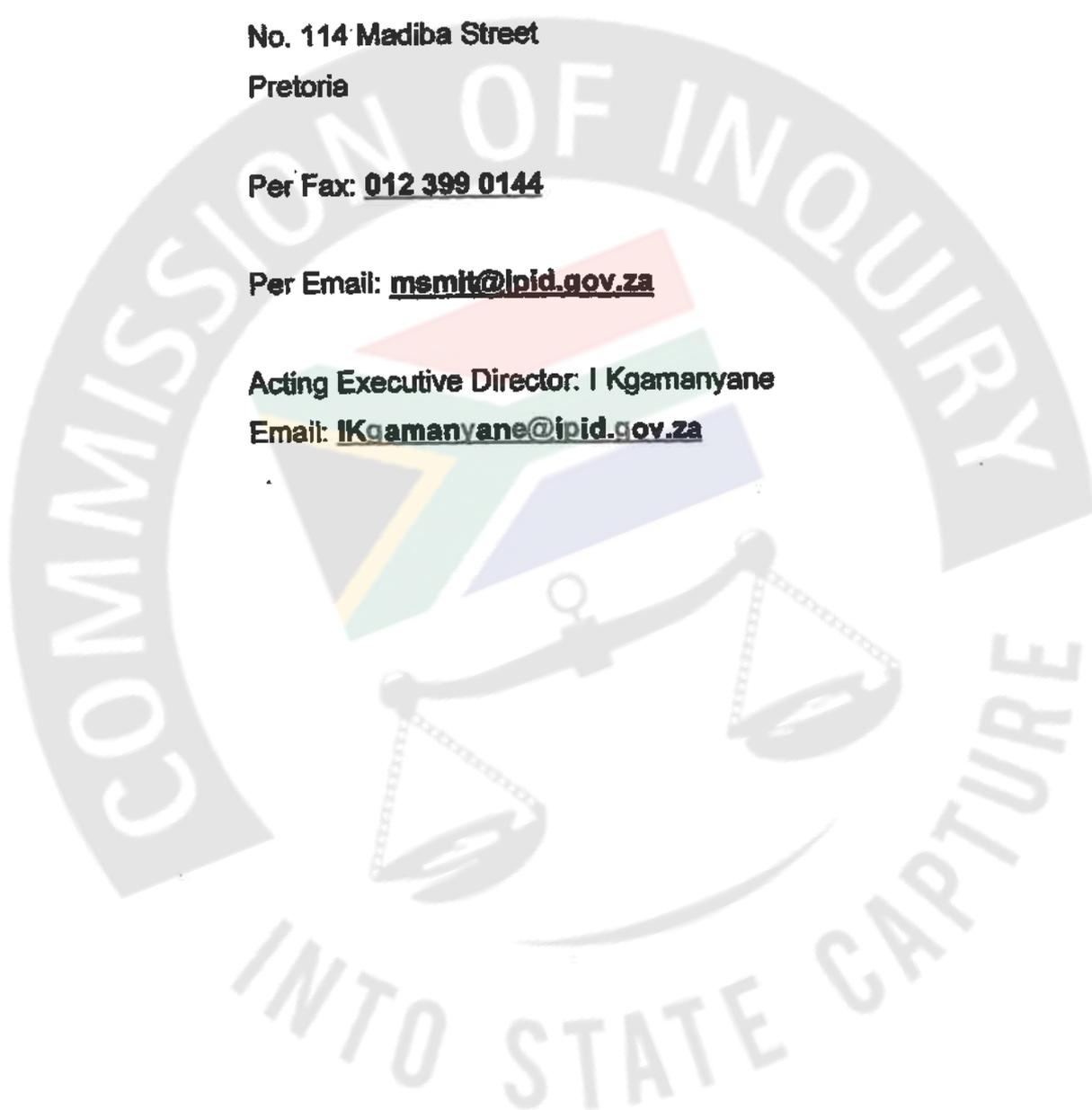
And to: **Respondent**
Independent Police Investigative Directorate
Head Office
No. 114 Madiba Street
Pretoria

Per Fax: 012 399 0144

Per Email: msmit@ipid.gov.za

Acting Executive Director: I Kgamanyane

Email: IKgamanyane@ipid.gov.za



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**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT BRAAMFONTEIN**

Case No. **J2031/15**

In the matter between:

HUMBULANI INNOCENT KHUBA



Applicant

and

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

HUMBULANI INNOCENT KHUBA

do hereby make oath and say that:

1. I am the applicant, an adult male and was employed by the Independent Police Investigative Directorate in the capacity as Chief Director: Investigations, Limpopo Province.

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SJ [Signature]

2. The facts deposed herein are, unless otherwise stated to the contrary, within my personal knowledge and to the best of my belief both true and correct.

The respondent

3. The first respondent is the Independent Police Investigative Directorate ("IPID"), an independent police complaints body established in terms of Section 3 of the Independent Police Investigative Directorate Act No. 1 of 2011, with its Head Office situated at No. 114 Madiba Street, Pretoria.

My case

4. The Acting Executive Director of IPID, Israel Kgamanyane ("Kgamanyane") unilaterally revoked a written settlement agreement in which, a sanction of a final written warning was contained, and summarily replaced the agreement with a summary dismissal.
5. The unilateral revocation of the settlement demonstrates the bad faith, high handedness and deliberate undermining of the principle of legality as there are no lawful grounds for the termination of my employment with IPID.

Material facts

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6. On 01 October 2014, I was promoted to the post of Chief Director: Investigations, Limpopo Province.
7. I was placed on suspension with pay on 21 May 2015 and on 6 July 2015 I was notified of a disciplinary hearing against me and my superior, Matthews Sesoko ("Sesoko") for dishonesty and defeating the ends of justice. A copy of the disciplinary notice is attached hereto marked Annexure "A".
8. My disciplinary hearing was settled on 23 September 2015 on the basis that IPID would impose a final written warning that was valid for 6 months and I would return to work on 28 September 2015. A copy of the settlement agreement is attached hereto marked Annexure "B".
9. On 25 September 2015, I provided Sesoko with a statement setting a brief background to the facts relevant to the charges against Sesoko, an undertaking that I did not implicate Sesoko in my settlement with IPID and that I am free to give evidence in support of Sesoko's case. A copy of my statement to Sesoko is attached hereto marked Annexure "C".
10. On 28 September 2015, I presented myself for work. At about 12:00 p.m. I received a telephone call from Kgamanyane who enquired on the statement that I provided to Sesoko.

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11. The next day a letter was hand-delivered to me by the IPID Head of Security. A copy of Kgamanyane's letter is attached hereto amrked Annexure "D".
12. The letter stated, *inter alia*, that, "in breach of your guilty plea and the agreement for a lenient sanction short of dismissal as contained in the settlement agreement, and without my knowledge or consent deposed to an affidavit in Polokwane, which contradicted the terms of your guilty plea as contained in the settlement agreement."
13. I was invited to provide an explanation for deposing to the affidavit, which Kgamanyane believed to be a contradiction of the settlement.
14. I provided an explanation to Kgamanyane stating, *inter alia*, that, "the settlement agreement was between me and the employer and that I was never meant to implicate or exonerate him (Sesoko) as a second respondent in the case I was initially charged with. Deposing to a statement against or in favour of an employee does not require the permission of an Accounting Officer and therefore cannot be held against me as misconduct."

"...the agreement does not have any condition or terms which require me to depose or not depose statement regarding this matter or testify in favour or against Mr Sesoko... If the employer made an offer for settlement

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agreement with ulterior motive, unfortunately I failed to read such during the acceptance of the offer. I concluded the agreement in good faith and putting the interest of my family first."

"The same Plea Agreement which was signed by the employer does not have clauses that allow the imposition of dismissal without a hearing on the so called new misconduct or any contravention if there really was such. This clearly shows that this agreement was used as an instrument of victimisation by the employer. With this threat of dismissal, I am convinced the employer made such offer in bad faith."

15. A copy of my letter is attached hereto marked Annexure "E". I was summarily dismissed by Kgamanyane the same day. A copy of my dismissal letter is annexed hereto marked Annexure "E1".

My employment with the Independent Complaints Directorate ("ICD") and IPID

16. I commenced employment with the IPID, formerly Independent Complaints Directorate ("ICD") on 1 January 1999 as the Assistant Director Investigation for the Northern Cape Province. During February 2000, I was requested to supervise the investigations in the Free State Province. At the end of 2000, I was appointed as the Acting Head of the Northern Cape Province Provincial Office.

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17. During June 2001, I was appointed as the Provincial Head for Limpopo Province as a Deputy-Director. During 2003, I was also assigned the responsibility of managing the Mpumalanga Provincial office. On 1 July 2007, I was promoted to the level of Director.
18. During 2011, I was transferred to Kwa-Zulu Natal Province for a period of six months to assist the office with achieving the Departmental Strategic objectives. After completion of the six month period I reverted back to my post in Polokwane.
19. At the beginning of 2012 I was re-assigned back to Kwa-Zulu Natal Province to head the task team investigating the so-called Cato Manor police death squad. I was forced to leave this post after my life was threatened during an investigation into the Cato Manor police investigation. I returned to Polokwane as Provincial Head for Limpopo Province as a Director.
20. During 2012 I was appointed to investigate all complaints against Major General Shadrack Sibiya ("Sibiya") who was stationed with the Directorate for Priority Crime Investigations (*"the Hawks"*).
21. On 1 April 2012, the ICD was transferred to IPID.
22. On 23 October 2012, I was appointed by Sesoko to investigate the illegal rendition of five Zimbabwean nationals.

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23. On 1 October 2014, I was appointed as the Provincial Head for Limpopo Province as a Chief Director. A copy of my appointment letter is attached hereto marked Annexure "F".

The Zimbabwe renditions

24. On 23 October 2012, Sesoko, the Acting Head of Investigations, handed a letter of appointment and a docket to me to investigate the illegal renditions of five Zimbabwean nationals. The investigation was known to be a National Project as the renditions did not occur within the Limpopo Province. I was brought into the investigation as an "outsider" as the investigation was a high priority matter which required my final report to be approved by the IPID Executive Director.
25. I was instructed to assemble my own team to assist me in the investigation, which I did. The docket contained 13 statements from members of the Crime Intelligence Department, friends and relatives of those deported to Zimbabwe.
26. Ms. Koekie Mbeki ("Mbeki"), the then Acting Executive Director of IPID, instructed me to collaborate with a member of Crime Intelligence, Colonel

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Moukangwe (*"Moukangwe"*) in the investigation. Mbeki also instructed me to keep Moukangwe's involvement in the matter secret.

27. I found Mbeki's instruction not in keeping with the Departmental practices and processes. The instruction was unusual and problematic because members of the Crime Intelligence were themselves involved in the arrest of the Zimbabwean Nationals. Nonetheless I complied with Mbeki's instructions.
28. Upon meeting with Moukangwe, he then in turn told me to work with two members from the National Prosecuting Authority (*"NPA"*), namely, Adv. Anthony Mosing (*"Mosing"*) and Billy Moeletsi (*"Moeletsi"*). He advised the pair had been guiding the investigation since its inception.
29. I commenced the investigation by obtaining statements from officials from the Department of Home Affairs. I was accompanied by Moukangwe.
30. During the course of the investigation I met with General Dramat (*"Dramat"*) of the Hawks together with Moukangwe. I requested the internal investigation file from the Hawks, which was provided to me.
31. I studied the contents of the Hawks docket and I became suspicious of the statement of a certain, Lieutenant Colonel Madilonga (*"Madilonga"*) who was posted at the Beit Bridge Border Post.

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Moukangwe

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32. On 8 April 2013, I met with Madilonga, without Moukangwe, to clarify certain issues on his statement. During the interview Madilonga stated that Zimbabwean Police officials met him at the Border Post and showed him the cellphone number of Dramat. They said that they were meeting with Dramat in connection with Zimbabwean citizens in South Africa who were involved in the murder of a senior police officer.
33. Madilonga stated that he obtained permission from his superiors to call Dramat, who Madilonga alleged, confirmed that the Zimbabwean Police officials were meeting with him.
34. I then gathered documentary evidence on the Zimbabwean nationals and their deportation. At this stage of the investigation Mbeki gave me an instruction that I should not involve Sesoko in the investigation. Again, I found this instruction to be unusual as Sesoko was my immediate superior and I reported to him regularly on my other investigations.
35. I also interviewed members from Crime Intelligence from Pretoria Central with Moukangwe. These members provided important information on the arrest of two of the Zimbabwean nationals.
36. I then compiled a preliminary report which I forwarded to Moukangwe, Mosing and Moeletsi. During the months that followed, we met on several.

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occasions and they gave their input on the analysis of evidence contained in the report.

37. During or about August 2013, I sent the cellphone records of Sibiya, Dramat and others suspected in the renditions to a Cellphone Data Analysis Expert. Amongst these records were the cellphone records of a certain Lieutenant Colonel Maluleke ("Maluleke") who allegedly spearheaded the arrests of all the Zimbabwean nationals.
38. The Data Analysis expert sent me an incomplete report which did not contain details of locations of persons making or receiving calls. This was an important consideration as some witnesses had alleged that Sibiya was present at the scene at the time of the arrests.
39. I met with Mosing during this time and he was aware that the finalisation of the investigation was delayed by the Data Analysis expert and outstanding warning statements.
40. During October 2013, I drafted questions for a Warning Statement for Dramat. Dramat initially responded by providing a brief history of his political background without properly responding to the questions sent to him. I persisted in having these questions directly answered by Dramat who provided the answers during November 2013.

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41. During December 2013, I drafted questions for Sibiya but sent them first to Mosing for his input before sending them to Sibiya. After receiving the questions back from Mosing I then forwarded the questions to Sibiya. Upon receiving the questions Sibiya indicated that he intended to consult with his legal representative before providing answers. Also, Sibiya had met with Sesoko to express his anger at being served with the questions. Thus, Sesoko became a facilitator between Sibiya and I.
42. During December 2013, Mosing contacted me and stated that the investigation should be finalised. I requested him to be patient and wait for the outstanding Data Analysis report in the form that he required and for Sibiya's answers. I must state that the cellphone data analysis report that was in the docket did not give an indication of the location of the relevant persons making and receiving calls. However, Mosing was impatient and pressured me into submitting a report on the investigation.
43. During January 2014, I met with Mosing and delivered the investigation report to him. The report did not have the outstanding evidence with regard to the warning statement of Sibiya and the cellphone records providing the street location of the relevant individuals making and/or receiving calls. I was adamant that the report had to be approved by the IPID Head as it was a national investigation.

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44. On 26 February 2015, Sibiya responded to the questions previously sent to him. However a few days before receiving Sibiya's statement I also received the cellphone data analysis report from the expert in the manner and form required by Mosing. It was bulky and in manual form.
45. On 27 February 2015, I submitted Sibiya's response to Mosing by email. I could not simultaneously email the cellphone data analysis report as it was bulky. On 28 February 2015, Mosing informed me that he referred the investigation docket together with his own report to the Directorate of Public Prosecutions ("DPP") in Johannesburg. I attach a copy of Mosing's email as Annexure "G".
46. On 3 March 2015, Robert McBride ("McBride") commenced employment as the Executive Head of IPID.
47. I met with McBride on 4 March 2015. He requested an update on the Zimbabwe renditions, which I provided to him. I briefed McBride on my appointment, the persons who were assigned to assist me in the investigation and whom to exclude from the investigation.
48. McBride expressed his concerns with the lack of independence in the investigation, the methodology of the analysis of evidence and the exclusion of Sesoko from the investigation.

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49. On 5 March 2015, I met with Sesoko, Glen Angus ("Angus") and McBride. I informed them that the investigation docket was with Gauteng DPP in Johannesburg. I also informed them Mosing took the investigation docket without Sibiya's warning statement and the Data Analysis report in the form required by Mosing.
50. McBride then permitted Angus and I to fetch the investigation docket from the Gauteng DPP in Johannesburg in order to supplement the docket with the outstanding information. Sesoko was delegated to assist in the process.
51. On 6 March 2015, Angus accompanied me to Johannesburg to fetch the investigation docket from the Gauteng DPP offices in Johannesburg. I noticed that docket did not contain my report.
52. The Cellphone Data Analysis report exonerated Sibiya from being at the arrest locations. I then finalised the report with guidance from Sesoko. McBride then approved the report. Sesoko, McBride and I signed the report as the supervisor, Executive Head and compiler, respectively.
53. McBride then personally handed the investigation docket over to the NPA.
54. The final report recommended that Maluleke should be charged with kidnapping and defeating the ends of justice.

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55. The final report recommended that Sibiya should be exonerated based on the cellphone data analysis report which did not place him at the scene of the arrests as alleged by witnesses.
56. Upon an independent review of all available information there was no evidence that Dramat in fact had knowledge of the illegal renditions. This conclusion is based on the following among others:
- 56.1. There is no evidence that Dramat received the success reports. In any event the same success reports that claim that Dramat had a meeting with the Zimbabwean Police lacked detail about the meeting itself. There is no indication of what was discussed and who was part of that meeting.
- 56.2. The fact of a meeting with Zimbabwean Police takes the matter no further as Dramat does from time to time meet with Zimbabwean Police
57. It is on this basis amongst others that Dramat was exonerated in the report.

McBride's suspension and approaches from IPID

58. During March 2015, McBride was suspended from work and Kgamayane was appointed as Acting Executive Head of IPID.

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59. Soon thereafter IPID made approaches to me to explain the existence of two reports (my preliminary report and the final report). I was also called to three interviews at Werksmans Attorneys about the existence of the two reports. At the commencement of these interviews I was assured that the information gathered would not be used against me at a later stage. However, this was not the case as I was later suspended and charged with dishonesty and defeating the ends of justice.

60. I was suspended from work on 21 May 2015 and on 6 July 2015, I was charged with Sesoko.

The disciplinary hearing and my settlement of the charges

61. The disciplinary hearing against Sesoko and I was set down for 17 July 2015. However, this was postponed to 13 to 17 August 2015 for the commencement of the hearing. I could not attend as I was booked off-sick for depression and the hearing did not commence.

62. I understand however that Sesoko raised certain preliminary matters that required a response from the Employer. A preliminary hearing commenced only in respect of the issues raised by Sesoko.

63. On 23 September 2015, I was present for the hearing but Sesoko was not. Sesoko's legal representative advised the Chairperson that he had been

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booked to undergo a surgical procedure. The employer's representative then approached my attorney to propose a settlement of the charges on the basis that IPID would issue me with a final written warning that was valid for six months if I pleaded guilty to the charges.

64. I accepted IPID's offer and signed the settlement agreement. I also intended to avoid a costly and acrimonious hearing and to mend the relationship between IPID and myself.
65. On 25 September 2015, Sesoko called me to enquire on the details of the settlement agreement. I informed him of the agreement but he did not trust me and thought that I had falsely implicated him. In order to allay his fears I drafted an affidavit setting out the background of the relevant facts and I also stated that I did not implicate him in the settlement agreement and further that I was free to give evidence in support of his case at his upcoming disciplinary hearing.
66. I presented myself to work on 28 September 2015. At about 12:00 p.m. I received a call from Kgamanyane who stated that he was informed of my statement and wanted to know the details contained in the statement. There appeared to be no issue as Kgamanyane did not seem to be upset by the statement.

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SJ [Handwritten initials]

67. On 29 September 2015, I received a letter from Kgamanyane asking me to set out why I should not be dismissed for giving Sesoko a statement.
68. On 30 September 2015, I responded to Kgamanyane's letter. However, I was dismissed by that afternoon.

Advances from the Hawks

69. On 2 October 2015, I received a telephone call from a certain Brigadier Rammela ("Rammela") from the Hawks. He asked to meet with me at the provincial office of the hawks in Polokwane. I advised him to come over to my home in Polokwane.
70. Rammela came over within the hour together with another employee from the Hawks by the name Colonel Mahlangu ("Mahlangu"). He asked me to draft a statement in which I referred to my January and March reports. He also wanted me to state that McBride had pressured me to change my report in order to exonerate Sibiya and Dramat. At this point, I asked to speak to my lawyer and Rammela responded by stating that he could arrange for me to be reinstated at IPID. I again stated that I would need to consult with my attorney.

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71. The next day, 3 October 2015, Rammela came over to my home again. He brought a docket which he claimed contained a charge of perjury against me with case number 2454/05/2015 opened at Pretoria Central. He told me that I would be arrested if I do not co-operate and give a statement against McBride and Sesoko. I refused to do so and told him to arrest me. He told me to think over my decision and that he would meet with me and my attorney on Monday, 5 October 2015 at my home at 15:00 p.m.

72. Later that day, I received a telephone call from Mahlangu which I recorded on my cellphone. I have made a transcript and a translation of the conversation. A copy of the transcript and the translation is attached hereto. Once again, Mahlangu encouraged me to draft the statement and to assure me that the General, whom he mentioned as General Ntlemeza, the National Head of the Hawks would reinstate me. A copy of the transcript of the conversation is attached hereto marked Annexure "H".

IPID's unlawful conduct

73. My case is based on IPID's unilateral revocation of the settlement agreement.

74. Section 77(3) of the BCEA states:

"(3) The Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of

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employment, irrespective of whether any basic condition of employment constitutes a term of that contract.”

75. The material terms of the settlement agreement are that:

72.1 I pleaded guilty to the charges against me;

72.2 IPID would impose a sanction of a final written warning which is valid for six months;

72.3 The suspension would be uplifted and I would report for duty on 28 September 2015;

72.4 There were no other terms and conditions to the settlement agreement and no party would have claims for any undertakings or representations not contained in the agreement.

76. The settlement agreement contains no condition that I would not be able to assist Sesoko in his disciplinary enquiry or to make a statement to Sesoko.

77. Further, my statement to Sesoko contains a summary of the background facts that I have set out above. There is nothing improper in the statement and I have not set out any falsities or lies in the statement.

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78. There is no reason to revisit the sanction that was agreed upon between IPID and I. The initial sanction was what we agreed upon and one which I accepted. IPID unilaterally revisited the sanction on the basis of a truthful statement and unilaterally imposed another sanction of dismissal in breach of the settlement agreement.

79. The opportunity afforded to me to make a representation does not accord with the principle of fairness as the charge against me contained in Kgamanyane's letter was not decided by an independent trier of fact in a hearing and there was also no opportunity to mitigate on the sanction.

80. I submit that the visits by members of the Hawks have revealed that my employer's biggest problem is that I do not want to give a statement implicating McBride and Sesoko.

Bad faith, high handedness and deliberate undermining of the principle of legality

81. I submit that the conduct of my employer is high handed and a complete disregard for the law of our country.

82. In the least, the agreement reached between myself and IPID created a reasonable and legitimate expectation that I would not face any disciplinary

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action on the same charges. Instead, I have been subjected to two differing sanctions for the same offences.

83. In any event and I submit that I am entitled to fair labour practices. IPID has ignored and flouted the provisions of Section 23 of the Bill of Rights of our Constitution and provisions of the LRA in summarily terminating me. This, regrettably from an oversight complaints body which appears to have the same tendency as organs of State to behave as if they are above the law.
84. My cause of action is premised on my right to fair labour practices and that I cannot be dismissed unfairly.
85. There are no lawful grounds for the termination of my employment and I submit that the termination of my employment is as a result of the truthful statement made to Sesoko.

Urgency

86. I was dismissed on 30 September 2015. Thereafter I sought legal advice from my current attorney and during this time the Hawks had approached me. I also had to consult with Counsel in Johannesburg, who settled this application. I submit that I have set out the time period and the circumstances which render this application to be urgent.

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87. I submit that this application is urgent because it also deals with abuse of power by IPID to falsely implicate McBride and Sesoko which is using State resources to pursue their own interest.

88. I submit that it is imperative that the court comes to my rescue in my interest and the interests of the public. I have no other recourse other than to turn to this court to prevent continued illegal conduct.

89. Wherefore, I pray that the court grants the relief sought in the notice of motion to which my affidavit is attached.



 DEPONENT

THIS DONE AND SIGNED BEFORE ME AT BEHOLA THIS 07 DAY OF OCTOBER 2015, AFTER THE DEPONENT DECLARED THAT HE/SHE IS FAMILIAR WITH THE CONTENTS OF THIS AFFIDAVIT AND REGARDS THE PRESCRIBED OATH AS BINDING ON HIS/HER CONSCIENCE AND HAS NO OBJECTION AGAINST TAKING THE SAID PRESCRIBED OATH. THERE HAS BEEN COMPLIANCE WITH THE REQUIREMENTS OF THE REGULATIONS CONTAINED IN GOVERNMENT GAZETTE R1258 DATED 21 JULY 1972 (AS AMENDED).



 COMMISSIONER OF OATHS

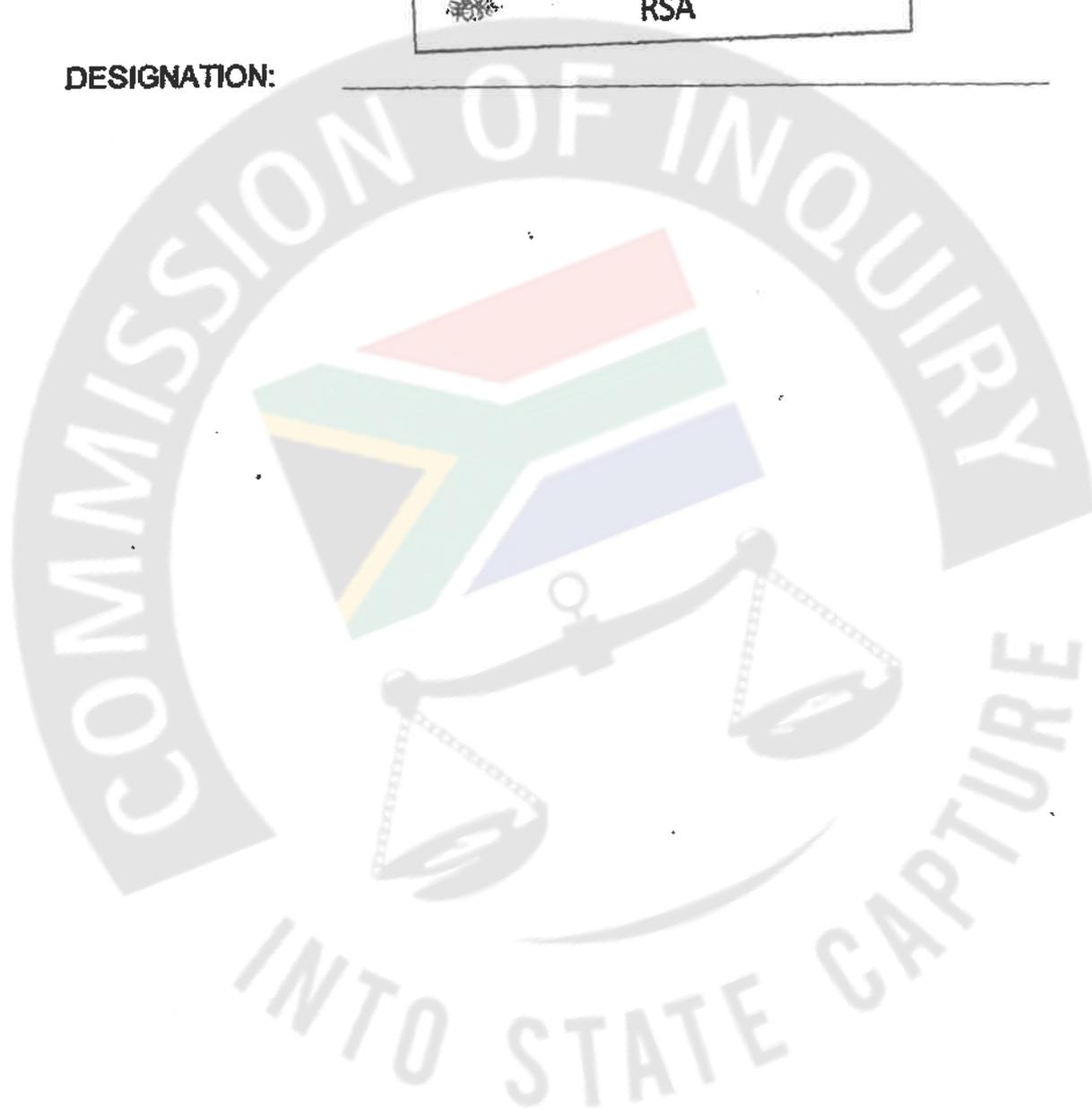
SJ
 JB

FULL NAME:

ADDRESS:

DESIGNATION:

Moruthane Lekoko Mateme
46 Victoria Avenue
Commissioner of Oaths
Practising Attorney
RSA



SJ *[Signature]*



ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

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City Forum Building, 134 Mediba Street, Pretoria, 0002
Private Bag X 941, Pretoria, 0001
Tel: (012) 399 0026 Fax: (012) 399 0344
E-Mail: ikgamanyane@ipid.gov.za <http://www.ipid.gov.za>

Mr Innocent Khuba
Provincial Head: Limpopo Province
14 David Mabito Street
Faranani Estate
Polokwane
0700

07 July 2015

Dear Mr Khuba

RE: NOTICE TO ATTEND DISCIPLINARY ENQUIRY

1. You are hereby given notice to attend a disciplinary hearing in terms of clauses 6 and 7 of the Disciplinary Code (Paragraphs 15 and 16 of Chapter 7 of the SMS Handbook).
2. You are employed by the Independent Police Investigative Directorate ("IPID") as the Provincial Head: Limpopo Province. You, together with Mr Matthews Sesoko have been charged with acts of misconduct.
3. The scheduled disciplinary enquiry will take place on Friday, 17 July 2015 at the Curator Building, 6th Floor, Cnr Nelson Mandela Drive and Pretorius Street, Pretoria starting at 10h00. If you do not attend and cannot give reasonable grounds for failing to attend, the meeting will be held in your absence.
4. I have appointed Advocate William Mokhari SC together with Advocate Thembeke Ngcukaltobi and Hogan Lovells Attorneys as initiators and pro forma prosecutors.
5. I have appointed Advocate Patrick Nguishana of the Johannesburg Bar Association as an Independent Chairperson of the enquiry. At the conclusion of the enquiry, the Chairperson will submit a finding to me on whether or not you are guilty of any of the allegations made against you.
6. You are entitled to legal representation at the disciplinary enquiry at your own cost and you are also entitled to be represented by a fellow employee if you wish, and to call witnesses, to cross-examine witnesses called on behalf of the employer, and to lead evidence in your own defence.

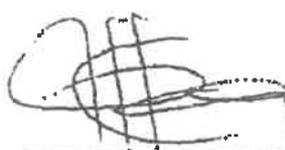
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NOTICE TO ATTEND DISCIPLINARY ENQUIRY / MR IN KHUBA

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- 7. If the enquiry holds that you are guilty of misconduct, you may present any relevant circumstances in determining the disciplinary sanction.
- 8. Attached hereto is a copy of the charge sheet.

Yours faithfully



MR KI KGAMANYANE
ACTING EXECUTIVE DIRECTOR




SIGNATURE OF MEMBER
DATE: 20/07/07



SS JB
20/07/07

"B"

DISCIPLINARY ENQUIRY

204

In the matter between

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Employer

and

INNOCENT KHUBA

First employee

MATTHEW SESOKO

Second employee

AGREEMENT BETWEEN THE EMPLOYER AND INNOCENT KHUBA

INTRODUCTION

1. The First Employee, Innocent Khuba ("Khuba"), was charged with dishonesty and defeating the ends of justice as more fully set out in the charge sheet attached hereto marked "A".
2. Pursuant to the institution of disciplinary action against Mr Khuba, the parties have reached agreement on 23 September 2015.
3. The Parties wish to record in writing the terms of the agreement, which terms they record below.

TERMS OF AGREEMENT

4. Mr Khuba being legally represented, freely and voluntarily pleads guilty to the charges proffered against him as set out in annexure A.
5. The Employer will impose a sanction of a final written warning valid for 6 months against Mr Khuba.
6. Mr Khuba suspension will be uplifted and he will report for duty on Monday, 28 September 2015.

M.E. V. S.S.
10/2/15

"C"

IN THE DISCIPLINARY HEARING
(HELD AT PRETORIA)

In the disciplinary enquiry between

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE Employee

And

INNOCENT KHUBA 1ST Employee

MATTHEWS 2ND Employee

AFFIDAVIT

I the undersigned

Innocent Khuba

Do hereby declare as follows that

1. I am an adult male currently employed by Independent Police Investigative Directorate (IPID) as a Provincial Head for the Limpopo Province.
2. The facts deposed hereto are within my personal knowledge and I believe same to be both true and correct and binding on my conscience.

[Handwritten signatures and initials]
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C.L.M
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C.L.M.

3. I will in this affidavit set out brief background facts regarding matters explained herein and thereafter explain circumstances in relation to Mr Sesoko.

Background Facts

4. I was immediately prior to making this sworn statement facing certain charges of misconduct relating to a matter that came to be commonly known as illegal rendition of Zimbabwean Citizens (rendition or rendition matter).
5. I was appointed on or about 2012 as the lead investigator in the rendition matter by Ms K Mbeki (Ms Mbeki). Upon my assignment to this matter Ms Mbeki gave me specific instruction not to involve Mr Sesoko in the investigations and that I should instead co-operate with Colonel Moukangwe of SAPS Crime Intelligence, Advocate Mosing and one Adv Moeletsi.
6. In the normal course of events in terms of IPID processes I must liaise with Mr Sesoko when conducting the investigations.
7. I must also state that Advocate Mosing and Advocate Moeletsi are not IPID employees.
8. In the course of my rendition investigation I submitted various progress reports to Ms Mbeki and Advocate Mosing. In respect of one of the progress reports, with which I also surrendered the docket, Advocate

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C.L.M.

Mosing insisted that it should be signed. Mr Sesoko was not present or aware that I had submitted the report to Adv Mosing.

9. In view of the fact that Ms Mbeki had gone awol and therefore not available to sign, Advocate Mosing advised that I should append my signature to it. Normally Ms Mbeki would have been the person legible to sign this report as required by Advocate Mosing. Upon Mosing's insistence I voluntarily signed this report before handing same to him. For purposes of convenience, I would refer to this report as the January report.

10. At the time of submitting the January report Advocate Mosing was aware of the outstanding investigations.

11. At or about this time which was about March 2014, Mr Robert McBride (McBride) was appointed as the new Executive Director. Like all other persons who were dealing with what is termed high profile cases, I gave a briefing to him on the high profile matters that I was investigating including the renditions matter and also that I was instructed by Ms Mbeki not to include Mr Sesoko in the investigation. I further advised McBride that I have now completed all outstanding investigations as requested by Advocate Mosing and that I have already requested retrieval of the docket from the Director of Public Prosecution (DPP).

12. McBride instructed me to henceforth include Mr Sesoko in the further investigations if any and in finalising the renditions report.

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13. After retrieving the docket from the DPP I proceeded to work with Mr Sesoko in finalising the renditions report. This was in March 2014. I emailed one of the progress reports to Mr Sesoko's computer from which we proceeded to finalise the renditions report based on all the evidence available. I worked on Mr Sesoko's computer when finalising the report.
14. In compiling the final report Mr Sesoko would assess the evidential value of assertions made in the report and I would input into the report submissions that are supported by the evidence available.
15. I wish to state categorically except for what I stated above that neither McBride nor Sesoko instructed me to either make any specific changes in the report or to exonerate any person in the report.
16. During January or February 2015 I was phoned by Mr Sesoko inquiring whether I have knowledge of the signed report dated January 2014 (The January Report).
17. I could not immediately recall this specific report and only did so when two pages of the report were sent to our spokesperson, one Mr Dlamini, by a Journalist by the name Mr Mzilikazi wa Afrika.
18. It was only at this time that remembered that it is the report I had previously sent to Advocate Mosing.
19. Hitherto Mr Sesoko and McBride were not aware of this fact or existence of the January report. Both Gentlemen became aware of the unfolding events when an inquiry was made by the Journalist aforesaid.

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My Guilty Plea

20. In respect of my plea to the charges that I was facing I do not in any way given the manner in which the charge/s are phrased implicate or intend to implicate or in any manner suggest that Mr Sesoko is also guilty of the charge/s that he is facing.

21. In fact in my plea bargain with my employer, it was also agreed though same is not included as a term in the settlement agreement that I am free to testify for Mr Sesoko should he find it necessary to call me as a witness.

[Signature]

DEPONENT

THIS DONE AND SIGNED BEFORE ME AT Polokwane THIS 25 DAY OF September 2015. AFTER THE DEPONENT DECLARED THAT HE/SHE IS FAMILIAR WITH THE CONTENTS OF THIS AFFIDAVIT AND REGARDS THE PRESCRIBED OATH AS BINDING ON HIS/HER CONSCIENCE AND HAS NO OBJECTION AGAINST TAKING THE SAID PRESCRIBED OATH. THERE HAS BEEN COMPLIANCE WITH THE REQUIREMENTS OF THE REGULATIONS CONTAINED IN GOVERNMENT GAZETTE R1258 DATED 21 JULY 1972 (AS AMENDED).

[Signature]
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C/L no 10187
COMMISSIONER OF OATHS

SOUTH AFRICAN POLICE SERVICE
POLOKWANE
2015-09-25
COMMUNITY SERVICE CENTRE
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SOUTH AFRICAN POLICE SERVICE

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

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Private Bag X941, Pretoria, 0001, City Forum Building, 114 Mediba Street, Pretoria
Tel: (012) 399 0826 Fax: (012) 399 0140
Email: ipgamanzana@ipid.gov.za Web: www.ipid.gov.za

Mr Innocent Khuba
Provincial Head: Limpopo Province
14 David Mabilo Street
Faranani Estate
Polokwane
0700

BY HAND

29 September 2015

Dear Mr Khuba

RE: YOUR PLEA OF GUILTY AND SANCTION

1. On 08 July 2015, you and Mr Sesoko were charged together in a disciplinary enquiry with a count of dishonesty and defeating the ends of justice in terms of the charge sheet that I annex hereto for your benefit. On 23 September 2015, you attended a disciplinary enquiry in which you were represented by your attorney, Mr Phoko which was chaired by Advocate Patrick Ngutshana and Mr Sesoko did not attend due to ill-health. As a result of Mr Sesoko's non-attendance, your disciplinary enquiry was separated from that of Mr Sesoko.
2. Mr Sesoko's disciplinary enquiry was postponed by agreement to 01 December 2015. Your disciplinary enquiry was proceeded with in which you pleaded guilty to the charge of dishonesty and defeating the ends of justice, as framed in the charge sheet. As a result of your guilty plea, I had agreed that despite the seriousness of the offence that you have committed, and that it warranted a dismissal, I have taken into account that you were open in admitting your guilt, and decided to agree to a final written warning instead of a dismissal. A settlement agreement to that effect was concluded on that day and signed by yourself in the presence of your attorney. You pleaded guilty to the charge, freely and voluntarily.

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3. The settlement agreement containing your guilty plea and the sanction was read out to the chairperson in the enquiry who then made a ruling in which he confirmed its contents and pronounced you guilty of the charge. The enquiry then terminated on that day, 23 September 2015. A copy of the settlement agreement and Annexure "A" (the charge sheet) is attached.
4. On Friday, 25 September 2015, in breach of your guilty plea and the agreement for a lenient sanction short of dismissal as contained in the settlement agreement, and without my knowledge or consent deposed to an affidavit in Polokwane, which contradicted the terms of your guilty plea as contained in the settlement agreement. I, as the Acting Executive Director learned about the existence of the affidavit in the media. On Monday, 28 September 2015, I phoned you at your office to verify whether the media reports that you have after the disciplinary enquiry was finalised on Wednesday, 23 September 2015, deposed to an affidavit on the same subject matter of the completed disciplinary enquiry.
5. You confirmed that indeed you have deposed to such an affidavit because Mr Sesoko asked you to do so.
6. I am of the view that your conduct as explained above was a perpetuation of the dishonest act and the defeating of the ends of justice which you have already pleaded guilty to, and a serious breach of the leniency of the sanction that I gave you of a final written warning. I am inviting you to provide me with the full explanation as to why you deposed to an affidavit in respect of a disciplinary matter which had been concluded, and in which you sought to contradict the terms of your guilty plea, and the terms of the settlement agreement. I require your full explanation on this matter because it is of grave concern to me, in order to enable myself, to take an appropriate decision, on whether I should revoke the final written warning and replace it with a sanction of dismissal.
7. In the light of your conduct aforesaid, I invite you to make written representations to me by no later than 09h00 am on Wednesday, 30 September 2015, why it is not appropriate that a final written warning be revoked and a summary dismissal be imposed.

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Yours faithfully

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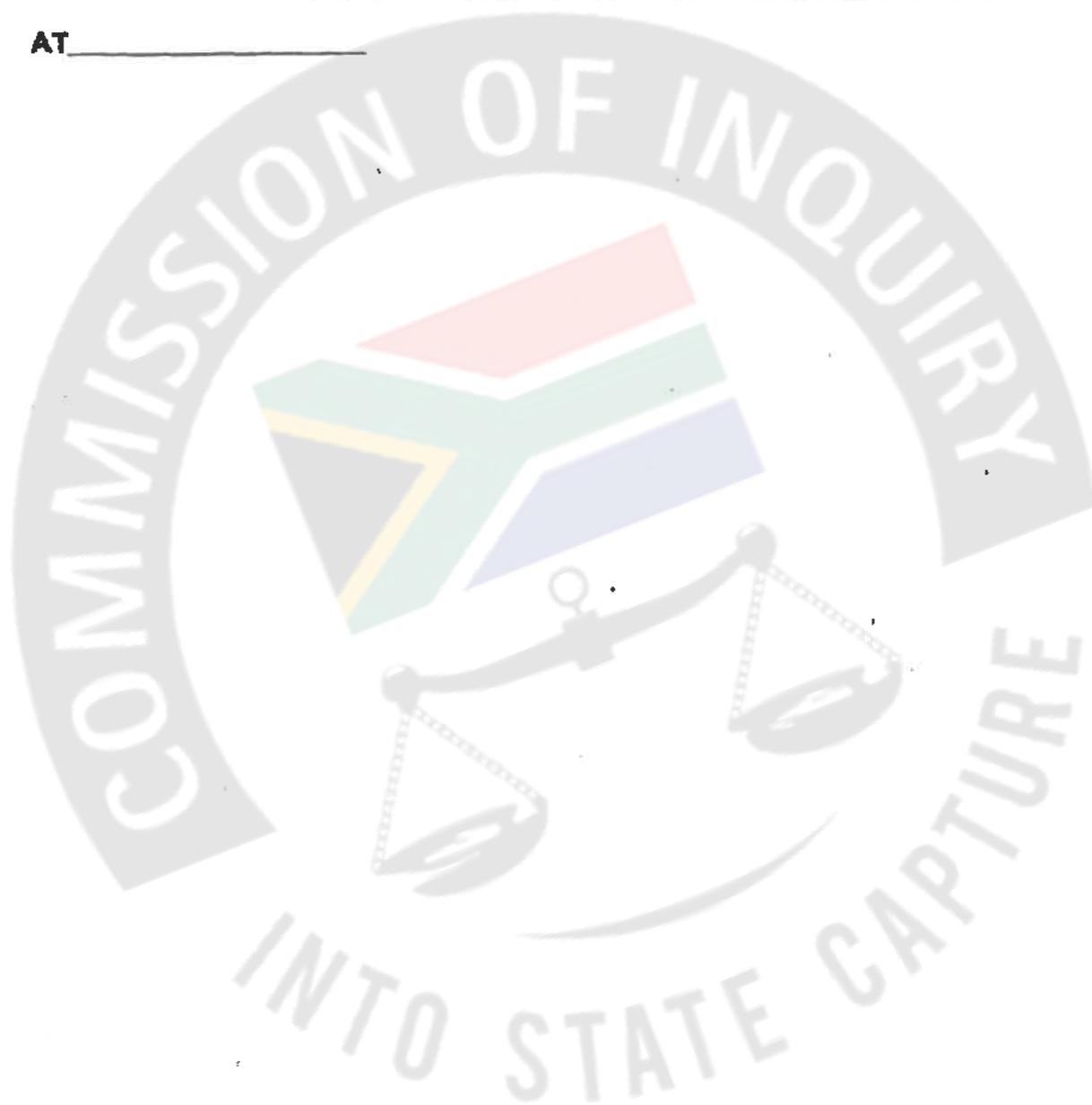


MR KI'KGAMANYANE
ACTING IPID EXECUTIVE DIRECTOR
DATE

27/09/2015

ACKNOWLEDGED BY _____ ON _____ 2015

AT _____



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SJ

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ipid

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

Private Bag X9525, Polokwane, 0700, 05 A Market Street, Fennel Building, 2nd Floor, Polokwane
Tel: (015) 291 9800 Fax: (015) 295 3409

Env: I R Khebe
Date: 2015/09/30

**Mr Israel Kgamanyane
Acting Executive Director
114 Madiba Street
Pretoria
0001**

Dear Mr Kgamanyane

SUBJECT: MY GUILTY PLEA AND SANCTION

I have noted your letter dated 29/09/2015 which was hand-delivered by Mr. Mlisi on the same day. The content of your letter relate to a settlement agreement which was concluded on 23/09/2015. On 2015/09/29 while I was in the office I received your telephonic call in which you asked me whether I made a statement on 25/09/2015. After I confirmed that I made a statement, you asked me why I made such statement. Reason was given to you which is contrary to what you have cited in your letter.

The reasons for deposing an affidavit was to clarify Mr Sesoko that the settlement agreement was between me and the employer and that it was never meant to implicate or exonerate him as a second respondent in the case I was initially charged with. Deposing of a statement against or in favour of an employee does not require the permission of an Accounting Officer and therefore cannot be held against me as misconduct.

The Plea Agreement which was concluded on 23/09/2015 was proposed to my lawyer by the employer's representative (Mr Mkhari) on 22/09/2015. Such agreement could not be concluded on 22/09/2015 because we informed the employer that we would like to apply our minds to the offer and consider the implication of such agreement. After we considered that the case has been dragging for a long time which is torturous to my family, we decided to accept the offer presented by the employer.

The agreement does not have any condition or terms which require me to depose or not depose statement regarding this matter or testify in favour or against Mr Sesoko. Your paragraph four states that my conduct of deposing an affidavit after the settlement contradicted terms of the Guilty Plea. The Agreement does not have terms with regard to this issue. If the employer made an offer for a settlement agreement with ulterior motive, unfortunately I failed to read such during the acceptance of the offer. I concluded the agreement in good faith and putting the interest of my family first.

It is unfortunate that you learned about the existence of my affidavit from the media; however a trace of the email which I can also provide as proof shows that it was emailed to Mr. Sesoko's

Mr. Sesoko

*Dr. Temo H1
2015/09/30*

*IB
SS*

DR-EM

My guilty plea and sanction

H I KHUBA

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lawyer on 25/09/2015. I do not know how it ended up with the media. It is as baffling to me as the same Plea Agreement which was quoted by Sunday Times of 27/08/2015 whereas the discussions took place behind closed doors.

Your paragraph 6 and 7 states that I should explain why you shouldn't revoke the final written warning and replace it with dismissal. The same Plea Agreement which was signed by the employer does not have clause that allow the imposition dismissal without a hearing on the so called new misconduct or any contravention if really there was such. This clearly shows that this agreement is used as an instrument of victimisation by the employer. With this threat of dismissal, I am convinced that the employer made such an offer in bad faith. It is clear that with this amount of victimisation, the so called six months in which the sanction would be active, is going to be a nightmare for me.

I have approached the PSA for an urgent High Court application to have the Agreement set aside based on number of reasons, to allow me to go through the process of a hearing.

If you decide to serve me with letter of dismissal, please use the same address that appears on your letter dated 29/09/2015. I have been booked off sick due to my ill-health and will only be back on 08/10/2015.

Kind Regards

H I KHUBA

H I KHUBA
PROVINCIAL HEAD - LIMPOPO

Confidential

Page 2

H.I. 10/10/15
Dr. Tene
2015/09/30

SS
DB



ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X941, Pretoria, 0001, City Forum Building, 114 Madiba Street, Pretoria
Tel: (012) 399 0026 Fax: (012) 399 0140
Email: ikgamanyane@ipid.gov.za Web: www.ipid.gov.za

Confidential

"E1"

216

Mr Innocent Khuba
Provincial Head: Limpopo Province
14 David Mabilo Street
Faranani Estate
Polokwane
0700

BY HAND

30 September 2015

Dear Mr Khuba

RE: YOUR DISMISSAL FROM EMPLOYMENT WITH IMMEDIATE EFFECT

1. On 29 September 2015, I addressed a letter to you affording you an opportunity to make written representations to me by no later than 08h00 on 30 September 2015, as to why the sanction imposed on you of a final written warning should not be altered to a summary dismissal in the light of your conduct on 25 September 2015, when you deposed to an affidavit without my knowledge and consent contradicting your plea of guilty and the terms of the settlement agreement you signed on 23 September 2015.
2. I have received your written representations at 08h45 on 30 September 2015, and I have taken them into account in making my decision herein. Nothing in your representations address the issues I have raised in my letter dated 29 September 2015, than a further confirmation of your perpetual dishonesty.
3. I find that your conduct on 25 September 2015 was the perpetuation of the dishonest conduct and defeating of the ends of justice which you had already pleaded guilty to. Due to the seriousness of this transgression and the seniority of the position you hold in IPID as the Provincial Head, I find that I am unable to trust you anymore, and as such, the trust relationship has been

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Confidential

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irreparably broken down. The position that you occupy is one of trust and the person who occupies it must be a person with integrity. You have demonstrated through your dishonest conduct that you lack integrity and cannot be trusted by the employer.

- 4. I therefore dismiss you from your employment with immediate effect.
- 5. If you wish to challenge your dismissal, you are entitled to refer the dismissal dispute to the Bargaining Council within 30 days from the date of your dismissal.

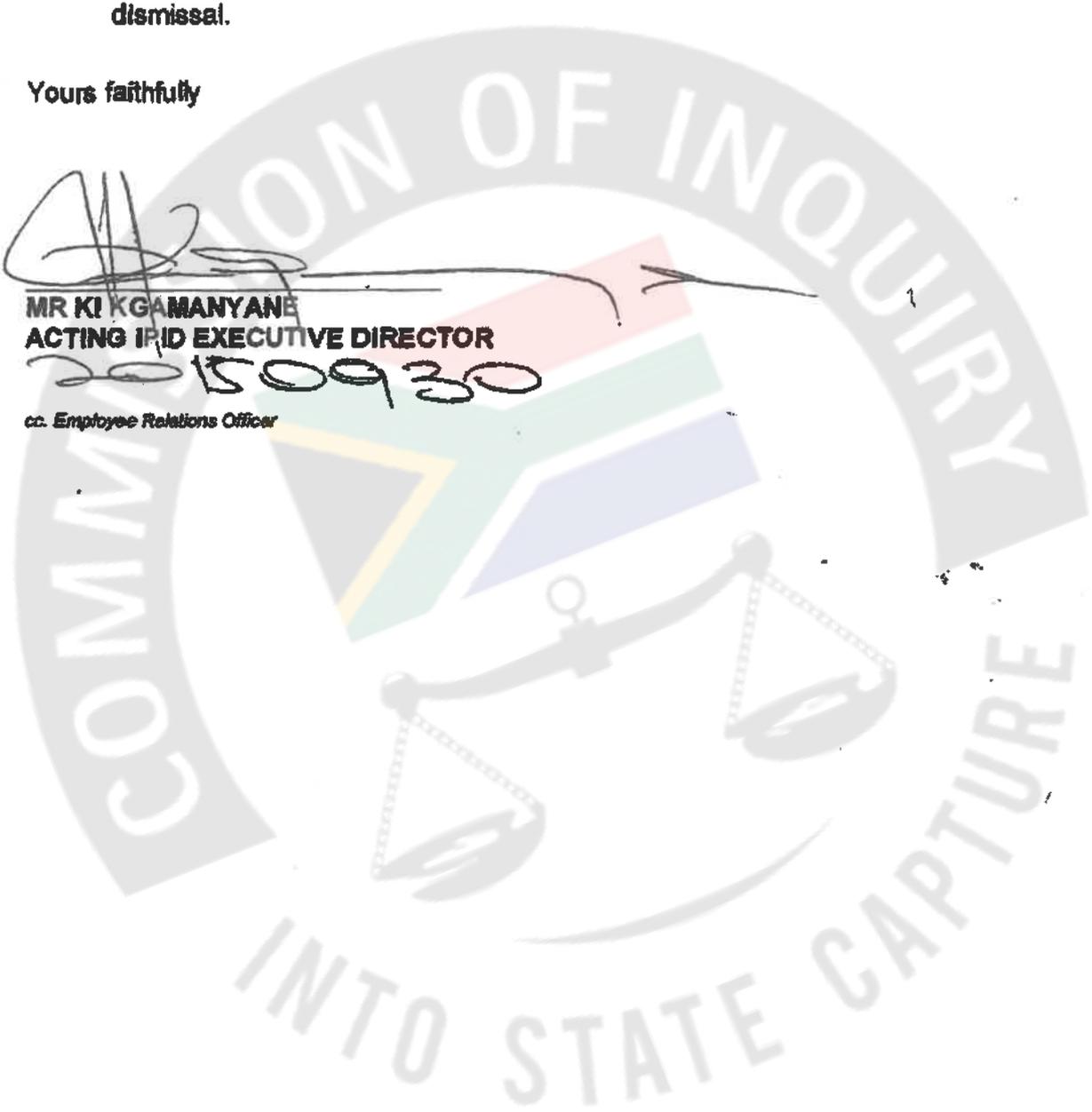
Yours faithfully



**MR KI KGAMANYANE
ACTING IRED EXECUTIVE DIRECTOR**

20150930

cc. Employee Relations Officer



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refer
SJ
JB



ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

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Private Bag X941, Pretoria, 0001, 114 Madiba Street (Vermeulen Street), City Forum Building, Pretoria

Eng: Mr VD Sibazoni
Ref: SP/Mr Khuba

MR H KHUBA
PRIVATE BAG X9525
POLOKWANE
0700

Dear Mr Khuba

**APPOINTMENT TO THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE (IPID): CHIEF DIRECTOR:
INVESTIGATIONS, LIMPOPO OFFICE**

As a result of your successful candidature for the advertised post of Chief Director: Investigations, I am pleased to inform you that your appointment has been approved with effect from date of assumption of duty:

Rank	:	Chief Director: Investigations
Salary	:	R 988 152.00
Salary Level	:	14
Office	:	Limpopo Office

Your appointment is subjected to the provision of the Public Service Act, the collective agreements concluded in the Public Service Co-ordinating Bargaining Council (PSCBC), the Public Service Regulations and the Public Service Pension Fund. Furthermore, your appointment to the IPID is approved on condition that you pass the IPID security clearance, that you have no previous criminal and/or departmental convictions which were not disclosed during the interview and, that no such matter is pending against you. Your probation will be subject to a positive Security Clearance from NIA i.e. ITC, Criminal Records, Citizenship. Should your security clearance results be negative your appointment will be terminated.

In addition, kindly note that your appointment is subject to the positive verification of your qualification by the South African Qualification Authority. Should your qualifications not be positively verified, your appointment will be terminated.

Your permanent appointment is subject to the satisfactory performance during the probationary period of twelve months. Please note that as per the Department of Public Service and Administration (DPSA) Circular HRD 1 of 2012, the probation of an employee cannot be confirmed unless such an employee has completed at least Module 1 of the Compulsory Induction Programme.

Within 30 days of entering the post, you are also subjected to the following:

- ❖ Job description agreed and signed with your relevant Supervisor/ Manager.
- ❖ Performance Agreement signed with your relevant Supervisor/ Manager.
- ❖ Structuring of the New Inclusive Flexible Remuneration Package for employees in the Middle Management Services (MMS) (only applicable to employees appointed on salary 11 -12)
- ❖ Structuring of the New Inclusive Flexible Remuneration Package for employees in the Senior Management Services (SMS) (only applicable to employees appointed on salary 13 -16)

Chief Director: Investigations

Mr H Khuba

Handwritten initials: "F", "SS", "H1", and a signature.

PAY DATE

Your salary will be paid on the last day of the month. Any overpayment on salaries due to an error or oversight will be recovered as soon as it is discovered. After completion of your probationary period, your salary for the month will be paid in the middle of the month.

GENERAL

Your conditions of service are in accordance with the Public Service Act, Public Service Regulations as amended and other Circulars and Resolutions which are negotiated from time to time. Departmental policies, including the Grievance procedure and Disciplinary Code, apply to all employees.

LEAVE

You will be entitled to 22 working days' vacation leave per annum for the first ten years' service and 30 working days per annum after completing ten years' service and if you are appointed during the year a pro-rata leave calculation will be done. Your unused vacation leave credits for the previous year will expire every year on the 30th June.

Sick leave is granted per three-year cycle of 36 days. Family responsibility leave is 10 working days per annum. A maximum of 5 days family responsibility leave is granted for a death and 5 days if the employee's spouse or life partner gives birth to a child or the employee's child, spouse or life partner is sick as stipulated in the Leave Directive. Female employees are entitled to 4 consecutive months' paid Maternity Leave.

SERVICE BONUS

An annual service bonus will be paid to you on your birthday month. This amount is equal to 100% of your basic salary per month. If the employee has less than a year's service, a pro-rated portion is calculated and paid accordingly.

Note: Employees in Middle Management Services (MMS) (employees appointed on salary 11 -12), will only enjoy this benefit if they have structured for it within their Flexible Remuneration Package.

HOUSING ALLOWANCE

The Homeowner's Allowance is set by the Department of Public Service Administration and is calculated based on the prevailing interest rate. The allowance fluctuates in response to the interest rate. The amount to be paid on Housing Allowance will be based on individual circumstances, e.g. property or renting accommodation.

Note: Employees in Middle Management Services (MMS) (employees appointed on salary 11 -12), will only enjoy this benefit if they have structured for it within their Flexible Remuneration Package.

STATE GUARANTEE

State guarantees are issued with reference to the Public Service Regulations. Only applications from employees who have completed their probationary periods may be considered.

OFFICIAL HOURS OF ATTENDANCE

The official hours of attendance for the Department are as follows:
07H30 until 16H00 or 08H00 until 16H30 (with a 45 minutes lunch break from 12H45 until 13H30). Please consult your manager in this regard.

PAY PROGRESSION

The qualifying period for first time participants have been extended from 12 to 24 months. This amendment is effective from 01 July 2012. Upon completion of the 24 months period, an eligible first time participant will qualify for pay progression and 12 months thereafter.

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VOLUNTARY RESIGNATION

The employee may resign from the Department at any time by giving the Department 30 days' notice in writing.

TERMINATION OF EMPLOYMENT

The Department shall be entitled, after following due processes, to terminate your employment, after following due processes, should you be found guilty of any conduct which will justify dismissal as contemplated in the Labour Relations Act of 1985, the Public Service Act and the Public Service Regulations. Upon termination of your employment for any reason whatsoever, you must undertake to return all property/assets belonging to the Department of the Independent Police Investigative Directorate immediately.

Should your contract display an end date, please be advised that the onus is on yourself and your immediate supervisor to be aware when your contract expires.

MEMBERSHIP OF PENSION FUND

It is a condition of service for you to contribute to the Government Employees Pension Fund at a rate of 7.5% and your employer will contribute an amount of 13%.

MEDICAL FUND MEMBERSHIP

You will have a choice to become a member of the Government Employees Medical Aid Scheme (GEMS). Please note that the Department ONLY pays two thirds (medical aid subsidy) of the total contribution to a maximum predetermined amount p.a. towards the Government Employees Medical Scheme. For you to enjoy the medical aid subsidy benefit, you will be required to join GEMS as a registered member.

Note: Employees in Middle Management Services (MMS) (employees appointed on salary 11-12), will only enjoy this benefit if they have structured for it within their Flexible Remuneration Package.

INTERACTION WITH THE MEDIA

This Department has a dedicated Communication Unit, any questions from the media must be referred to the Executive Director or delegated authority.

FALSE AFFIDAVIT

The Department is in the process of confirming the authenticity of your educational qualification(s), criminal record and your working experience with the relevant institution(s) and companies. Any false information given by you on your application form (Z83) and curriculum vitae (CV) or during your interview and any misrepresentation would lead to your immediate discharge.

COPYRIGHTS

The Department of the Independent Police Investigative Directorate retains copyright on all materials produced by yourself during the period and scope of your employment and such material must be returned to the department on termination of your employment.

REMUNERATIVE WORK OUTSIDE THE PUBLIC SERVICE AND RELATED ACTIVITIES

In terms of the Public Service Regulations 2001 as amended, you shall not engage in any other business, or form of employment, directly/indirectly without the prior written approval by the Executive Director.

CONFIDENTIALITY

You shall not divulge any information of a confidential nature by yourself during the period of employment with the Department, either during your employment or after termination of employment unless otherwise authorized by the Department of the Independent Police Investigative Directorate.

Chief Director: Investigations

Mr Hl Khuba

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[Handwritten signature]

CHANGE IN BANKING DETAILS

Should you wish to change your banking account, it is advisable that you keep your existing account operational until your new account number comes into effect. Failing this, delays in payment of your salary will be experienced.

Please respond within 5 days to accept or decline the offer on receipt thereof. Failure to do so will result in the automatic lapse of the offer. You are most welcome to the service of this Department and I trust that you will be happy and make valuable contribution in your new working environment.

I await your response.

Yours sincerely



MR R.J. MCBRIDE
EXECUTIVE DIRECTOR
DATE:

12/09/2014



Chief Director: Investigations

Handwritten initials: SS, HI, and a signature.

Mr. H. Khebo

"G"

222



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

2015/05/20 09:58 AM

— Forwarded by Innocent Khuba/Limpopo/IPID on 2015/05/20 09:58 AM —

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

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

A MOSING

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

TEL: +27 128456366
MOBILE: +27 847388076

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

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

From:	Matthews Sesoko/NorthWest/IPID
To:	Innocent Khuba/Limpopo/IPID@IPID
Date:	2014/02/27 12:58 PM
Subject:	Fw: Emailing: RESPONSE TO QUESTIONS POSED BY IPID - MAJOR GENERAL SHADRACK SIBIYA

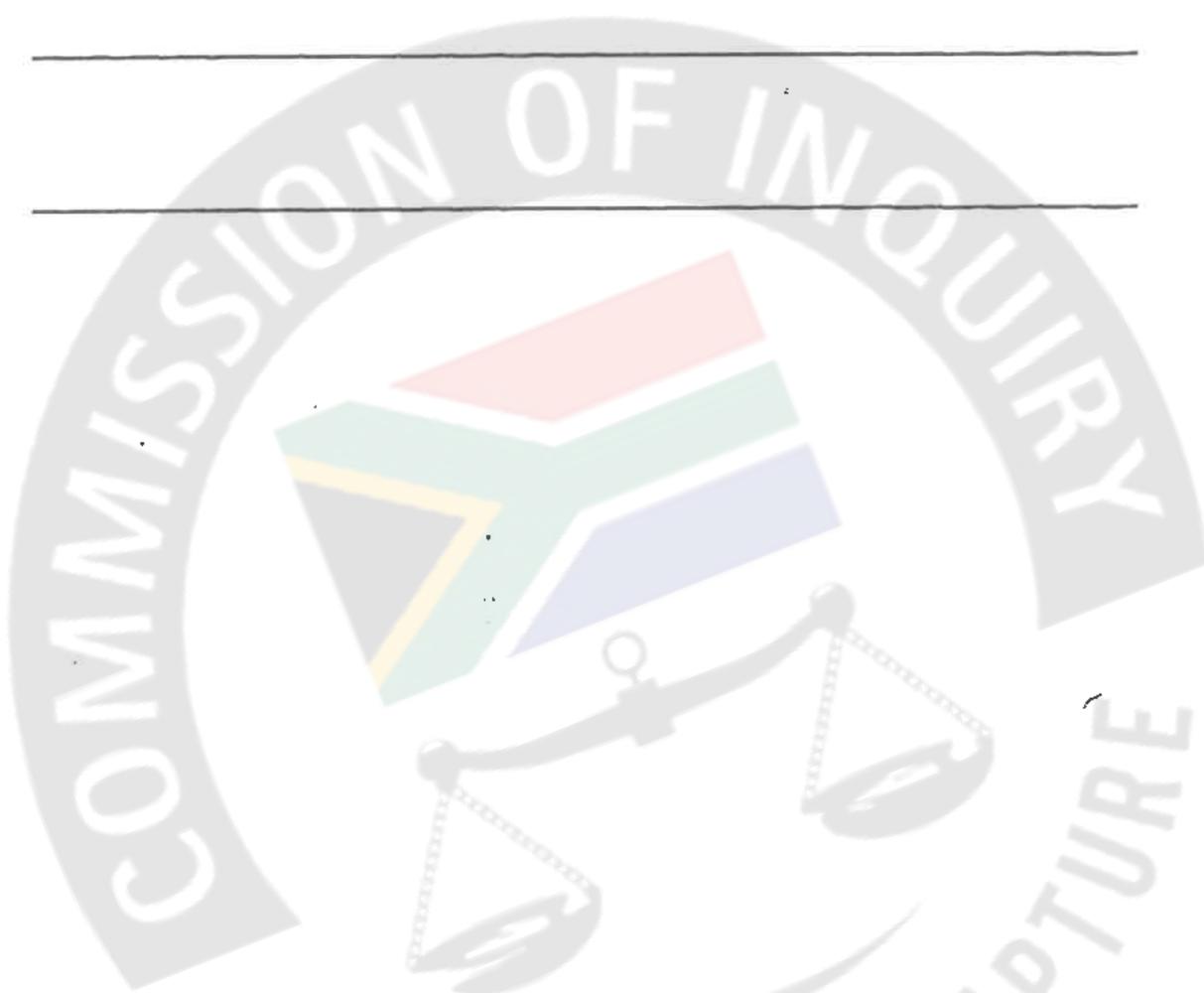
Matthews Sesoko
 Acting Chief Director: Investigation & Information Management
 Independent Police Investigative Directorate
 Private Bag X941, Pretoria, 0001
 City Forum Building, 114 Madiba (Vermeulen) Street, Pretoria, 0002
 Tel: (012) 399 0048
 Fax: (012) 399 0196
 Fax2email: 0866301019

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TELEPHONE RECORDING

COL MAHLANGU
AND
HUMBULANI INNOCENT KHUBA



LUBBE & MEINTJES cc

Box 1852 Ground Floor
SOUTHDALE Arbour Square
2135 BRAAMFONTEIN

Tel: (011) 339-8073
Fax: (011) 339-6766

Handwritten notes:
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TELEPHONE RECORDING
COL MAHLANGU AND HUMBULANI INNOCENT KHUBA

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224

BEGINING OF CD TRACK call_15 10 03 +27827782835

HUMBULANI INNOCENT KHUBA: Hello Mr Poko.

COL MAHLANGU: Yes, are you sleeping?

HUMBULANI INNOCENT KHUBA: No, I am not sleeping.

5 COL MAHLANGU: I am sure you are sleeping.

HUMBULANI INNOCENT KHUBA: No, who am I speaking to?

COL MAHLANGU: It is alright.

HUMBULANI INNOCENT KHUBA: Who am I speaking to, who am I speaking to, is it Mr Poko?

10 COL MAHLANGU: No, did you not save my phone numbers man?

HUMBULANI INNOCENT KHUBA: Who is it? I saved them, who am I speaking to?

COL MAHLANGU: If you had stored it you would have seen my name on your phone.

15 HUMBULANI INNOCENT KHUBA: Brigadier how are you?

COL MAHLANGU: I am okay man.

HUMBULANI INNOCENT KHUBA: I thought it was Mr Poko man.

COL MAHLANGU: Yes it is me; I wanted to check if you stayed well?

HUMBULANI INNOCENT KHUBA: No I am okay, how was the trip?

20 COL MAHLANGU: No I am not home yet but I am at the elder's house.

HUMBULANI INNOCENT KHUBA: Where, okay, okay.

COL MAHLANGU: In the rural areas here, I am home, no one stays here so I decided to come and open the windows so that some air can come in.

HUMBULANI INNOCENT KHUBA: Okay, that is good.

25 COL MAHLANGU: Yes.

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TELEPHONE RECORDING
COL MAHLANGU AND HUMBULANI INNOCENT KHUBA

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COL MAHLANGU: As soon as everything is finalised General is the one who will do good for you.

HUMBULANI INNOCENT KHUBA: Okay, okay.

COL MAHLANGU: As a friend, as a person you know.

5 HUMBULANI INNOCENT KHUBA: Yes.

COL MAHLANGU: I do not think he will dump you, I do not think he will throw you, he will throw you in the mud, the only thing you must do is be honest to yourself, fix everything, do not take wrong ideas and advices, and then we will tell General, NPA will deal with whoever they deal with, but we will inform General that since this guy has pushed for us to reach where we are.

HUMBULANI INNOCENT KHUBA: Yes.

COL MAHLANGU: As the witness.

HUMBULANI INNOCENT KHUBA: Yes, yes.

15 COL MAHLANGU: Then he is acquitted.

HUMBULANI INNOCENT KHUBA: Okay.

COL MAHLANGU: And something has to be done, he has to be restored next to his position or to his (indistinct).

HUMBULANI INNOCENT KHUBA: Okay.

20 COL MAHLANGU: Yes, please you must underline it, you must put NB behind it and underline it, do not do it.

HUMBULANI INNOCENT KHUBA: Okay.

COL MAHLANGU: Do not highlight it with a highlighter, you must write it with a red pen underneath, it is the best statement to you, you must empower yourself.

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**TELEPHONE RECORDING
COL MAHLANGU AND HUMBULANI INNOCENT KHUBA**

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HUMBULANI INNOCENT KHUBA: Okay.

COL MAHLANGU: Yes, okay cool then.

HUMBULANI INNOCENT KHUBA: No problem, thanks.

COL MAHLANGU: Okay cool.

5 **END OF PHONE CONVERSATION**

END OF CD TRACK call_15 10 03 +27827782835



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S July/IPID
27.03.15

INNOCENT KHUBA

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

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INNOCENT KHUBA

PRESENT: MR INNOCENT KHUBA - IPID 10
MR SANDILE JULY - Director, Werksmans
MS KERRY BADAL - Associate, Werksmans
MR SANDILE TOM - Associate, Werksmans

26 March 2015 15

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 WERKSMANS, and SANDILE TOM is also an Associate from WERKSMANS. And we have MR KHUBA from IPID. You can proceed, Mr Khuba. 20

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 25

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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.

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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.

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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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27.03.15

INNOCENT KHUBA

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: What was KOEKIE's position at that time?

MR KHUBA: 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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27.03.15

INNOCENT KHUBA

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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S July/IPID
27.03.15

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.

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

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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27.03.15

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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S July/IPID
27.03.15

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 5
some disciplinary. I'm going to cut and go to
the core.

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 15
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 20
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.

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

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S July/IPID
27.03.15

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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S July/IPID
27.03.15

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 5
happy about when I cast my ...

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 10
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 15
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.

The following day I drove there straight away 20
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 25

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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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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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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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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 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 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 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 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

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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, I had to go outside. 5

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 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. 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 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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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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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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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.

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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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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 15
from the same ethnic group as MALULEKE - I 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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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 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 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 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 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

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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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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

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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 5 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 10 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 15 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 20 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 25

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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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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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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, because their internal investigation had only the cellphone records of SIBIYA, NEETHLING and MALULEKE. Those cellphone records covered a very short space of time.

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MR JULY:

Who conducted their interviews?

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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 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 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

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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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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
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
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
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
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.

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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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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 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. 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 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 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

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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. 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

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- 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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and on the 28th the register of NOORD 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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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 5
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 10
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 15
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 20
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 25

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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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even now I have not yet got her statement. I
sent out questions which relate to not only
MALULEKE, because by that time I had these
success reports, so I had to add GENERAL
DRAMAT, to say: You signed these success 5
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 10
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 15
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 20
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 25

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this person had been discharged from hospital
- the same resistance. Lately, when I was
requested by ADVOCATE BALOYI 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

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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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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 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 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 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 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

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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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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

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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 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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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 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. 5

I think on 3 March McBRIDE started, if I'm not 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. 10 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 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 20 25

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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? 5

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 10 between updating new evidence in terms of saying what its impact is, and also the issue of ...

MR JULY: ... of saying how does it get you to a conclusion. 15

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 20 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 25

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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 ...

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

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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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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 5
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, 10
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 15
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 20
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 25

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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. 10 15 20

After leaving the hotel I went straight to PRETORIA to meet with McBRIDE, as well as the...

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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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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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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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 5
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. 10
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 15
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 20
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 25

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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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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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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 5
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 10
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 15
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 ... 20

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 25

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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 5
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 10
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 15
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 20
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 25

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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 5
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. 10

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 15
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: 20
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 25

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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 ... 5

MR JULY: Yes, I heard that part.

MR KHUBA: He had an automated email/SMS dispatch. 10

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 15 20 25

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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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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 5
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 10
diverts - 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. 15

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, 20
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 25

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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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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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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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- 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 5
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 10
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 15
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.

MR JULY: And they were committing an unlawful act. 20

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 25

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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 15

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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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 ...

MR JULY: The second report? 20

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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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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SESOKO signed on the 18th.

MR KHUBA: 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?

MR JULY: No. 15

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 Sibiya." 25

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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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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 25

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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 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 operation. 5 10

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 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 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 15 20 25

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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.

MR JULY: You see, his physical presence would have been relevant on assault and theft.

MR KHUBA: Mmm.

MR JULY: 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. 5

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. 10 15

THE INTERVIEW ADJOURNS 20

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: 25

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"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 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 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 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 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 DRAMAT.

MR KHUBA:

Yes. It says:

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

Yes.

MR JULY: You see, that part has nothing to do with this
either. 5

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, 10
paragraph 53, which is the second page of the
second report.

MR KHUBA: Paragraph 53 or 5.3?

MR JULY: It's paragraph 5.3, sorry.

MR KHUBA: I see that. 15

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: 20

"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 25

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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." 5

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

MR KHUBA: Let me check.

"He sent emails circulating more than 10 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 15 tracing the main suspects."

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 ... 20

MR KHUBA: 5.5?

MR JULY: 5.5 is the cellphone record of MAJOR GENERAL SIBIYA.

MR KHUBA: Okay.

MR JULY: It reads: 25

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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. 5

The same automated SMSs were sent to Major General Lebeya (at that number). 10
These SMSs were sent at various milestones of the operations."

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

- MR KHUBA: This one is not in terms of the analysis? .
- MR JULY: This one. 15
- MR KHUBA: No, no, that's fine.
- MR JULY: 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?
- MR KHUBA: There it is in the blocks. 20
- MR JULY: 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.
- MR KHUBA: Whereas here it is there.
- MR JULY: Yes, it's left out, even (indistinct) is 25

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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? 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. 20

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. 25

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- 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." 15 20
- 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." 25

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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. 10 15

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 20 25

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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? 25

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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:

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"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 ..."

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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.

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MR JULY: It does.

MR KHUBA: Where?

MR JULY: It does. If you look at the second ...

MR KHUBA: It doesn't.

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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

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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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MR KHUBA: Okay.

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

Okay.

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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:

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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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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: 5

"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 ..." 20

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 25

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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. 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. 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? 25

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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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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. 5

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. 10 15

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 20 25

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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 5
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 10
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. 15
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. 20

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. 25

SJ [Signature]

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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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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 ...

MR KHUBA: ... some things that are not there ... 15

MR JULY: ... things that have been removed.

MR KHUBA: 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 25

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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 when 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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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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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 5
to that conclusion, is left out in order to
come to this different conclusion.

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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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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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. 5

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 ... 10

MR KHUBA: Of the original report? 15

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. 20

According to a letter retrieved from Captain Maluleke's laptop there was a 25

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meeting in August 2010 held between
Zimbabwe ..."

To that one you may deliberately not make
reference.

MR KHUBA: So it doesn't appear in the analysis? 5

MR JULY: Yes.

MR KHUBA: Okay. It's not in the findings?

MR JULY: It says in the findings - there is only one
meeting that is being referred to. It talks
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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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-transit and (?)."

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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 the ZIMBABWEANS come into the country for the purposes of meeting with him.

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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 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 ...

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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

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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? 5

MR KHUBA: Okay, did you check DRAMAT's statement, the warning statement?

MR JULY: No, you see, the warning statement - that's a bad memory. It's not ... 10

MR KHUBA: It's not factual?

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

MR KHUBA: 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." 15 20

MR JULY: On which page is that?

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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."

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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.

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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.

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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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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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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 15

MR KHUBA: Yes.

MR JULY: In this case, when DRAMAT becomes aware of this, it is beyond question whether ...

MR KHUBA: ... whether the other one followed procedure or not? 20

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 25

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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, 25

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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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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. 25

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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 5
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 10
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 15
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 20
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). 25

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MR JULY: Criminally?

MR KHUBA: Yes. But these other ones like NKOSI, 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 5 the rationale behind the issue of saying why the decision was that way.

Also, can I raise another point here?

MR JULY: Yes.

MR KHUBA: There was a memo - an info note, sorry, which 10 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 15 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. 20 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.

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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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, 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 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.

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 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

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- 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? 5
- 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 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 number 1, and the review of the existing evidence. Those are the two major things. 15 20
- 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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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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INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

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INNOCENT KHUBA

PRESENT: MR INNOCENT KHUBA - IPID
MR SANDILE JULY - Director, Werksmans 10
MS KERRY BADAL - Associate, Werksmans
MR SANDILE TOM - Associate, Werksmans
MR KWAZI BUTHELEZI - Candidate Attorney

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MR JULY: We are going to record this. I was saying to you that when we interviewed MR MOUKANGWE, he said you, him and SESOKO went to the NPA.

MR KHUBA: Yes.

MR JULY: And the reason you went to the NPA is you 20 wanted a warrant of arrest.

MR KHUBA: Yes.

MR JULY: He said it was taking time and you guys wanted to find out why.

MR KHUBA: Yes. 25

MR JULY: Then was MR SESOKO aware of the report that was given to the NPA?

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MR KHUBA: Okay.

MR JULY: No, I'm asking you.

MR KHUBA: According to me I don't think he was aware, because I never gave him a copy.

MR JULY: Let's say you never gave him a copy, but he was aware - because he said somewhere in December you sought his advice as to how to submit the report to the NPA. 5

MR KHUBA: Yes.

MR JULY: So he was aware of the report. 10

MR KHUBA: Yes.

MR JULY: But he may not have seen the report. You also testified that because he was your senior, sort of, although the Acting Executive Director gave you specific instructions not to involve him, you did inform him about the report. 15

MR KHUBA: Yes, yes.

MR JULY: So he knew about the existence of the report.

MR KHUBA: Yes. 20

MR JULY: So when McBRIDE asked you - maybe before I go to McBRIDE, do you remember the date when you went to see the NPA?

MR KHUBA: When I went to see ...

MR JULY: When you went with MR MOUKANGWE and MR SESOKO? 25

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MR KHUBA: No, I can't remember the date, but it was before McBRIDE joined us.

MR JULY: Yes, definitely. You know why it was before McBRIDE, because it was shortly after you submitted the January report. 5

MR KHUBA: Yes, yes.

MR JULY: McBRIDE joined on 3 March.

MR KHUBA: This year, yes.

MR JULY: And you submitted your report on 22 January.

MR KHUBA: Yes. 10

MR JULY: So if you visited the NPA it would have been around February then?

MR KHUBA: Yes, it would have been around there.

MR JULY: And at that time you all went there with one intention, to get the warrant of arrest. 15

MR KHUBA: Yes.

MR JULY: We're not going to talk about the new information. We have talked about the new information and we have our views about this new information, but at one stage you guys 20 applied for the same information, before McBRIDE came into the picture.

MR KHUBA: Okay.

MR JULY: Section 205 - the cellphone information and dates. 25

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- MR KHUBA: Mmm.
- MR JULY: According to MOUKANGWE there was nothing that was required - even what you say is new. You knew about that information, firstly, that SIBIYA - at the time you had information that the cellphones that you tracked were not at the scene of the crime. 5
- MR KHUBA: Yes.
- MR JULY: That information you always knew about, even when the report was finalised and was given. That information you knew about? 10
- MR KHUBA: Yes.
- MR JULY: Even the advocates at the NPA raised that issue: Listen, this information you may have a problem with, and that you could go and do one or two things regarding that information. 15
- MR KHUBA: Alright.
- MR JULY: So according to him there was nothing new that came out. 20
- MR KHUBA: Let me expand. There was a telephone record we got in terms of Section 205. That telephone record was like raw data. It had not yet been integrated to an extent where it could guide us to say where (?). I need to be 25

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very clear, because I was one of the people who was very insistent on saying: This person must be put as a suspect - what is his name?

MR JULY:

SIBIYA.

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MR KHUBA:

SIBIYA. And also DRAMAT must be put as a suspect. There was a time when the advocate dealing with the case was quite hesitant about the issue, to say: Why is SIBIYA being put in the report? But he insisted by saying that we needed to get an expert to assist us. I indicated to him that I had already engaged the expert, but that was not coming forth. I indicated to him that I would suggest to my boss, MBEKI, to say: Can we issue a new order to a new person to deal with the information? The point that makes a difference is that when I discussed it with SESOKO - when we discussed these things - he was also of the view that we can't put this person (?). The issue that you raised last time, that was my point of view to say SIBIYA was heading a unit. The unit came out of that, and in that operation he communicated with his seniors about this operation, because I wanted to go to him with

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a warning statement, to say: Sibiya, if you
were not communicating about the mission, what
were you talking about? And he never came
clear. I have his response. When we went and
discussed it - that is when we discussed it 5
with MR SESOKO, after the deliberation with
McBRIDE. I want to put this very clearly, to
say, if MR McBRIDE then had an agenda for the
changing of the report, he might have used
SESOKO, because SESOKO had evaluated. We 10
argued. MR SESOKO said: No, no, you can't
put words like that. We deliberated about it.
We deliberated because that was my position.
One question - and I don't know whether you
asked it previously - if McBRIDE did not join 15
with the (?), would it have been changed. My
view, without even being convinced by SESOKO,
I wouldn't have changed it. Because my
understanding is that when we deal with such
people they are very senior, and to get a 20
little thing where you can point fingers at
them is not - because it means you won't get
anything.

MR JULY: So at the time when you met with SESOKO, who
was going through the report - he says, and 25

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let me be upfront with you: Khuba never told
me that he even sat with the report. We know
that is not true. We said to him that that
can't be right, and that will go to the
honesty - that KHUBA was not honest with you, 5
because KHUBA came to you and asked for your
advice on how to submit the report. He
submits the report, and you guys go there and
want a warrant off the report that you never
signed. The question that I want to ask is 10
this. When McBRIDE asked you for a report,
you gave him the report that you had already
submitted to the NPA?

MR KHUBA: Let me tell you that the report which I had
given to him, which I emailed - I don't know 15
whether he read it or did not read it - is the
report that I sent the NPA. I had already
updated it, but I don't think I updated the
recommendation, it was just to add those
statements that had just arrived. Because 20
there were things that I received after the
report had already been sent.

MR JULY: But those things did not influence your
recommendation - they did not influence the
changing of the recommendation? 25

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- MR KHUBA: Let me be honest with you, when I dealt with the report, when I got these new statements, I never went back and looked at the recommendations, I just updated the statements. Because if you check my report, it's categorised. I would do statements of this or of this, but the actual interpretation and the changing of everything happened when McBRIDE had already arrived. 5
- MR JULY: Here's the thing. You remember we showed you a number of pages where the information was deleted? 10
- MR KHUBA: Yes.
- MR JULY: And when we showed SESOKO he said he doesn't know anything, you were the one who was working with that information, and he doesn't know anything about the changes. You said on record you did not delete that information. 15
- MR KHUBA: Yes. 20
- MR JULY: And you know there is a reason why you would not have deleted the information. For instance, what was said by the people - for you to change it, you would have a reason, and you would put that reason in your report. So 25

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that information was removed. But if it was not you and it was not SESOKO, we have not yet been able to talk to MR McBRIDE, although we wrote him an email to come and talk to us, who then would have deleted that information? 5

MR KHUBA:

That is a very difficult question. But I need to say as the investigating officer I was over-trusting with the report. Because when SESOKO asked for the report, I never withheld the report, I emailed it to him. When we were working on the report I used his computer. Whether he showed McBRIDE - but I remember McBRIDE, if there is one person who read that report extensively it was McBRIDE. He read it extensively. Then the progress which I was doing on the report itself, I was only adding stuff. He was sitting next to me. I was adding things, I was doing things, but whether that part was cut out by him or by me, I will not say, but I don't remember removing it. 10 15 20

MR JULY:

Deleting?

MR KHUBA:

No, no, no, I do not remember thinking to say: I'm deleting this part. Because I had nothing 25

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to benefit by it. In fact it's something that would have made me feel bad, to have the investigation and make me have sleepless nights, and yet not all things are going into that. But the way we worked on that report, I emailed it to MR SESOKO. I do not know how MR SESOKO dispatched it to him. 5

MR JULY: Tell me then, the day of the signing, when you signed, were you in the same room when you signed the report? Did you sign the report when you were somewhere else, or were you in the same office? 10

MR KHUBA: I need to be honest, and I just want to lay a background for you, so that you can understand. When we were dealing with this report, it went back and forth. There were a number of issues we queried, and I was tired. I was tired. Finally there was this report, and it was still on MR SESOKO's computer, because I was not linked to the printer. I was not linked. He was the only one who was linked. So it might have taken not even - it never took three days in succession, it might be around a week or two. Sometimes I would drive, come there, deal with this report and 15 20 25

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go back. At the time when we signed, I signed something that was printed off MR SESOKO's computer. Whether it was not the right one, I don't know, because I never went back into this, reading and analysing, but I just 5 believed that it was the same report.

MR JULY:

I think from my side I don't have any further questions. I think those were the questions that we wanted to find out, to confirm that indeed you asked SESOKO about the process of 10 submitting the report to the NPA, and the two of you visiting the NPA before McBRIDE, and it was based on the report that you submitted.

Another thing that we just need to confirm, 15 and maybe I will ask the question from my side. We spoke to MR ANGUS, who said with a report, when you submit a number of updates, it is not called a report. You are adding to the existing report. But once you make the 20 recommendations, any report which has recommendations is a final report. And if later on you may find one or two bits of additional information, you will add that there, but that report remains the final 25

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MR KHUBA:

report once it has the recommendations.

I want to tell you that a report that has a recommendation can be regarded as a final report on the basis that there is nothing else you need to do. You need to understand the procedure which I outlined previously, to say when you compile a report with recommendations it has to be assessed by the senior person, who signs it. I was in the predicament where firstly the Acting Head - SESOKO was a senior, but he was still at the same rank as I was. He was acting in that position, but I was also acting, so there was not much difference. We were all Acting Chief Directors anyway. The challenge was that when I completed that report I contacted head office, to say: This report needs to be signed, and there is no-one to sign. SESOKO was already told that he must not really cooperate well with me in that investigation. MBEKI was still an Acting Head, but waiting for SASSA(?). So you have a person who has taken employment with a department. When I spoke with the PAs in her office, they told me: This lady is on study leave(?) and she's only dealing with important

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matters. MOSING was pressuring me, to say: This matter has been going on for a long time, you need to sign. I said: I will definitely sign, I'm going to sign. So I signed it.

MR JULY: You were signing the report ... 5

MR KHUBA: ... even though there were things that were outstanding. But I signed a report with recommendations.

MR JULY: In other words, what ANGUS says, is that what you believed to be the factual situation at the time when you signed the report, even if it changes later on, that report remains the final report. If things have to change you will then have to deal with it, and how do you deal with those issues that have cropped up? 10 15

MR KHUBA: What you are talking about I don't think is an issue of only departmental procedure. It's an issue of commonsense, that once you have made a recommendation you have done your investigation. If new evidence surfaces to rebut that, then you are able to advance: Now I have this and that and that. But you need to understand that when I was requested to submit the report, which I had already updated 20 25

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- because I was very ...

MR JULY:

When you were submitting, you were adding?

MR KHUBA:

I was adding stuff. But I even sent some of
the stuff to MOSING. I said: I have the
response of (?), and I sent it to him. That's 5
when he said to me: No, no, Khuba, I am not
dealing with this, I have already sent it to
GAUTENG. All along I was thinking he was the
one who was dealing with this investigation,
and he would probably prosecute it. 10
Then the issue of us doing the other report,
even if I had updated that report, I could
have probably (indistinct), but whether the
recommendation would have changed I do not
know. My understanding, from my view, when I 15
sat with SESOKO I started to see it in another
light, and I was very firm with my view. But
SESOKO with his prosecutorial background said:
Mr Khuba, you can't take it this way. You
need to know that when McBRIDE arrived and 20
read the report, we did a new report, he had
an option to say: Guys, let's leave the
prosecutors (indistinct). He had an option.
And he also exercised the other option to say:
You will go and work on this report to reflect 25

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the content. That's why when this document was sent I was never part of it.

MR JULY:

You see, the problem is it is one thing to change the recommendation, but it's another thing to delete information to justify the changing of the recommendation. And if there is no basis or justification for the deletion of information then the conclusion and the report itself raises questions. Do you get what I'm saying? 5 10

MR KHUBA:

I understand that. The other thing that you also need to understand is that I think the manner in which we handled the report was quite problematic. When you showed me the part that was deleted, I was worried that they deleted the part that deals with DRAMAT - I think the two. The other one does not deal with DRAMAT. I saw the other one, and it does not deal with him. I was worried. The other reason is that when I came here last time I never prepared. Even now I haven't prepared. I know this investigation, because I did it. I told you that clearly these reports are still there, because that is my understanding. You know what I did, after I dealt with the 15 20 25

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report - in fact I emailed the report to
SESOKO and we worked on it. I went home.
Another day I came again. That's why it took
very long. If you check from the 3rd, when
McBRIDE started, to the date when it was 5
submitted, it took very long. I had this
challenge, and I think this is where I need to
be honest with you, because when we had our
discussions in the room, he also raised the
issue of Crime Intelligence. There was an 10
issue where he was not happy with Crime
Intelligence. I never had the number of my
boss - I think I told you last time that it
might have taken three months or seven months.
I was always figuring that probably he was mad 15
about me cooperating with Crime Intelligence,
and that is why he raised the issue of
independence and all these types of things.
It was an issue I was really concerned about.
Whatever happened through the process, I might 20
have been busy, but I was not even supposed to
be cautious because I was dealing with people
where we are working with things objectively.
But when you started to show me that some of
the things were missing, for me that was ... 25

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MR JULY: And you never suspected anything, he never told you about the information that was deleted?

MR KHUBA: No.

MR JULY: You signed the report on the basis that it is the same report and you were adding to that? 5

MR KHUBA: Yes. I signed knowing that it was the same report, because I had dealt with that report for the past eighteen months to the date I signed the report. Because of that, I was so used to it. You know you are dealing with a new person. I had dealt with so many other Executive Directors, and here I was dealing with Executive Directors with a traceable political background. That was my biggest challenge. It's not to say that it really influenced it, it did not, but the point of the matter is I was less (?) in the way I dealt with the issue. MR SESOKO and I read through the report, we did that, and he said sign. There was a date when I went there - if it was not the date that we signed only, it might be a date when we did little things and then the report was signed. But my conscience 25

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is clear, I never ...

MR JULY: ... deleted?

MR KHUBA: No, I never. That's why even when you called me today, I said I will tell you what I know.

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MR JULY: Okay, that's fine.

MR TOM: There is just one thing, Mr July. Mr Khuba, this question relates to - remember the statements that you obtained from various witnesses in relation to the incidents of 5 10 November 2010 and 22 and 23 November 2010 in relation to GENERAL SIBIYA's involvement in the arrests of MR PRITCHARD CHUMA? There is a statement there from PETROS CHAUKE in which PETROS says he saw GENERAL SIBIYA. I just 15 didn't bring the big file which has his statement under oath, where he says he saw GENERAL SIBIYA, who, according to him, is the head of the TOMS, and he saw GENERAL SIBIYA in the second operation. Now, this cellphone 20 evidence that places GENERAL SIBIYA in SUNNYSIDE in PRETORIA, for instance, I want to understand the weight that was attached to this statement from PETROS CHAUKE. I'm aware you have statements or affidavits, rather, 25

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from one DESMOND CAMPBELL, who says: I didn't see, but I heard they were saying he was in the car. And I think there is another person who says the same thing: I didn't see him, but I heard Warrant Officer Makoe calling his name. I understand that information to say perhaps you need to go a bit further to establish whether or not you can rely on that information, to say: I didn't see him, I heard his name being called. I want to understand how you guys treated this statement from PETROS CHAUKE, who says that he saw him. 5 10

MR KHUBA: For me, that statement was quite a solid statement, and I think it was the basis for me to say at the initial stage I would want GENERAL SIBIYA to be charged criminally. The other challenge was that the issue of the cellphone records - and that is what I started to discuss with some of the police officers - I started to realise that when these guys know that they are involved in illegal activities, they will come and give you a phone, and say: You are my brother, I'm going out at this time, this time and this time, make a call. 15 20 25

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When calls come, answer them. For example, if you receive a call of your brother, maybe it's (indistinct), you try to create a discussion that will last maybe a minute with that person, to say: No, this person is not here, do you have a message, what is your name, may I take your details? You prolong that, whereas the person will be busy with illegal activities somewhere, but the phone will show the activities within the radius of that particular tower, which is not near the scene of the crime. So that always happens. When I was discussing it with MR SESOKO, the argument was: But do you have proof? Do you get what I'm saying?

MR TOM: I get exactly what you are saying.

MR KHUBA: For me, as an investigator, I was pursuing it, and thinking these guys are supposed to have known these things. But the argument was: You do not have proof.

MR TOM: You do not have proof, apart from this statement from PETROS CHAUKE.

MR KHUBA: Yes. Also, when you are arguing with a person who has a prosecutorial background it makes things very difficult.

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MR TOM: Absolutely. I would also have that difficulty if I were to debate a subject with a person who has prosecutorial experience who poses these questions, on the understanding that I myself am not a criminal lawyer. So he asked for something in addition to this mere statement? 5

MR KHUBA: Yes.

MR TOM: Because I have seen, Mr Khuba, in the analysis of the Section 205 process in what I will term the second report, for instance when it comes to the analysis of the cellphone evidence it just says: 10

"The reason for this was to test the version of witnesses who are alleged to have seen General Sibiya at the crime see." 15

Now it doesn't specify which crime scene, because from my understanding - and correct me if I'm wrong - there are two instances, the one of 5 November 2010, and the one of the 22nd and 23rd. It's just a question that has been hovering in my mind, to say: Does this cellphone evidence which happened to place GENERAL SIBIYA in SUNNYSIDE relate to all 25

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activities, for instance being the 5th and the
23rd?

MR KHUBA:

I think there you have a point, because in
fact SIBIYA has been dealing with a lot of
criminal activities in terms of investigation, 5
so he knows this. They were very aware - even
the police who were involved knew what they
were doing was wrong, so they might have pre-
planned in terms of how they approached this
thing. 10

MR JULY:

The last thing from my side, because it is not
for us to determine the merits or demerits of
your findings, it's to find out about the
existence of the two reports, as to which is
the report, I can tell you now that our 15
preliminary view is that there is only one
report, which is the first report.

MR KHUBA:

Yes.

MR JULY:

The other report is just something we don't
know why - because you see, you can't have a 20
second report which is so identical to the
first report, and the only thing that is
different is that certain information has been
left out. Because SESOKO wanted to give the
impression that this report was something that 25

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now needed to be started afresh, the wording
had to be new. He went through the pages, and
if you look at how the first page starts the
wording is the same. In the second page the
wording is the same - everything. So for him 5
to say he had no knowledge about the report is
really - I don't know, MR SESOKO must decide
if he intends to mislead this investigation.
If that is his intension then he has a
problem, because in our recommendation we will 10
indeed indicate his attempt to mislead us.
The issue about how he goes to a meeting with
the NPA on the basis of the report that was
submitted, and then he claims that he didn't
know anything about the report ... 15

MR KHUBA: On that, I still remember the meeting. MR
MOUKANGWE was also there. Also, what I'm
really worried about insofar as this matter is
concerned, is I'm really - okay, there are
things that I'm going to mention off record. 20

MR JULY: Okay. We can switch off now.

THE INTERVIEW ADJOURNS

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INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

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INNOCENT KHUBA

PRESENT: MR INNOCENT KHUBA - IPID
MR SANDILE JULY - Director, Werksmans 10
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 15
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 20
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 25
makes no provision for him to sign. He says
one of the reasons why he signed is because it

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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. 5

MR JULY: But why did MR SESOKO sign? 10

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. 15

MR JULY: So he participated in the report, and would McBRIDE have signed that report had he not participated in the report? 20

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. 25

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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. 5

MR JULY: 3 March. Then who gave you a call to say that
MR McBRIDE wanted the report?

MR KHUBA: It was MR SESOKO.

MR JULY: MR SESOKO?

MR KHUBA: Yes. 10

MR JULY: You emailed the report to MR SESOKO?

MR KHUBA: Yes.

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

MR KHUBA: No, I do not know. 15

MR JULY: But you met with McBRIDE the day after you
emailed the report?

MR KHUBA: That's correct.

MR JULY: Which was the 5th?

MR KHUBA: Yes. 20

MR JULY: When you met with him on the 5th, what did you
discuss?

MR KHUBA: We discussed the report. He wanted to know -
he wanted me to outline the process of
investigation from the beginning to the end, 25

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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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of it.

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

MR KHUBA: Yes.

MR JULY: You had another meeting on the 6th?

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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.

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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.

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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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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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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?

5

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.

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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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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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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. 5

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 10 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 15 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 20 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 25

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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. 5

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 - 10
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 (?). 15
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...

MR JULY: Did he tell you about his discussion with the 20
previous matter?

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 25

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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. 5
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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 20
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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. 5

MR JULY: Did he say what the purpose was? 10

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? 15

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 20 25

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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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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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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. 5 10

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. 15 20

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 25

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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 prove that, as an investigator you start thinking that you can be a seasoned investigator, but when you come to how you weigh evidence ... 5

MR JULY: But, Mr Khuba, didn't you guys discuss the 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 at one point discuss that? 10 15

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 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 20 25

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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.

MR JULY:

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

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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 5
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 10
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 15
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 20
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 25

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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 not going to sit behind the computer. 5

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 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 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. 10 15 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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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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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 docket? 5

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 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 that part, I do not know. But my commonsense is that they would have removed it, because they wouldn't send it with it. 15 20

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?

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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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INNOCENT KHUBA

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

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INNOCENT KHUBA

PRESENT: MR INNOCENT KHUBA - IPID
MR SANDILE JULY - Director, Werksmans 10
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 15
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 20
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 25
makes no provision for him to sign. He says
one of the reasons why he signed is because it

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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. 5

MR JULY: But why did MR SESOKO sign? 10

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. 15

MR JULY: So he participated in the report, and would McBRIDE have signed that report had he not participated in the report? 20

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. 25

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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. 5

MR JULY: 3 March. Then who gave you a call to say that
MR McBRIDE wanted the report?

MR KHUBA: It was MR SESOKO.

MR JULY: MR SESOKO?

MR KHUBA: Yes. 10

MR JULY: You emailed the report to MR SESOKO?

MR KHUBA: Yes.

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

MR KHUBA: No, I do not know. 15

MR JULY: But you met with McBRIDE the day after you
emailed the report?

MR KHUBA: That's correct.

MR JULY: Which was the 5th?

MR KHUBA: Yes. 20

MR JULY: When you met with him on the 5th, what did you
discuss?

MR KHUBA: We discussed the report. He wanted to know -
he wanted me to outline the process of
investigation from the beginning to the end, 25

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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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of it.

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

MR KHUBA: Yes.

MR JULY: You had another meeting on the 6th? 5

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. 10

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. 15

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. 20

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, 25

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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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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?

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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.

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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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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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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. 5

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 10 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 15 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 20 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 25

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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. 5

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 - 10
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 (?). 15
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...

MR JULY: Did he tell you about his discussion with the 20
previous matter?

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 25

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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. 5
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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 20
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INNOCENT KHUBA **397**

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. 5

MR JULY: Did he say what the purpose was? 10

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? 15

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 20 25

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INNOCENT KHUBA **398**

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 10
- this is McBRIDE. Copies - even copies of
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 15
did not have a single thing, except I had the
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. 5 10

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. 15 20

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 25

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INNOCENT KHUBA **401**

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 **402**

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.

MR JULY:

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

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INNOCENT KHUBA **403**

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 **404**

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 not going to sit behind the computer. 5

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 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 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. 10 15 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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INNOCENT KHUBA

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 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 was nothing I could detect. 5 10

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 report? 15

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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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 docket? 5

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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INNOCENT KHUBA

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 5
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. 10

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 15
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 20
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 25

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INNOCENT KHUBA

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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INNOCENT KHUBA

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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INNOCENT KHUBA

MR KHUBA:

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

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.

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.

THE INTERVIEW ADJOURNS

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COLONEL MOUKANGWE

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

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COLONEL MOUKANGWE

PRESENT: COLONEL MOUKANGWE - IPID 10
MR SANDILE JULY - Director, Werksmans
MS KERRY BADAL - Associate, Werksmans
MR SANDILE TOM - Associate, Werksmans

30 March 2015 15

MR JULY: Today is 30 March 2015. In this room we have SANDILE TOM, an Associate from WERKSMANS, and KERRY BADAL, also an Associate from Werksmans. We are interviewing COLONEL MOUKANGWE about the report relating to the illegal rendition of the ZIMBABWEAN citizens. 20

Colonel Moukangwe, there are two reports in front of you.

COLONEL MOUKANGWE: Yes.

MR JULY: There is a report dated 22 January 2014, and 25 there is a report dated 18 March 2014. Do you

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see those two reports?

COLONEL MOUKANGWE: Yes, I see them.

MR JULY: Maybe, before we go to the details of these reports, can you explain what your role was in the drafting of the report and which one did you draft, or which report were you involved in? 5

COLONEL MOUKANGWE: The report of 18 March I was not part of. I don't know anything about it. The one of 22 January I know, and the reason I know about this is I am the initial investigator of this case docket. When it was transferred to IPID, I worked with the IO, MR KHUBA, in the investigation of this matter. When we drafted the report we would sit together and discuss what was outstanding and what we should be doing on the way forward. We drafted this, and the only outstanding thing at that time, if my memory serves me correctly, is that GENERAL DRAMAT's and GENERAL SIBIYA's witness statements were not obtained. 10 15 20

MR JULY: Why were they not obtained?

COLONEL MOUKANGWE: When we went to GENERAL DRAMAT's office, he said he wants to involve his attorney and he will only give a statement after discussing 25

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this with his attorney. Then GENERAL SIBIYA requested that he should be sent questions. MALULEKE refused, and he said he will speak in court, he won't give anything. That was the outstanding stuff as far as I was concerned. 5
I don't know whether there was any further investigation then in my absence, which led to the drafting of the other report in the new year, in 2014 - the one for 18 March. I don't know what it was that led to the drafting of 10
the new one, I'd be lying, but I know of this other one. And this is not the first one we drafted. Initially I drafted the report itself, not on IPID letterheads, but on SAPS letterheads. This one was not the only one we 15
drafted, because before this one there was one we drafted of 20 December. If I remember well, we drafted one on 20 December, and according to me this was the final one.

MR JULY: This was the final report? 20

COLONEL MOUKANGWE: That I know about. It was the final one.

MR JULY: You say you were involved in the actual drafting?

COLONEL MOUKANGWE: Yes.

MR JULY: Meaning that you ...

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COLONEL MOUKANGWE: I had input in what was drafted.

MR JULY: But at the end of this report it is signed by MR KHUBA.

COLONEL MOUKANGWE: Yes, MR KHUBA is the official investigating officer of the case docket, because it was now no longer an SAPS matter, it was IPID's issue. But because of the volume of the work we had already done, they felt it was necessary for me to assist in that issue. That is why I was involved. 5 10

MR JULY: You went through the report.

COLONEL MOUKANGWE: Yes.

MR JULY: You went through this report, and were you consulted by MR KHUBA when this report, which is dated 18 March 2014, was submitted or signed by MR KHUBA? 15

COLONEL MOUKANGWE: I spoke to MR KHUBA when we last drafted the one for January. He only phoned me last week, on Friday, saying that when I'm in PHOLOKWANE, going to church, I must just give him a call and see him. I'm sure it's nearly a year that I didn't speak to him, so I was not consulted, and I don't know anything about it. 20

MR JULY: So if there is anything which was 25

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removed from this report, to come up with this report of 18 March, and there is information that has been removed, and which was contained in the original report, you don't know about that?

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COLONEL MOUKANGWE: I will never know about that.

MR JULY: I want us to go through this report. For instance, on page 21 of the report dated 22 January 2014 - maybe before we go to this report, are you certain that when this report was signed by MR KHUBA, it was submitted to the NPA as the final report?

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COLONEL MOUKANGWE: I won't be able to say it was submitted, but we went to the National Director of Public Prosecutions, because we were given two advocates to work with us on this issue. I was there with MR KHUBA and MR SESOKO. MR SESOKO is a legal person, he was a former prosecutor in BENONI. We went there, and when we were there the report was already drafted. That is what I can say with certainty, because when we were there the prosecutors who were dealing with us on this issue, knew about it, and had a copy of the report.

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MR JULY: So when the report was submitted to them, was

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it submitted as a temporary report, was it incomplete, or was it a final report?

COLONEL MOUKANGWE: It was a final, because we wanted warrants there, really, that's why we took our legal person, MR SESOKO. We were worried about why it seemed they were dragging their feet in giving us warrants of arrest for these people, because the people never wanted to cooperate. 5

MR JULY: When we spoke to MR KHUBA last week, on Thursday, being 26 March, he indicated to us that what necessitated the drafting of the new report was the evidence that came after this report was finalised - and with this I am referring to the report of 22 January 2014. But what we have not yet established is when this new information came into existence. 10 15

Let me tell you what he says was the new evidence. He says there was contradiction during the statements of the witnesses, in particular of those who were assaulted. They claim that GENERAL SIBIYA was at the scene when they were arrested and when they were assaulted. According to MR KHUBA new evidence 20 25

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was then established that in terms of the
cellphone records, when they were compared with
what the tower - the tower being what cellphone
company is being used, whether it's MTN or
VODACOM, but the tower indicated that GENERAL 5
SIBIYA's phones, which according to MR KHUBA
were the two phones he was using: the first
phone was the phone which he said was an
official phone, and the second phone he said
was the phone he found clandestinely, which 10
GENERAL SIBIYA was using. GENERAL SIBIYA did
not know that he was using that cellphone.
Based on the evidence that locates GENERAL
SIBIYA in SUNNYSIDE, he then decided to change
the report, because SIBIYA was not at the 15
scene.

COLONEL MOUKANGWE: In that one maybe he forgot something, because
we knew before that GENERAL SIBIYA's cellphone
shows he was in PRETORIA, but the people who
were operating with him said he is not using 20
one cellphone. So it might happen that the
official cellphones were at home, and maybe he
used the other one, which is just recorded here
on the statement. That is according to what
they said. But we knew about the information 25

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before, because we questioned them: How can you say SIBIYA was involved, the cellphone shows that ...

MR JULY: And how did you know about this information that SIBIYA's cellphones were in 5
SUNNYSIDE?

COLONEL MOUKANGWE: Because of the detailed billing that we did. We did a detailed billing on the two cellphone numbers that we were given, to show where the cellphones were at that time. They showed that 10
he was in PRETORIA at the time they mentioned in their statements.

MR JULY: So you're saying that the information that the cellphones were located in SUNNYSIDE can't be new information? 15

COLONEL MOUKANGWE: No, unless they are new cellphones. If they are the two original ones, it's not new evidence, because they knew about it. They knew when we went to meet them, the advocates at the NDPP, we knew about that. We had copies 20
of the detailed billing when we were there. We had a big file of the cellphone billings when we were there.

MR JULY: He also says in the new report you will notice that there are warning statements from the 25

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implicated parties, which is GENERAL DRAMAT, GENERAL SIBIYA, and in the report that you signed there are no warning statements from these two.

COLONEL MOUKANGWE: In the report in which I was involved I never saw them, but in the report in which I was involved there were no warning statements of GENERAL SIBIYA, GENERAL DRAMAT or COLONEL MALULEKE. As I said before, they didn't want to give a statement. GENERAL SIBIYA wanted questions to be sent to him, GENERAL DRAMAT said he was still going to speak to his lawyer, and COLONEL MALULEKE refused. And they didn't speak directly with me, he's the one who spoke to me, but I was with him when he spoke to them. So the issue of how they now decided to bring statements - maybe it was just after I was a far distance from the investigation.

MR JULY: Do you remember if you asked for those statements from them before you finalised the report ...

COLONEL MOUKANGWE: Yes, we did.

MR JULY: ... which is dated 22 January?

COLONEL MOUKANGWE: We did. I even went to the office of GENERAL

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DRAMAT with MR KHUBA, to find out what was happening with this issue. That was the time when he instituted an investigation by one of his brigadiers there, according to the allegation that was in the SUNDAY TIMES, so that there must be an internal investigation to check why these people were deported, and all that stuff. 5

MR JULY: Were you at any stage given the warning statements by MR KHUBA - that there are warnings statements that we could not obtain, and now, as a result of those warning statements I am changing the report that we submitted to the NPA? 10

COLONEL MOUKANGWE: No, I was not part and parcel of the changing, and I was not consulted or involved in the new drafting of the last one, the purported final report. 15

MR JULY: If we start right at the beginning, the two reports look the same, except of course for the dates when they were finalised. But they look the same on page 1. Then from page 1 to page 21 they look the same. 20

MS BADAL: Mr July (indistinct) they are not the same.

MR JULY: Yes, I forgot about that. If you look 25

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at page 9 of the old report, that statements starts on page 8 in paragraph 4.4. Do you see that?

COLONEL MOUKANGWE: Yes.

MR JULY: That is LIEUTENANT COLONEL MADILONGA. 5

COLONEL MOUKANGWE: Yes.

MR JULY: What he says on page 9, everything looks the same up to the paragraph where it says:

"He will state ..."

It is the third paragraph on page 9, in the original one. Have you located that? And it says: 10

"He will state that he told Superintendent Ncube that he has to verify with his seniors about the arrangement. 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 Provincial Head, Protection and Security Services. 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 15 20 25

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COLONEL MOUKANGWE

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

That is what MADILONGA said. If you go to the report ...

COLONEL MOUKANGWE: Which one?

MR JULY: The second report, which is dated 18 March, that statement starts on page 8, where it says:

"He will state ..."

The paragraph that we've just read.

COLONEL MOUKANGWE: "He will further state that ..."

MR JULY: Yes, look at that on page 9. It's supposed to be the second paragraph.

MS BADAL: After GENERAL DRAMAT, here we have the sentence that ends in "suspects". Then it starts here: "For the period".

COLONEL MOUKANGWE: "For the period of two weeks he never heard anything from Superintendent

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COLONEL MOUKANGWE

Ncube..."

MR JULY: Yes, can you see that that information is not there?

COLONEL MOUKANGWE: Yes, it's not there.

MR JULY: It is not there? 5

COLONEL MOUKANGWE: It is not.

MR JULY: Were you present when LIEUTENANT COLONEL MADILONGA made this statement?

COLONEL MOUKANGWE: No, I was not present.

MR JULY: You were not present? 10

COLONEL MOUKANGWE: No, I was not present, but I read his statement.

MR JULY: And its content?

COLONEL MOUKANGWE: Yes.

MR JULY: Then in the second report there is no explanation for why it has been removed, but it is not there. 15

COLONEL MOUKANGWE: No, it's not there.

MR JULY: Instead what you see there, and what comes after that, instead of that paragraph, is where it says: 20

"For the period of two weeks ..."

Can you see that?

COLONEL MOUKANGWE: I can see that:

"... he never heard anything from 25

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COLONEL MOUKANGWE

Superintendent Ncube ..."

MR JULY: Yes. Then let's go further and see what else has been removed. If you look towards the end, there is a paragraph which starts with:

"While he was on the front passenger seat..." 5

Can you see that in the original?

COLONEL MOUKANGWE: Yes.

MR JULY: "While he was on the front passenger seat heading to the border gate, he told him that the Zimbabwean police who 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 an extradition agreement with Zimbabwe. He said that since the Zimbabwean Police entered the country they had been busy trying to trace the suspects." 10 15 20

Do you see that paragraph?

COLONEL MOUKANGWE: Yes, I can see that.

MR JULY: But if you look at page 9, that paragraph ... 25

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COLONEL MOUKANGWE

COLONEL MOUKANGWE: "While they were driving he realised that
there were other BMW ..."

MR JULY: It's not there.

MS BADAL: So this ends on "the back seat" here, and it
starts at "While they were driving ..." 5

MR JULY: It's supposed to be:
"While they were driving he realised that
there were other BMW ..."
The paragraph that begins with:
"While he was on the front passenger seat" 10
That has been removed.

COLONEL MOUKANGWE: Yes, it's not there.

MR JULY: Instead it starts with:
"While they were driving he realised that
there were other BMW cars ..." 15

COLONEL MOUKANGWE: Yes, I can see that.

MR JULY: Were you told about the changing of the
statement?

COLONEL MOUKANGWE: No, I was never told.

MR JULY: As the person who was assisting, and who 20
contributed to the drafting of that report?

COLONEL MOUKANGWE: I was never involved.

MR JULY: Maybe the other difference between this report
and the original report would be if you look at
page 21. You have already told us that you 25

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COLONEL MOURANGWE

were never told about the changes, but we just
want to show you where the changes were made.
If you look at page 21, and you look at page 20
of the other report, paragraph 5.2, in the one
which is dated January 2014 paragraph 5.2 5
reads:

"Success report dated 04/02/2011:

The report was addressed to General
Dramat, General Hlatshwayo and General
Toka, with a heading that reads: 10

'CONSOLIDATED SUCCESS REPORT: MOST
WANTED FUGITIVE: WANTED FOR MURDER
AND ROBBERY: DPCI TOMS REF
3/12/2010 AND ZIMBABWE (BULAWAYO)
CR348/09/2010): WITNESS DUMISANI 15
NKOSI@NDEYA: ZIMBABWEAN NATIONALS
AND OTHERS.'

The report bears reference 14/02/01 and
was signed by Colonel Leonie Verster.
Paragraph 'A1' of the report states that 20
on 05/11/2010 General Dramat held a
meeting with Zimbabwean Police at DPCI
about the Nationals that shot and killed
one of their senior officers. Paragraph
3 states that Captain Maluleke was tasked 25

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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.

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Success report dated 11/11/2013 (A82/1-
82/2):

The report bears reference number 26/02/1
and again addressed to Deputy National
Commissioner DPCI. The person to whom
enquiries must be directed is Captain
Maluleke whereas the signatory is Col PJ
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."

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But if you look at the report of 18 March, in
particular the first part where it says:

"The report bears reference ..."

Do you see that?

COLONEL MOUKANGWE: Yes.

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COLONEL MOUKANGWE

MR JULY: That part is not there.

COLONEL MOUKANGWE: No, it's not.

MR JULY: It's not there. All you have is that "The report also covers ..." - you have the last sentence in that. 5

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

MR JULY: Yes, but the part which says: 10
"The report bears reference ... Paragraph 'A1' states that on 5/11/2010 General Dramat held a meeting with Zimbabwean Police ..."

That has been removed. 15

COLONEL MOUKANGWE: Yes, it's out.

MR JULY: Yes.

COLONEL MOUKANGWE: It's out of that one.

MR JULY: If you go to paragraph 5.3, on the same page of the January report, right at the end, where it 20 says "EMAILS BY CAPTAIN MALULEKE", it reads:

"EMAILS BY CAPTAIN MALULEKE:

He sent emails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. 25

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COLONEL MOKANGWE

The emails were sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence. He also sent emails to Zimbabwean Police trying to find out how they travelled back home and that he is still tracing the remaining suspects."

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But if you read what is written on page 21 of the 18 March report, it reads:

"EMAILS BY CAPTAIN MALULEKE:

10

He sent emails circulating more than 20 photos of both the suspects arrested and the members involved in the operation."

There is no reference to:

"Emails were sent to the PA of General Dramat."

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Do you see that?

COLONEL MOKANGWE: Yes, it's not there.

MR JULY: Then if you go to page 23 of the report, 5.5, there you have the cellphone record of MAJOR GENERAL SIBIYA, and this is what it says about these cellphone records, and that's the number of MAJOR GENERAL SIBIYA.

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"Upon perusal of the cellphone records, it was discovered that Major General

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COLONEL MOUKANGWE

Sibiya communicated with officers who were involved in the operation, eg Captain Maluleke, and sent more than 20 SMSs to Major General Dramat. However, Major General Dramat never responded to the SMSs. The same automated SMSs were sent to Lieutenant General Lebeya at ... These SMSs were sent at various milestones of the operation, as deduced from witnesses' statements and documentary proof." 5 10

COLONEL MOUKANGWE: Then on that point you can see that when I say we already had the detailed billing of the cellphones when we wrote the report - there it comes. It's not something that only came when this one was written. 15

MR JULY: Yes.

COLONEL MOUKANGWE: By the time he wrote this, we already had the detailed billing, that's why we included that evidence in terms of Section 205 of the Criminal Procedure Act. It was there. That's why I said if it's another thing - maybe it's new cellphones or new issues, I don't know. But the cellphones that we had at that time, they are here. 20 25

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COLONEL MOUKANGWE

MR JULY: Hence in this report you are also not stating whether MAJOR GENERAL SIBIYA was present, but you are saying he was communicating?

COLONEL MOUKANGWE: Yes.

MR JULY: You are not saying you still have to discover whether MAJOR GENERAL SIBIYA was at the scene or not? 5

COLONEL MOUKANGWE: No, no. No, we never said that. So you can see the 205 was already there. The results were already received, because we couldn't include this in this report if we were still waiting for it to come as other evidence. That's why I said if there is a new thing, I will never know, because I was not present with that one. 10 15

MR JULY: Educate me about this 205 application. If you look at the report of 18 March, you suddenly see the blocks now. It's no longer written in this format - you see how it's written here?

COLONEL MOUKANGWE: Yes, I see that. 20

MR JULY: But now it's in blocks. Then it says:

"REASON FOR 205 APPLICATION."

What is this 205 application?

COLONEL MOUKANGWE: To get information on the cellphone, we have to apply Section 205 of the Criminal Procedure 25

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COLONEL MOUKANGWE

Act, so that the court must authorise us to do that.

MR JULY: But you already had?

COLONEL MOUKANGWE: Yes, we had already.

MR JULY: You already had, because for you to be able to come to this conclusion, you already had the 205. 5

COLONEL MOUKANGWE: Yes, we had the 205. We already had it.

MR JULY: When it is put like this, as the reason for the 205 application, it's put as if it's a new thing that ought to have been done, and which was not done in the previous ... 10

COLONEL MOUKANGWE: No, we did it previously, otherwise we wouldn't have paragraph 5.5 in the report which is said to be the first report. 15

MR JULY: Let's look at that 205. It says:

"To test the version of the witnesses who are alleged to have seen Major General Sibiya at the crime scene."

Now, this is testing something different. What we are saying here is that he was in constant communication, so he knew - he had knowledge of what was happening. But what they are saying here, in this report, was to verify whether the evidence the witnesses gave that SIBIYA was at 25

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the scene of the crime, was true or not.

Then it says:

"FINDINGS:

Major General Sibiya was never at the
crime scene or planning area as alleged 5
by members of Crime Intelligence."

COLONEL MOUKANGWE: It's difficult to say that, because now we
don't know, but those people are people who were
physically there. We don't know. For them,
the credibility of this must be tested in 10
court, if it must be tested. It can't be
tested by us, it must be tested in court in
cross-examination if they really believe
he was with him. For example, I don't even
know SIBIYA, I have never met him in my life, 15
so how can I say he was there if I don't know
him?

MR JULY: Didn't you know - the point that we are trying
to establish is, did you know at this point
that you heard that evidence about SIBIYA, but 20
according to the record SIBIYA was not at the
scene. Didn't you know when you were drafting
this report?

COLONEL MOUKANGWE: We knew. We knew about this, and even the
prosecutors were doubtful about the evidence, 25

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COLONEL MOUKANGWE

but how can we now say SIBIYA was involved while it shows he was at his home? Don't you think it's right that we leave SIBIYA, we don't charge him, but we charge DRAMAT and leave SIBIYA? That is the advice we got from the prosecutors, so we had the information. 5

MR JULY: Therefore, is this information new information, according to you?

COLONEL MOUKANGWE: No, it's not new information. This is not new, we had it here, and that's why we wrote about it in the report that is dated 18 January. 10

MR JULY: Let's go to the reasons again on DRAMAT.

"To verify whether he had interaction with the Zimbabwean Authority regarding the arrest of Zimbabwean Nationals. To clarify as alleged by the witnesses whether he received Zimbabwean police in relation to the murder case of a senior officer in Zimbabwe." 15

Then it says: 20

"The entire cellphone record of Lieutenant General Dramat does show any interaction with the Zimbabwean counterparts. However the fact that Zimbabwean police might have entered the 25

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country is confirmed by photographs, but there is no evidence that they were with General Dramat. The photos show them with members of the TRT, Captain Maluleke and members of Crime Intelligence." 5

COLONEL MOUKANGWE: But there is nowhere where we said DRAMAT took photos with the ZIMBABWEAN Police.

MR JULY: Exactly.

COLONEL MOUKANGWE: We never said he took photos with them. We said they were there, and according to the witness statement that we got, one of the members of Crime Intelligence was there when they were congratulated by the General, accompanied by his spokesperson, McINTOSH. When they say he took photos with them, if he did we don't know where they are, but the photos that we saw were the suspects and the ZIM Police who were there with the team that arrested them. But we didn't say GENERAL DRAMAT was also in the photos. 10 15 20

MR JULY: But you also discovered - and it's not stated in this new report - that there were several SMSs that were sent by both MALULEKE and SIBIYA to DRAMAT, but he never responded to those SMSs. 25

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COLONEL MOUKANGWE

COLONEL MOUKANGWE: Yes, he never responded. That's why I said we did ...

MR JULY: So you already had this report?

COLONEL MOUKANGWE: Yes, we already had it.

MR JULY: So there is nothing new to you? 5

COLONEL MOUKANGWE: No, it's not new to me.

MR JULY: You will notice that the cellphone records of MADILONGA in the new report, which you will find on page 24, where it says:

"To test his version in which he alleged 10
that he received a call from Captain
Maluleke on 8/11/2010 regarding the
deportation of Zimbabwean Nationals."

But here on page 24 of the January report it states in the affirmative: 15

"He assisted Captain Maluleke to cross
the border with the suspects. He
contracted Lieutenant General Dramat when
he welcomed the Zimbabwean Police the
first time." 20

So that is not here.

COLONEL MOUKANGWE: Yes. I see it is confirmed here that:

"The interaction confirms the relation of
Madilonga ..."

MR JULY: No, no, here it is confirming MALULEKE. 25

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COLONEL MOUKANGWE

COLONEL MOUKANGWE: Only on MALULEKE?

MR JULY: Only on MALULEKE. If you look at that paragraph, it only makes reference to MALULEKE.

COLONEL MOUKANGWE: To MALULEKE, yes. 5

"He contracted General Dramat ..."

That is not there.

MR JULY: Mmm.

COLONEL MOUKANGWE: Yes, that one, where he contacted GENERAL DRAMAT, is not there. 10

MR JULY: And the same with the telephone calls of MALULEKE. If you go to page 23, it's the same thing with MALULEKE. If you read what you discovered from the cellphone of MALULEKE, it's that: 15

"Captain Maluleke also communicated with General Dramat in terms of outgoing SMSs at a very important milestone of the operation. However, Dramat never responded to the SMSs which he received 20 from Captain Maluleke. He also called a Zimbabwe number twice ..."

But if you look in this one about MALULEKE:

"To test the version of the witnesses who alleged that Captain Maluleke led the 25

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operation."

It's a different issue.

COLONEL MOUKANGWE: Mmm.

MR JULY: How do you use the phone to determine whether he led the operation? 5

COLONEL MOUKANGWE: You can't.

MR JULY: The leading requires a person to be there?

COLONEL MOUKANGWE: To be there physically. You can't use a cellphone, because if I forgot it in my car, it would show that I'm leading people, whereas I'm sitting here. Because the towers will still show the movement on the cellphone. The movement of the instrument as it is, shows that he was moving there. It doesn't mean it's linked to the body of a person. 10 15

MR JULY: Exactly.

COLONEL MOUKANGWE: The instrument is only there. If the cellphone shows that I'm in DURBAN, meanwhile I'm here, which one is the correct one, the one in DURBAN or this one? Because you can attest that I was here with you. But the other one is an assumption which needs substantiation or statements by an individual. 20

MR JULY: We just wanted to demonstrate the report which you drafted with MR KHUBA, and the 25

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information contained in that report - part of it was removed, and you say you were not consulted?

COLONEL MOUKANGWE: No, I wasn't.

MR JULY: And you say after the report was prepared, you met with the NPA, in particular ADVOCATE MOSENG ... 5

COLONEL MOUKANGWE: MOSENG, yes, and MOELETSI.

MR JULY: ... and MOELETSI.

COLONEL MOUKANGWE: Yes. 10

MR JULY: And the reason for the meeting was to get the warrants?

COLONEL MOUKANGWE: Yes.

MR JULY: Those were the warrants of arrest?

COLONEL MOUKANGWE: Yes. 15

MR JULY: And according to you this report was the final report?

COLONEL MOUKANGWE: Yes.

MR JULY: The one of 22 January 2014?

COLONEL MOUKANGWE: Yes. 20

MR JULY: It was not subject to further investigation?

COLONEL MOUKANGWE: No, there was nothing we could do, because VERSTER was refusing, was dodging us, and the Generals were not giving us their whole statement, so there was nothing else we could 25

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do.

MR JULY: What is the practice if people don't want to give you information? Does it mean that the report that you finalise, which excludes that information, is rendered incomplete or is an interim report? 5

COLONEL MOUKANGWE: It's complete, because it's what we have. We complete a report on what we have. We cannot anticipate what the person is going to say in future. Whether he's going to come or not, we can never know. 10

MR JULY: But what was critical for us was to find out the information in the so-called new information. You are saying you already had that information. The issue of the physical location of SIBIYA was already known to you at the time? 15

COLONEL MOUKANGWE: That was known. Unless they've got other statements that I don't know about, but that was known. Because we had 205 records at that time. They were not outstanding, we had them by the time we drafted this. That's why we had issues on cellphone reports, that's why we had issues where SMSs were not answered by GENERAL DRAMAT. We couldn't get that information 20 25

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COLONEL MOUKANGWE

without using Section 205.

MR JULY: There is something MR KHUBA referred to, which was when they received the cellphones they had to take them to experts.

COLONEL MOUKANGWE: For analysis. 5

MR JULY: For analysis, yes.

COLONEL MOUKANGWE: After the discussion with the prosecutors, they made a suggestion whether we should do the mappings. Cellphone mapping is where an analysis will show us that this was done at this, and make some points in a chart form. That's what we were requested to do. 10

MR JULY: But that was for the purposes of leading evidence?

COLONEL MOUKANGWE: For the purpose of leading evidence, it was not for the purpose of the report. It was for the purpose of leading evidence, and it would be easier for the prosecutors to pinpoint and show on a chart. 15

MR JULY: Okay. That's the end of this interview. If we need you, we will call you again. 20

COLONEL MOUKANGWE: Okay, thanks.

MR JULY: Thank you.

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ANTHONY MOSING

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

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ANTHONY MOSING

PRESENT: MR ANTHONY MOSING - NPA
MR SANDILE JULY - Director, Werksmans 10
MS KERRY BADAL - Associate, Werksmans
MR SANDILE TOM - Associate, Werksmans
MR KWAZI BUTHELEZI - Candidate Attorney

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MR MOSING: ... has to be refreshed if, for instance, they refer to them coming to see us at a certain stage.

MR JULY: Somewhere in February?

MR MOSING: Yes, yes. But I can tell you what I recall 20 clearly offhand about the matter and then we can fill in gaps from memory.

MR JULY: I can let you know that we are on record now. Today is 14 March 2015.

MR MOSING: Okay, thanks, Mr July. I think maybe from my 25 side, before we really get into the details, of course I have been told that I am now

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ANTHONY MOSING

cleared to speak with you.

MR JULY:

Oh, yes, yes, I got an email.

MR MOSING:

Of course coming here now and thinking in terms of what is going to be required, I just needed to understand what exactly I am 5
authorised to be able to speak about. But really, I haven't seen the request - the email that went to the NPA. All I got was: Yes, you can; you're allowed to go and talk. DR MAITE just said yesterday that I'm allowed to 10
consult with WERKSMANS about the letter, but I'm not too sure exactly what you will require from me eventually. I thought that if I could see the request that you drafted to the NPA, which led to them agreeing for 15
me to come here, just in case there is anything that might - I don't want to be in trouble, or anything like that, because of course I'm discussing matters which are *sub judice* now within the NPA. In other words, 20
this matter is *sub judice* within the NPA still. And whatever I'm saying, you must understand ...

MR JULY:

Our role is very limited, but I appreciate your concerns. We don't know what is really 25

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ANTHONY MOSING

sub judice at the NPA. Our mandate is to discover and unravel a number of things, but the main issue is that there is a report that was submitted. Then there is a second report. We need to establish the status of the two reports, that's all - only that. It's about the report, but I think it's better that you see the letter from the Minister which was written to us, and also the letter from the Minister of Police to the Minister of Justice, asking the NDPP to release anybody who may be of assistance in our investigation.

MR MOSING: The release part, I am available, because I will participate, it's understood. But I'm not too sure what further issue ...

MR JULY: I'm not sure what is happening at the NPA regarding this report or these reports, but our issue is about the two reports - one given on 22 January and one which is dated 18 March.

MR MOSING: Okay. I think that I will be able to explain, but I think probably I will start from the beginning, in order to get to the report. That must be in context in terms of our

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understanding of the reports, the old report,
if that is the case. Is that ...

MR JULY: That's fine, I'm with you.

MR MOSING: I just want to see, because I have a report
which I need to find in my files. I actually 5
thought I didn't have it, but it's actually
two copies. I drafted them in pencil at the
time, because they were not, let's say, the
official version.

MR JULY: I think maybe also for your benefit it is 10
important that you read this mandate, so that
you understand.

MR MOSING: I don't know whether you are aware, but from
my involvement in the matter I think - and I
must also make sure of the dates - but I would 15
say we got involved in the matter at a
relatively early stage when the investigations
basically started. I must mention that my
position at the NPA at the time was that I was
heading a unit which is called the Special 20
Projects Division, which is basically an
office of the NDPP. As such I reported to
ADVOCATE JIVA, who was the Acting NDPP at the
time. So I attended a meeting where we were
then instructed to assist with this 25

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investigation. I think MR MOUKANGWE was involved at that stage. I'm not sure what his rank is in the SOUTH AFRICAN POLICE SERVICE. There had already been some statements obtained from - I'm not sure whether it's 5
three or four - ZIMBABWEAN Nationals, who, let's say, had survived this ordeal, and who at the time were in witness protection. There were also statements I think from four Crime Intelligence members, who, it appears, were 10
part of the so-called TOMS unit of GAUTENG. They were seconded to be part of that unit, and they also made statements pertaining to the first alleged kidnapping of four 15
ZIMBABWEAN Nationals.

I'm trying to think what other evidence there was, but I think at that stage that was basically the evidence at the time. Although the evidence indicated or mentioned certain names of senior police officials from Ops in 20
particular, the evidence wasn't really very conclusive. We obviously advised the investigation that there would have to be a lot more investigation done to get to a stage where one could make concrete decisions from 25

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a prosecution point of view. At some stage, also, I think IPID got involved early on as well, because to our minds they were the relevant body as well. They informed us that they were also tasked at the time by the Minister to investigate the matter. I think we were also shown an investigation that was done by the Civilian Secretariat for Police regarding these allegations and the report that they gave after having received the reports. I think there were about three or four reports from the HAWKS and the Police which dealt with the allegations. Part of the reports were actually answers to Parliamentary questions. From that report of the Civilian Secretariat I think one could see that they pointed out a number of inconsistencies and unsatisfactory aspects which they advised the Minister to have investigated.

I must say, it was difficult to make a general observation. I think, given the nature of the case, and the suspects involved, it was generally difficult to get people to cooperate. There were a lot of police members involved in TOMS, and it was only these Crime

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Intelligence guys who had made statements. But I think in the light of the allegation then that there was a fight between Crime Intelligence units and the HAWKS, and maybe there was some sort of personal vendetta or some sort of thing, we had to view the evidence with caution. That's why we insisted that the police must investigate the matter and try to get other people who were involved in these things. I think it was generally difficult. I must say MR KHUBA from IPID was involved in investigating right from the start, with MOUKANGWE, but then he would report or discuss developments in the investigation with myself and BILLY MOELETSI. I think we met on several occasions, but I cannot say exactly how many times. I think we also saw the report that the HAWKS' Integrity Unit had conducted into the allegations of the involvement of their members, which basically exonerated them. I think the breakthrough in the investigation really started when MR KHUBA obtained a statement from a certain MADILONGA. I'm not sure what his rank is now, but he was the head of the Border ...

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MR JULY: He's dead.

MR MOSING: Yes, apparently he's dead. I was shocked. I actually advised him: You know what, this is a key witness, you must put him in witness protection. But I thought with him deceased 5
it weakened the case. That was generally my view at the time. I think I'll get to it when I come to the point when we stopped with this investigation. He excitedly even phoned me in the night or over the weekend to say 10
he's got this statement. I think he even emailed the statement to me. When I read it, it was really like a light that was switched on in the investigation. It was detailed - a very good statement, and one which one could 15
view credibly, although I think it contradicted an earlier statement he had made to the HAWKS' investigations. But at least he explained why he had made that earlier statement. 20

From that statement I think the investigation really came to a point where everything was reasonably clear, as to what really transpired. I don't know - I don't want to deal with every step of the investigations, up 25

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to the point where it became - although one
can, but I wouldn't want to leave out gaps.
I don't have the docket, and of course I don't
remember every statement, but I think we ended
up understanding - because initially the 5
allegations were that there were four
ZIMBABWEAN Nationals. I think that's how the
police reported it. There were four
ZIMBABWEAN Nationals who were deported under
a HOME AFFAIRS process. I think at the start 10
he got statements from HOME AFFAIRS people
which actually showed that these documents
were not authentic. They were even submitted
to a document dispute expert, who gave a
report as well that ... 15

MR JULY: The documents that were used to deport
them?

MR MOSING: To deport them, yes. There were, shall I say,
a lot of gaps with regard to that deportation.
Firstly, there was a moratorium against 20
deportation. He even got from HOME AFFAIRS a
complete list of all the people who had been
deported during that period of the moratorium,
and none of these people were on that list.
According to HOME AFFAIRS' evidence, the 25

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persons were only deported during that period
if they had committed a crime or were involved
in criminal activities. Other than that there
was a complete moratorium. Also, copies of
those deportation documents were not available 5
at HOME AFFAIRS, so the only copies were the
ones that the HAWKS had. I think the issue
also with the apparent falsification of those
documents was that the same stamp appeared to
have been used. The documents were really 10
identical, to the extent that they didn't
appear to be very authentic. Also, the fact
why the HAWKS had to deport these people
instead of them being taken to LINDELA, and so
on. Because on that same night they were 15
detained in SOWETO, there were other illegal
immigrants, and those were taken to LINDELA.
These four were taken a separate route. What
transpired from the earlier statements of the
ZIMBABWEAN Nationals was that two of these 20
guys actually never crossed the border, they
were dumped somewhere next to the freeway -
that's according to their statements. It
transpires that only two were actually taken
over the border. That was also contrary to 25

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the reports and contrary to what was contained
in the reports from the HAWKS in answer to the
Parliamentary questions. So there already it
was clear that things were not as they
appeared to have been. 5

When MADILONGA gave his statement, as I
said, things started falling into place. The
investigating officer then managed to uncover,
let us say, the other kidnappings and
deportations. Let me just have a look, 10
because I actually wrote a memo to my bosses,
explaining the matter in detail. I said:

"Significant progress was made by the
investigating team since July 2013. In
summary the following evidence was then 15
obtained."

That's when I think additional statements - of
course we had the SAP13's, the police stations
where these people were kept. There was a
SELEKE or SELEPE IO, who did not give us a 20
statement, but we insisted that they must try
and get a statement from him. Then one
captain from TOMS gave a statement. He was
the first one to confirm that there were
policemen from ZIMBABWE present during that 25

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first operation. Because initially, as I
said, the allegation was only made by the CIG
guys. For some reason I treated that with
caution. I wasn't too sure whether it was a
made-up story. But then NIEUWOUDT, I think is 5
his surname, confirmed that yes, that was with
the first operation. I think it was 5
November. On 23 November is when they
realised that SHEPARD TSHUMA in a follow-up
operation was kept at ALEXANDRA Police 10
Station. From the records there he was taken
out by a certain SELEPE or SELEKE - SELEPE, I
think it was. Eventually SELEPE also made a
statement to say he was requested to transport
this guy. I think he is also from TOMS. He 15
confirmed that he transported TSHUMA - it's
not SHEPARD TSHUMA, I think it's another
TSHUMA. PRITCHARD CHUMA, because there are
two CHUMAS. It's PRITCHARD CHUMA, and he
transported him to the border with MALULEKE, 20
so MALULEKE was following in another vehicle.
At the border he handed him over to MALULEKE,
and MALULEKE took him into the office there,
and then he turned back. So at least we could
account for PRITCHARD as well. Then the other 25

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two incidents happened, and in the investigation I'm really satisfied that we had all the statements, to show that: Here are the other two - which was GORDON DUBE as well as JOHNSON NYONI. Because I think DUBE and JOHN NYONI were arrested later, around January, after that incident. The people who were involved in those arrests - it shows that Crime Intelligence gathering investigators from PRETORIA were involved in those arrests. With DUBE I have actually set it out in this memo, and I can give you a copy of this, because that really explains what my understanding was at the time of the investigation - how it unfolded. DUBE was supposed to appear in court at ATTRIDGEVILLE on serious offences of robbery and house breaking, because he was a wanted criminal. The Crime Intelligence guys came from PRETORIA - that's what they normally do, they go to the police station in the area and look for the suspects, to help trace them through their sources. So MALULEKE understood that they were looking for DUBE, and he actually asked them, to say: Trace this person for us, which

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they did in DIEPSLOOT, and they arrested him.
We got a statement from the investigating
officer who was MEYER, of those documents, who
said MALULEKE demanded that he hand over DUBE,
the accused, to MALULEKE, to be taken to 5
ZIMBABWE, where he was to face charges of
armed robbery and murder. The investigating
officer did that, contrary to the fact that
this case was on the roll in ATTRIDGEVILLE.
I don't think we could trace the charge sheet, 10
or if we did trace it - no, we did have the
charge sheet, but we didn't have the
explanation from the prosecutor. Apparently
the prosecutor had resigned as well - in the
ATTRIDGEVILLE case - because we wanted to get 15
an understanding of why he allowed an accused
who was facing court not to be brought to
court, and whether there was a warrant issued,
and all that. But it seems from the computer
of MALULEKE there was a statement MALULEKE 20
made, which I think MEYER also confirmed,
which may have been handed to court to show
that DUBE was taken to ZIMBABWE for
deportation purposes and he had been sentenced
to life imprisonment and was never coming back 25

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to SOUTH AFRICA. That seems to have been the explanation to close our diary.

The firearm as well - when DUBE was arrested they found a firearm which allegedly was a firearm robbed from this Colonel in ZIMBABWE, 5

and although it was handed in to Ballistics, the two police guys were instructed by MALULEKE to go and fetch that firearm and bring it to PRETORIA to MALULEKE, which they did. That firearm - and there are photographs 10

you can see, which were taken on the premises of PROMED Building, where GENERAL DRAMAT is based, you can see is still in the forensic bag. They deliberately took a photo of it as being the firearm, as if it was being handed 15

to the ZIMBABWEAN Police to return with it. So we managed to trace that DUBE was arrested, and he, together with JOHNSON NYONI - I just want to see the dates here, because on the 12th - there were documents, sort of progress 20

reports of MALULEKE that we saw, but he didn't explain, and it didn't make sense from the initial story. However, when we got this information and he had explained the various incidents, you can say, on 5 November they 25

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arrested four people and deported two. On 23
November they arrested PETER CHUMA and
deported him as well, presumably, because he
was taken to the border. The two further
incidents were then these guys DUBE and 5
JOHNSON NYONI. NYONI was arrested as well,
using these Crime Intelligence gathering
officers from PRETORIA, because they had a
source in DIEPSLOOT. I think he is the one
who alerted them to DUBE as well as NYONI. 10
They then arrested him as well. But he was
arrested and apparently taken directly to
PROMED BUILDING, and that's when allegedly, as
some of the witnesses stated, GENERAL DRAMAT
came and congratulated them whilst he was in 15
the vehicle in custody. There were
photographs of him being there. After that
the members say a braai was made to thank them
for their participation. This was a TRT unit,
sorry, not the TOMS - in other words the 20
support unit that helped arrest them, the
TACTICAL RESPONSE TEAM.
After that, NYONI was kept at the MOOT Police
Station. We managed to get the records there
that showed SAB14, or whatever, and showed 25

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that he was detained, and was allegedly
detained for fraud. Then the next day he was
taken out by MALULEKE himself. The record
says he was taken to BEIT BRIDGE to be
deported. 28 January I think corresponds with 5
MADILONGA's testimony that people were taken
to the border. That really accounted for all
five, because seemingly there were five people
sought by the ZIMBABWEAN Police. It looks as
if they did an excellent job in arresting all 10
five of them, and all five of them you can say
were taken out (indistinct). The only thing
still remaining were the corroborating
documents in the computer of MALULEKE, which
showed that there was a letter from the 15
ZIMBABWEAN High Police Office, written to our
SOUTH AFRICAN counterpart, where they thanked
them for these arrests of DUBE and NYONI, and
also some other operations. I'm not sure
which ones, but they happened at the same 20
time.

There was just one more thing, there was a
suspect, MOYO, who was facing charges in
PRETORIA for bank robbery. He is a ZIMBABWEAN
National as well. He had escaped several 25

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times, and the one time he had escaped -
because from that computer of MALULEKE I think
there was some evidence which showed they may
have been involved in getting MOYO, almost
like the reciprocal action on the part of the 5
ZIMBABWEAN Police to reciprocate for what
happened with these five. That happened
around May of 2011. We pursued that
investigation and statements and KHUBA even
went to see MOYO in prison. MOYO's story is 10
yes, he was shot by the ZIMBABWEAN Police
after he had escaped from SOUTH AFRICA, he was
brought back to SOUTH AFRICA, and at the
border he was seemingly handed over to the
SOUTH AFRICAN POLICE - the HAWKS - and taken 15
to a hospital in MUSINA, where he was again
brought to court in SOUTH AFRICA. I thought
that also corroborated the basic allegations
that the SOUTH AFRICAN POLICE helped. On the
evidence regarding who of the police was 20
involved, I think that it was where KHUBA
spoke with DRAMAT several times, trying to get
their statements - their warning statements.
He had taken a warning statement from
MALULEKE, but he was trying not to be 25

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cooperative, really. From MADILONGA's statement he mentioned that when this contingent of ZIMBABWEAN Police came there, they had a cellphone number, which they said was DRAMAT's and they should phone DRAMAT to confirm. It seems it turned out that that number was his official cellphone, and he was called. We also have a record of his cellphone to show the call was received from that number. So there was just a slight thing about the dates. I think he misjudged the dates in terms of when the ZIMBABWEAN Police came, but it was a minor thing. In fact what he said really corroborated it. What we did, because the only thing that was really doubtful was the involvement of SIBIYA. The four initial Crime Intelligence officers did allude to the fact that he was present - not all four of them, but they had actually made two or three statements each.

MR JULY: Now, when you're talking about "present", do you mean present at the crime scene, where they were assaulting, and all those kinds of things?

MR MOSING: Yes, at the very first - on 5 November. To me,

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the evidence wasn't really conclusive, but one
guy said MALULEKE did all the talking during
the briefing. Because they first briefed all
the members at the place where they met. I
think it was some supermarket just outside of 5
DIEPSLOOT where they all gathered, and
seemingly MALULEKE was doing the briefing, and
then the two ZIMBABWEAN Police guys were
present. The story was that they were from
PRETORIA, and they were actually ZIMBABWEAN 10
Police guys. They were now going to look for
suspects. They said GENERAL SIBIYA was
present, but he was sitting in the car, and he
let MALULEKE do all the talking. Then when
they moved into DIEPSLOOT the other members 15
managed to arrest these four guys. Then there
were discussions as to what must happen to
them, and where must they be taken. Some of
the ZIMBABWEAN witnesses said the General in
the car said they must go to SOWETO Police 20
Station. You see, all that evidence of course
was not conclusive, to say who the General
was, and for me, what was really not
satisfactory was that these Crime Intelligence
members ought to know SIBIYA. They knew him 25

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because they worked with him as part of the TOMS. That evidence wasn't conclusive at that stage.

With the cellphone location we tried to see, because that would have proved conclusively whether he was present or not at the scenes, especially at the first scene. Unfortunately I think the one cellphone that was alleged to be his, if I understood it correctly, showed that he may not have been there, he was somewhere else in PRETORIA, or whatever. I think it was the cellphones as well as the vehicle tracking, because there was tracking on those vehicles. That is why you have that evidence from some expert company that mapped the movements of the vehicles. Those other vehicles definitely show that they were around that vicinity, and from there they moved to SOWETO. But again, that evidence wasn't conclusive to say that SIBIYA was there beyond a reasonable doubt.

That's basically the investigation. Then KHUBA prepared his report, because we agreed we had uncovered what may have been the true version of what happened with

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all these events. That version was clearly very different from the official version that had been given by the HAWKS in the beginning. We were satisfied that definitely there were offences committed, and again we could define who the members were who were involved. 5

It is true that when KHUBA was requested to draft a report, because it was our understanding that the ICD previously - and now IPID - when they do an investigation they would compile a report, with a clear recommendation as to who must be charged or not, and they then submit it with the docket. He did compile the first report, which is dated 22 October 2013. I have a copy of it here. He submitted it to us and then ... 10 15

MR JULY: Can we have copies of that report?

MR MOSING: I think you can have a copy of that. Yes, I will make a copy of it. When he submitted this report to us, we basically sent it back to him to say it was not sufficient, because for the persons who must make a decision - the evidence in the report must be summarised 20 25

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properly. In fact, summarise all this
evidence and mark it accordingly, to say: A1
says this, A2 that, A3 that. There were some
inaccuracies in terms of that. But you will
see I made pencil notes. So he went back and 5
of course he did that. Then I think around
22 January 2014 was when the report was
brought in this fashion, of which I have
copies. There was one last thing that KHUBA
needed to get before we could say we were 10
closing the investigation from our
perspective. Remember now, we were merely
asked to assist the investigation. It
was made clear to the investigators that
the decision to prosecute is not ours, it's 15
not myself and BILLY, it is going to be the
DPP.

MR JULY: All they do even then, is they recommend.

MR MOSING: Yes, they recommend. But I'm saying our role
in the matter we made clear to them, that this 20
report is not given to me so that I can make
a decision, we would submit it to the relevant
DPP office, who would take it, and we were
merely guiding that investigation and
assisting them. As I said, we had continuous 25

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discussions with the investigating team, so at
no stage did he disagree really as to what was
happening. I think there was a lot of
pressure as well to terminate the
investigation, to move over to arrest. We 5
basically had to say: Make your investigation
complete first, make sure you've got all the
evidence, which at least indicates a *prima*
facie case so that a prosecutor can take it
forward and at least is assured of getting a 10
conviction. But really there wasn't any
pressure from anybody to say: Arrest this
person and arrest that person, in a sense.
But I'm saying of course this matter happened
some time ago already, and there was some 15
delay in really getting to the nitty-gritty,
to the truth of the whole event, until we
started making progress. It was just to make
sure: Finish your investigation so that there
is nothing extra to go and get. So by the 20
time he then wrote the final report, which we
then had agreed in terms of who would be
charged, and so on - as I said, where we had
agreed, and we mentioned names as well, as was
mentioned in this report dated 22 January 25

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2014. Based on this report, which we understood to be the final report, with the investigation being final as far as we were concerned, the matter was now ready to be submitted to a prosecutor to make a decision on whether to prosecute anyone or not. BILLY MOELETSI and myself drafted a memorandum to the Deputy National Director of Public Prosecutions, ADVOCATE JIVA, attaching - let me just get that report, first of all.

MR JULY: Let's take a break while you are looking.

THE INTERVIEW ADJOURNS

THE INTERVIEW RESUMES

MR JULY: You prepared a memorandum to the Deputy National Director of Public Prosecutions, and I think you were looking for it.

MR MOSING: Thank you, Mr July. The memo I was looking for is actually from myself as Head, Special Projects to ADVOCATE JIVA, the Deputy National Director of Public Prosecutions. I think at that stage MR NXASANA of the NDPP was already appointed in October 2013, because the report is dated 13 February 2014. It's also addressed to CHAUKE, the DPP of SOUTH GAUTENG, because it was my understanding that the

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matter should be referred to the DPP, who would then decide on the prosecution. As I indicated, I was not to decide the prosecution, but merely to assist and guide the investigations. 5

If I can just read a few introductory things in this report, it says:

"The purpose of the report was 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." 10

Then paragraph 2 is "BACKGROUND", and it says:

"The investigation 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 two lever-arch files, together with other files containing the cellular phone data and evidence obtained from a computer belonging to the DPCI, is also enclosed." 15 20

Then the third paragraph is a summary of the 25

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facts of the investigation. So I don't know whether I can call it standard practice to provide this to the NDPP or my supervisor, really, with our report on the assistance we gave regarding the matter. As you can see, as far as we were concerned the investigation was complete, to the extent that the matter could now be referred to the DPP for a decision. It's just a pity that I did not refer to the date of the report of IPID which accompanied the docket. 5 10

MR JULY: But the date of your memo is ...?

MR MOSING: My date is 13 February 2014. It then precedes...

MR JULY: ... March? 15

MR MOSING: Yes. Not to go through the whole summary of the evidence ...

MR JULY: You will also make a copy of that?

MR MOSING: I will make a copy of this, yes. We did an analysis of the evidence, as far as we were concerned, and then the challenges that we anticipated. The last paragraph really deals with the recommendations which we, as the team guiding the investigations, were making to the DPP. It reads: 20 25

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"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 contained in the docket. Those directly implicated in the actions are the Head of the DPCI, Lieutenant-General Dramat, Lieutenant-Colonel Maluleke, Warrant Office Makoe, Constable Radebe and Captain Nkosi. The recommendation in respect of Major-General Sibiya is not supported for the reasons mentioned above. 5 10

In addition to the charges mentioned in the IPID report, we would also recommend a charge of fraud, alternatively forgery and uttering in respect of the Home Affairs document that was submitted to the Civilian Secretariat and others." 15

In summary our recommendations tallied with the recommendations that were contained in the report from IPID which was dated 22 January 2014. To refer to those recommendations, that reads: 20

"Based on the available evidence, the 25

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Independent Police Investigative
Directorate recommends that Lieutenant-
General Dramat, Major-General Sibiya,
Lieutenant-Colonel Maluleke, Constable
Radebe, Captain S E Nkosi and Warrant
Officer Makoe be charged criminally for
kidnapping, defeating the ends of
justice, assault and theft (only
applicable to Captain Maluleke, Warrant
Officer Makoe, Radebe and Nkosi)."

That is the assault and theft charges. So in
essence we were in agreement with this
recommendation. It is in line with what we
had seen from the investigation up to that
stage. I then handed this memorandum,
together with the dockets - and I think I even
handed it personally to ADVOCATE CHAUKE, who
at that stage was at the head office, in the
presence of ADVOCATE JIVA, who was the head of
Prosecution Services at the time. This
included the report from IPID, dated 22
January 2014.

That was as far as our involvement went in the
matter. To our mind the matter was with the
NDPP SOUTH GAUTENG, who was going to make a

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decision whether to prosecute or not to
prosecute. Some time during 2014 - and I
don't have the exact dates - I was called by
ADVOCATE ZEISS VAN ZYL from the DPP SOUTH
GAUTENG office, who was enquiring about this 5
particular docket. He mentioned that some
police people came and fetched the dockets
from him under circumstances which for him
were very suspicious. He felt they were going
to bring the dockets back, they hadn't 10
returned the dockets, and he was getting
worried and suspicious about it. He thought
the dockets were back with us, being at head
office. I said to him: No, that can't be the
case because the dockets are now with the DPP, 15
for the DPP to decide the matter. He also
phoned ADVOCATE MOELETSI to the same effect -
I think he phoned MOELETSI before he phoned
me. When he heard we hadn't received the
dockets, he was worried. As I said, he became 20
very concerned. We then suggested as well
that perhaps the dockets were returned to the
NDPP, MR NXASANA, who was now the new head of
the NPA, without our knowledge, and they could
enquire about it from him. So I think they 25

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wrote a memo enquiring about it, setting out
the circumstances of the matter, and enquiring
about the dockets. I have seen that memo in
the file, in an email. It was in the custody
of the NDPP, MR NXASANA. This was in the last 5
few days of December 2014 - last year - and
this was after the media reporting that
GENERAL DRAMAT had been suspended, and so on,
with regard to this matter. MR NXASANA of the
NDPP called me in and asked me about the 10
matter, and then mentioned that the docket was
with him. He showed me a box with certain
lever-arch files which appeared to be the
docket in the matter, and he showed me the
IPID report. I saw it was dated some time in 15
March - I think it was 18 March 2014. He
showed me the recommendation, and I was
shocked to see that the recommendation was
completely different to the recommendation
that we had seen when the matter was referred 20
to the DPP SOUTH GAUTENG for prosecution or
for decision. I think the latter report
basically said that GENERAL DRAMAT and GENERAL
SIBIYA were exonerated - that's the word that
was used. I then briefly paged through the 25

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body of the report to see whether certain evidence was still there, still discussed in that report, particularly the statement of MADILONGA, because that was the one that I think pertinently implicated GENERAL DRAMAT as such. I did see that a summary of his evidence was still in that report. I then mentioned to the NDPP that to my mind this recommendation was not the recommendation we...

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MR JULY: It was not consistent with the statement?

MR MOSING: ... it was not consistent with the evidence that was in the report - that was still part of the report.

MR JULY: Tell me, Mr Mosing, because you were in your capacity as the NPA, you were just assisting.

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MR MOSING: Yes.

MR JULY: The decision to prosecute was not yours, but you were assisting. Were you consulted when the second report or the so-called second report was produced?

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MR MOSING: No, not at all. That's why I said I was so surprised in December 2014 to see that the recommendation in the report now said these two were exonerated. As you can see from my

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memo, initially I felt that the evidence was not conclusive with regard to SIBIYA, but with GENERAL DRAMAT we ourselves had recommended as well that there was evidence that implicated him. 5

MR JULY: And the part which was not conclusive was his location?

MR MOSING: Yes. It was a question that look, that could have been supplemented by further evidence from members who were there, who had not yet made statements at the time, as well as ID parades perhaps, because it was mentioned by the ZIMBABWE Police, but it was also dark and maybe they couldn't identify him properly. 10
But I felt that the other police members, who were part of that operation, or even other evidence could come out that showed that. 15
Because with cellphone things - with cellphones people know how to bypass things. If you are a policeman of that calibre, you will know what evidence - I think the 20
investigators had mentioned that he may have used other cellphones, which they didn't have, and which would perhaps have placed him in that location. It's also unlikely, it's 25

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improbable that he wouldn't have been there, because he was actually the person designated to work in cooperation with the ZIMBABWEAN Police with regard to this cross-border cooperation.

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MR JULY: His own statement says that. He says he was asked for personnel, and he had to provide that personnel.

MR MOSING: Yes.

MR JULY: The question then is how does that personnel carry out its duties without instructions from him? 10

MR MOSING: Yes, and TOMS in GAUTENG were reporting to him basically, I think. That's also the statement of the members from Crime Intelligence. 15
Because their evidence, which they gave right at the beginning, and which is now corroborated by the rest of the investigation, suddenly gains a little bit more credibility. Because now you can actually see, if they say 20
he was present, then he would have been present. You start now giving a bit more belief to what they were saying, because they are not just uncorroborated statements from people that are said to be in cahoots, or 25

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maybe have some motive. But now that the whole case was done, I think if you look at the evidence, I was not excluding the fact that the DPP could decide that SIBIYA was properly implicated, or that other evidence could do that. It's just that at that stage when we did our memo, or our report basically, the evidence was not conclusive as far as he was concerned. But we definitely felt there was a strong case to be made out regarding the rest. 5 10

Can I just maybe say that that report of March also did not even mention the other members like MALULEKE, MAKOE - I think it maybe mentioned MALULEKE, but MAKOE ... 15

MR JULY: It doesn't mention what should happen to others.

MR MOSING: And for me throughout that case it had always been clear - in fact we had gone so far as to give the IO draft charge sheets as far as the kidnapping and assault. We had pinpointed exactly the theft of the cellphones and the monies. We had prepared those charge sheets for the investigating officer. It was always that these people should be charged for those 20 25

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smaller offences as well. For them to be excluded completely in the report just showed me that the report is not very consistent with the evidence.

MR JULY: I was going to say the meeting - and we don't know when the meeting took place between KHUBA, MAKOE and SESOKO, a meeting with you. MAKOE confirms the meeting, KHUBA confirms the meeting and the only person who is not sure about the meeting is SESOKO.

MR MOSING: I think the only time that I met MR SESOKO was once, when he was part of this thing. That could be the meeting that is being referred to. I remember it was also at a venue which was not the usual venue where they used to meet. Due to the nature of the case, we were also not meeting in the office places because of the need to keep the matter confidential. That was the only time SESOKO came, and it was here at the PETROPORT. What exactly was discussed was really nothing out of the ordinary from what had already been discussed, and I think that was not after the reports were done, it was still well within the matter being investigated. Unfortunately I did not -

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I can try and find out when, more or less, from my records, to be exact. Perhaps I will be able to pinpoint the exact date. But it wasn't as if it was a matter where it was being referred to the NDPP already or that the investigations were done at that stage. 5

I think the purpose of MR KHUBA bringing MR SESOKO as well, was because SESOKO was a senior person within IPID. I think he's the Chief Director, or something like that. 10
Obviously at that stage we were getting a little bit worried as the team, because these allegations were serious, they involved high-profile people, and the question was whether IPID reported these things as well to the principals, or whatever, so that at least there was proper reporting about that. I think that's what MR SESOKO's role would have been, because KHUBA was merely the investigator, and we were just assisting him. 15 20

MR JULY: In your experience does the investigating officer, who is appointed by IPID and who signs the report, have to sign the report with other people, or does he sign the report alone? 25

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MR MOSING:

For us, when we received this report of 22
January, it was signed by MR KHUBA. It was an
official report and it was a final report.
There was no doubt that it was still subject
to somebody in higher office - because it was 5
done on a proper letterhead. As I indicated,
there were previous drafts which we helped him
to correct, so that he could give us a
complete product. There was no indication
that this report was still subject to being 10
corrected, or signed, or authorised, or
approved by somebody else. I think it was
basically the report from IPID about the
matter. That is why I did not expect - and if
it was going to be changed, I would have 15
thought that they would at least have
discussed it with us to say: This evidence
has changed, we've got new evidence which
shows something else. But nothing was
discussed. To my mind, given what ADVOCATE 20
VAN ZYL wrote in his memo, he said basically
that he received the dockets, as we had handed
them over, they were with him for a couple of
weeks, or something like that, he never looked
at them at the time, and they were then 25

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retrieved by IPID. So nothing new was added
to that investigation. Even up to today I'm
not sure what was added which then led to the
report being changed, which then exonerated
these people. If there is that evidence one 5
can at least say yes, maybe they got some
other evidence that ...

MR JULY: But again, does it change the report, or do
you add to the report and that will influence
the decision? 10

MR MOSING: You would normally make a supplementary report
to say: This was the decision at that stage,
now we've conducted a further investigation,
and this further investigation then changes
the initial recommendation. But to me it 15
doesn't look like there was. I didn't see
that.

I must also just mention that during November
GENERAL DRAMAT actually wrote through his
attorneys' representation to the NDPP, which 20
then happened to come to me as well. As a
consequence of that I had to draft a memo to
the NDPP, basically explaining the case and
what was going on with the matter. From that
as well, the involvement, in particular of 25

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GENERAL DRAMAT, because he was the one who was
now making this representation which we had to
address as to whether or not he was implicated
in the matter - we said that they were
responsible. As I said, when I saw it that 5
day, they say now that he is exonerated, and
I was really surprised because the evidence we
had managed to obtain, despite the
difficulties, was reasonably strong, to the
extent that a person taking a prosecuting 10
decision would have managed to say:
Definitely. To my mind now, I know the matter
since January this year was referred to the
DPP in PRETORIA by the NDPP. I understand
there was a recommendation to charge GENERAL 15
DRAMAT. Again, there doesn't seem to have
been - it was still on the same evidence that
we had. I think the only thing that was
different was also a recommendation of a
charge of murder. Between MOELETSI and myself 20
we had disagreed, and I also felt that there
was a case to be made out for murder, but he
felt otherwise. The murder being especially
of the first guy who was killed in ZIMBABWE,
and even others who would have been killed as 25

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a result of this kidnapping and handing over. Because there was evidence to the effect that MALULEKE actually bragged to the other members that the first one who was taken up was killed by the police, and that's how they dispense justice there, therefore if you continue on that argument, it means that he knew exactly what was going to happen. And if that thing happens then you are actually guilty of murder. It seems like it was borne out by our colleagues. 5 10

MR JULY: While we have this, can we ask to make copies of those documents?

MR MOSING: From the lady of the Secretariat pertaining to the report of their investigation - that statement was actually obtained. 15

MR JULY: What is her name?

MR MOSING: I'll tell you now.

MR JULY: I think it's QHOBOSHEANE.

MR MOSING: QHOBOSHEANE, yes. You'll see the date of her statement. It was very late. It was roundabout this time - here it is, JENNIFER IRISH-QUOBOSHEANE. It was the only thing KHUBA had to get before he basically finalised this thing. It's dated 17 February. The 20 25

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report I said was dated 13 February. So that was the only thing he wanted to add to the docket before he could finally submit the docket for a decision. I think that's why I perhaps wrote "draft" on this report. I want 5
to see if he added ...

MR JULY: What was the conclusion of QUOBOSHEANE, the recommendation?

MR MOSING: It's the same. In fact she didn't make any recommendation - I think. 10

MR JULY: It then makes sense that the October one was still a draft, hence there was no recommendation.

MR MOSING: Yes. That one was a draft, and because we didn't want this decision to be only ours. 15
They're the investigators, they are bound to indicate what the conclusion is of their investigation. I think that was one of the reasons why I said you must go and write your report in the usual format, and then he's the 20
guy who makes a recommendation on prosecution. If they say there is no case, then at least there is a recommendation. The prosecutor will be guided also by what the attitude is of the investigator. It's probably contained 25

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there, it's not just put under headings ...

MR JULY: Like the one which was ...

MR MOSING: Yes.

MR JULY: Also it was a final in October, but the only
reason why it had to (?), is the manner in 5
which it was drafted?

MR MOSING: Yes, it was the cosmetics. You see, if you
look at this one - the final one in January -
after he had changed it, it read better. I
think what he didn't do, it wasn't really 10
structured. We said: Discuss your evidence
that you rely on.

MR JULY: And then he changed that one to blocks when it
came to - he made blocks in order to get rid
of certain information. 15

MR MOSING: You see, that part I haven't seen. Where is
the new report? I didn't even get a copy of
that report.

MR JULY: If you look at this ...

MR MOSING: Oh, is this now the report? You see what is 20
also interesting, I looked at the dates, and
I thought, no, no, those dates can't be.

MR JULY: Let's start at page 9. If you look at page 9,
that is where the problem starts.

MR MOSING: And the rest is all the same?

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MR JULY: Yes. Then on page 9, on the report of 22 January, if you look at page 9 as well - look at the paragraph that starts in the middle with:

"He will state that ..."

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It's the fourth paragraph. It's in the middle.

MR MOSING: You know why? Remember I said this one is a draft.

MS BADAL: Oh, is this yours?

MR MOSING: Yes.

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MR JULY: Oh, let me show you this one.

MR MOSING: There would have been some changes. Can I just look to see what it says at the front? That's why I wrote "draft", because he needed to do something else before we could say yes. It will be identical, but there was something...

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MR JULY: It will be the pages that will be different. But the problem with this here is page 9.

"He will state that he told

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Superintendent Ncube that he has to verify with his seniors ..."

MS BADAL: This is 18 March.

MR JULY: On 18 March, where it is supposed to start with "He will state", after the paragraph ends

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with "suspects". After that it's supposed to read:

"He will state that ..."

MR MOSING: Yes, yes.

MR JULY: It's not there. 5

MR MOSING: It's not there.

MR JULY: He starts here.

MR MOSING: He left out that entire part?

MR JULY: Yes.

MR MOSING: What does it state. (Reading to himself.) No 10
but this is ridiculous, because this is
exactly the basis of MADILONGA's evidence,
where he said they had a cellphone, he phoned,
he had called RADZILANI. RADZILANI made a
statement - I think he made a statement as 15
well, which corroborated that guy, because he
didn't want to phone DRAMAT himself. He was
a junior officer, so he phoned his immediate
boss, and I think he said his immediate boss
told him: You can phone Dramat, and he then 20
phoned.

"... but she requested that he should
call Brigadier Makushu, who was a
Provincial Head Protection and Security
Services. He then called him on his 25

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

- MR JULY: That doesn't say this.
- MR MOSING: No, that is clear tampering. What does KHUBA
say, because KHUBA ...
- MR JULY: It was taken out.
- MR MOSING: But he knows that it was supposed to be in?
- MR JULY: He knows that it was supposed to be there.
- MR MOSING: Clearly that is what we also understood.
- MR JULY: Then if you go to page 21, this paragraph:
"DOCUMENTARY EVIDENCE ACQUIRED FROM DPCI
OFFICES ..."
This is what it says.
- MR MOSING: That is 5.2.
- MR JULY: It starts with "Success report". What then

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happens, you see this looks like it reads the same, but here it changes when it comes to another success report.

"The report bears reference number 26/02/1 and again to the Deputy National Commissioner DPCI. The person to whom enquiries must be directed is Captain Maluleke ... 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."

But here, on that one, there is not that paragraph. So this is the part that is not there.

MR MOSING:

Both of them?

MR JULY:

Both of them.

MR MOSING:

But they removed this one?

MR JULY:

Yes. In 5.2. You see if you start here:

"The report bears reference number 14/02/01 ... General Dramat held a meeting with Zimbabwean police ..."

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That is not there. You won't see it there.
It's this part of the report. This is where
it starts.

MR MOSING: It just says:

"The report also covers ..."

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MR JULY: Yes. It says:

"The report also covers the arrest of
Gordon Dube ..."

Instead of having ...

MR MOSING: I think it's this part here:

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"The report also covers the arrest of
Gordon Dube ..."

But it doesn't talk about this other part.

MR JULY: Yes, they delete all of this part.

MR MOSING: If you look at that success report, and you
look at how they are reporting here and how
they are reporting there, you will see which
one is more credible and which one is more
complete. That will be a simple exercise, to
show this one is (talking together).

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MR JULY: You will see what has been deleted there is,
it says:

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

You won't find it there.

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- MR MOSING: It's not there, it just says:
"He sent email to Zimbabwean Police trying to find out how they travelled back home and that he is still tracing..." 5
- This one says also sent email to the ZIMBABWEAN Police, so in the first one he is saying - I mean, really, it's no wonder they said he is chopping and changing on this thing. 10
- MR JULY: Yes, and there is no GENERAL DRAMAT mentioned there. I think 5.5 on the next page, just before "CELL PHONE RECORD OF LIEUTENANT NEETHLING", it says:
"Captain Maluleke also communicated with General Dramat in terms of outgoing SMSs..." 15
- MR MOSING: "... at a very important milestone of the operation." 20
- MR JULY: "He also called a Zimbabwean number ..." 20
And if you go and check on ...
- MR MOSING: Did they change this now?
- MR JULY: They changed it.
- MR MOSING: "EVIDENCE IN TERMS OF SECTION 205."
- MR JULY: Yes, do you see? Then they changed it and 25

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they put it in blocks.

MR MOSING:

They put it in blocks and changed the whole thing. But you see what they are saying - I don't know, but they are saying basically this was a progress report. Before that it's a 5
draft, it's a progress report. If you're now writing further - let's say it's a draft, but the fact of the matter remains that you have this draft, and then you have the other report. Clearly this other report - first of 10
all it doesn't deal as comprehensively with the evidence as this one does. It's less questionable (talking together).

MR JULY:

There is no explanation. Why did they leave out the information about the meeting of 5 15
November? That meeting DRAMAT does not dispute.

MR MOSING:

That was key. That's why I said MADILONGA's statement really corroborates the story. It was just on the dates that he wasn't sure. I 20
think he made a mistake about the exact date, but if you look at the records, the movement in and out, and the cellphone records in terms of what date he phoned, that fits in perfectly. And McINTOSH POLELA, who was a 25

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spokesperson, confirmed that he was called into a meeting where these people were, although he didn't really understand what the story was about - although he's trying to cover up a little bit. But I think he fully knew what the story was. The strange thing is that even with this thing, because he was the spokesperson and he had to address the media on this thing, he didn't disclose it then, to say: There was this meeting. He should have actually (?). So if you push him into a corner he probably will have to explain himself, because he phoned the media - remember that's when they came up with this story that there was a deportation, and all that. In the light of the meeting he would have known that this was not a deportation.

MR JULY: So if it was there in the public, why do you delete it from the report, unless you want to come to a conclusion that is consistent with what you are saying?

MR MOSING: But it was never in the public then. I think they never revealed, even to the Secretariat on three or four occasions, in the light of Parliamentary questions, in the light of the

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Civilian Secretariat, while the Minister was asking for explanations, they never ever revealed that there were ZIMBABWEAN Police who came here, and then there was a request and there was a meeting that took place, and as a result of that they did X, Y and Z. They never said that. I think they hid the fact that there was a ZIMBABWEAN delegation that came. And this was what MADILONGA actually revealed. They tried to cover it up by making a statement that (?) made initially in their investigation, to cover up the statement, where he basically said something to suit the story of the deportation. But that meeting was key. It informed the MALULEKE case, he also eventually - although he's not saying so now - that's where he got his (?). In fact from his progress report you can see that he's the one who said the meeting took place when the ZIMBABWEANS came, and then he was tasked to go and do this thing. That is why every time he is reporting back. So how do you change it now in your report, and you delete all reference to that meeting, or even reference to them coming into the country?

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Because that whole report isn't consistent with the evidence.

MR JULY: It is.

MR MOSING: If you look at this one and you look at that one, you will see this one is more in line with the evidence than the later one is. That should also be conclusive that this report is... 5

MR JULY: That's fine.

MR MOSING: Sandile, sorry, just on that report, so that there is no confusion, both of these are dated 22 January, but I think because there have been some changes maybe we must compare these two. As I indicated, I wrote "draft", and I think I wrote draft because he still had to do one or two things. Although the date is still the same, this was already like the end. You can see this thing is almost like a final thing. There was just maybe one thing or another that he had to add. 10 15 20

MR JULY: This one is the one that he signed.

MR MOSING: Yes, this one he also signed. But, as I say, because there were maybe one or two things, I just want to check where exactly it was. Because you can see it starts there already, 25

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where there is a bit of difference there. They will be identical, except maybe there was something that he - this was CHUMA, this was SIBANDA and NYENDA and NELSON CHAUKE ...

MR JULY: No, but this one could be the way that it came out when he printed the grid. 5

MR MOSING: Because this is now my copy, and we haven't really ...

MR JULY: Let's go to paragraph 4.3.

MR MOSING: 4.3 is: 10

"STATEMENTS OF HOME AFFAIRS OFFICIALS:

QABA, NDWANDWE, JACKSON, SKOSANA,

LODEWICKUS ..."

Then you have:

"STATEMENTS OF SAPS: 15

MADILONGA ..."

Maybe MADILONGA's statement - these two are the same. I doubt there will be anything changed in this one.

MR JULY: No, this one is the same, you see. 20

MR MOSING: I know there must have been just some small thing that he did, which then accounts for the fact that the documents are not exactly the same.

MR JULY: But it will just be a question of the timing. 25

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- After that it was this.
- MR MOSING: Yes, because like I say this one is just my draft. It was almost complete to the final one, so I think he may have just - perhaps it could be that MOSEANE(?), the addition of her. 5
Because he had to deal with the evidence. If you can see where he says anything about her - because I think the rest will ...
- MR JULY: This is what you submitted to the NDPP?
- MR MOSING: Yes. Like I say, what actually happened, was 10
I thought I hadn't kept copies, because I didn't make any.
- MR JULY: You see, the difference between this one and this one, even if they differ in terms of the format, the conclusion is the same. 15
- MR MOSING: Yes, and the statements are the same.
- MR JULY: Then they come with another report, where the people who were also involved in the investigation are not even advised: We are now changing this report. Because even 20
MOUKANGWE was not advised.
- MR MOSING: Yes, I don't think he would have ...
- MR JULY: And they didn't even tell KHUBA - if you look, this was taken out, and I don't know why.
- MR MOSING: KHUBA was also surprised.

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MR JULY: "On the 28th he was called by his former executive director, who gave him the following documents, saying they were received by the Secretariat of Police: Report on illegal rendition." 5

MR MOSING: You see that was the issue, because that report of the secretariat he wanted to put into the evidence as part of the docket. That was the whole domain thing. So we asked him where he got it, and that's when he explained he got it from that lady who was in charge, MBEKI, I think it was. 10

MR JULY: Yes.

MR MOSING: He got it from her, because he wanted that really to be a part of the docket, because it shows the whole matter. But is it now deleted from this one? 15

MR JULY: Yes.

MR MOSING: That's KHUBA's statement? Yes, here is his statement. No, he can't take that out, and it was our advice that we must get that report in, because we took account of it. We read it and we knew what in there. Because it's an official version they gave, and now the investigation shows a different version. So 20 25

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in terms of fraud, you would want to say: You guys, who had a full opportunity to explain this case, said it was this. Now it's this. It would have shown that they had lied. So as far as I'm concerned we had lied to Parliament 5 and to the Minister then, in the beginning, because in other words they cover up the real story. The investigation is supposed to have covered what really happened, and that's why I wanted that report from the Secretariat to 10 be part of the docket. KHUBA wouldn't have left it out, because it was part of his evidence. Is it here where it is taken out?

MR JULY: The paragraph starts with: "On the 13th ..."

MR MOSING: This is his statement. 15

MR JULY: That's an analysis, that one. His statement will be ...

MR MOSING: But what does it say in the analysis?

MR JULY: No, no, they don't have a heading saying "ANALYSIS". 20

MR MOSING: Oh, they don't?

MR JULY: No.

MR MOSING: This report is completely ...

MR JULY: They just come up with a finding. Go to page 25. 25

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MR MOSING: It should be around page 24 or 25. I think that could have been the story, that his statement was not there, and I think we wanted him to give his side of it.

MR JULY: It says: "STATEMENTS OF SENIOR MEMBERS". 5

MR MOSING: Yes, "STATEMENTS OF SENIOR MEMBERS OF SAPS",

MR JULY: Then there is "STATEMENT OF HOW DIEPSLOOT" - this part is there.

MR MOSING: Yes.

MR JULY: INNOCENT KHUBA. So what makes a difference is 10
his statement, because after that his statement takes a lot of ...

MR MOSING: Here is an analysis of the evidence. So these few pages are the same, from what I do have.

MR JULY: Yes. 15

MR MOSING: And I know his statement is supposed to be in that thing, in the one we gave. Now I remember. That's why on this copy that I have, I wrote "draft", because it lacked his statement. Once he did that - and like I 20
said, in not making a copy I didn't anticipate something like this happening. Because we thought in good faith KHUBA would stand by that investigation and wouldn't be made to change it. In other words the original report 25

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that he signed - although he had signed this
one and I wrote "draft" on it - we said: This
one is incomplete and you need to summarise
your statement. I think maybe if you look at
the docket, when was his statement 5
commissioned? It was commissioned more or
less at the same time, because it was the last
thing he also did. Because he said although
he had a draft of what he had done, we said:
Do an investigating officer's statement, so to 10
speak, explaining, because in this case he
really needed to explain how this case
unfolded, because it would help anyone reading
the docket to understand what was going on.
They could be easily confused, because there 15
is a version here which we have to disprove.
Now I remember. I think that's why we didn't
even have this. You see, he didn't even
change the date, he kept the date. It took
him a day or two basically to finalise that. 20
I was a bit worried as to that one.

MR TOM:

That one, as to the one you submitted to the
NDPP?

MR MOSING:

Yes. You see what happened - and I'm not too
sure how you got a copy of that thing. 25

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ANTHONY MOSING

- MR TOM: In the media.
- MR JULY: No, no, no.
- MR MOSING: That one was official.
- MR JULY: It was given to us from the Minister's documents. 5
- MR MOSING: What I want to say is KHUBA actually told me that report - because it had to go to the Minister. Once the report was done, when they gave us, as the NPA, the report, they gave it to the Minister's office as well. That's what we understood. That's why they took our copy. Unfortunately we didn't make copies. Even ZEISS VAN ZYL didn't make a copy. They took everything. That's why they wanted to take everything. They took everything, but now fortunately, even if I don't have a copy, I've got a recent draft, and you can see it's dated. We've got that draft that they started with, and you've got the docket. If you now look at the new statement or report they have, that report doesn't measure up to the evidence. 10 15 20
- MR JULY: Yes.
- MR MOSING: Unless they tampered with the evidence, because I think for you to change your 25

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ANTHONY MOSING

recommendation like that, you would have had to tamper with the evidence.

MR JULY: That's what they gave, you see. Even the tampering is not consistent with their finding, because what they were doing was just to take out the reference to DRAMAT. 5

MR MOSING: Yes. But even if they tampered with the report, they wouldn't tamper with the evidence, because it's there.

MR JULY: You're right, they tampered with the report. 10

MR MOSING: So it means that if they want to insist that that is their correct report, once you review the evidence you will see that that report cannot be - why is there no reference? MADILONGA's statement, for instance, is still there. 15

MR JULY: Yes.

MR MOSING: They haven't changed it. They can't deface it. So it's still there, and it still shows that he phoned, and all that they took up. 20

MR JULY: I think we can go and eat now.

THE INTERVIEW ADJOURNS

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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	15
MR KWAZI BUTHELEZI	- Candidate Attorney	

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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GEORGE BALON **505**
SIBONGILE MEINYATHI

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. 5

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 10 15 20 25

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GEORGE BALOYI
SIBONGILE MZINYATHI

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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.

5

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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GEORGE BALOYI 507
SIBONGILE MZINYATHI

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? 5

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
SIBONGILE MZINYATHI

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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 BALOYI
SIBONGILE MZINYATHI

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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.

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,

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GEORGE BALO 510
SIDONGILE MEINYATHI

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 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 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 time. I had finished reading the document myself. 10 15 20

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 MEINYATHI

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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 were 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. 5 10

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. 15

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 20 25

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GEORGE BALOYI 512
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 5

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 10

would simply have decided this matter. But the

reason why is as things now stand DIEPSLOOT

does not fall under my jurisdiction.

MR BALOYI: That's from 1 December 2014.

MR JULY: In actual fact what he says in the letter to 15

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. 20

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.

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

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GEORGE BALOYI 513
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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GEORGE BALO **514**
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. 5

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. 10

MR JULY: But in any event you were recommending a decision. It's not like you didn't make a decision. 15

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. 20

MR MZINYATHI: Yes.

MR JULY: So the issue of recommendation becomes too difficult.

MR MZINYATHI: Yes. After having done that - and this is also 25

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GEORGE BALOYI
SIBONGILE MZINYATHI

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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 5
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 10
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 15
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 20
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 25

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GEORGE BALO 516
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

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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 **518**
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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GEORGE BALOYI
SIBONGILE MZINYATHI

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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."

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

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.

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?

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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GEORGE BALOYI 520
SIBONGILE MZINYATHI

MR JULY: ... and then you CC'd 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. 5

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. 10

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 15 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.

MR BALOYI: But these are the internal workings of the NPA. 20
I suppose they do not form part of your investigation.

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 25

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GEORGE BALOZI
SIBONGILE MZINYATHI

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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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GEORGE BALOG **522**
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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GEORGE BALOYI **523**
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 5
that?

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 10
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? 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 20
DPPs. All the DPPs report to the head of the
NPS.

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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SIBONGILE MZINYATHI

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 5 working with this document.

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 10 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? 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 20 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 25

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GEORGE BALOYI
SIBONGILE MZINYATHI

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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. 5

MR MZINYATHI:

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 10 thing. In fact GEORGE told me that he didn't even read the report.

MR JULY:

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

MR MZINYATHI:

Okay, please. 15

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* 20 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. Already we have our own view about what should 25

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GEORGE BALOYI 526
SIBONGILE MEINYATEI

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

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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. 10
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 15
certain issues I would want to look at he might
have overlooked. For instances, these reports
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 20
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 25

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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, 5
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 10
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.
I read through the docket, and at some point I 15
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 20
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 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?

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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, 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 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 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 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.

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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 5
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 10
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 15
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 20
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 25

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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 5
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 10
recommendations. That's how we came up with
these recommendations.
Along with our recommendations we sent the NDPP
a brief memo motivating why we think a
prosecution should be instituted. On 13 March 15
we sent the docket with our recommendations and
the memo.

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 20
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 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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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

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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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
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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 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 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 think during our conversation, when he mentioned that the 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, 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,

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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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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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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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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.

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- 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 ..."
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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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this thing in blocks. It's not the same, if you look at it. Do you see at paragraph 5.5 on page 23...

MR MZINYATHI: Of the second report?

MR JULY: Yes, of the second report. If you look at page 5
23 of the first report, the information is not quoting details. They talk for example about:

"REASON FOR 205 APPLICATION

To test the version of the witnesses who are alleged to have seen Major General Sibiya at the crime scene." 10

Then it says:

"Major General Sibiya was never at the crime scenes or planning area as alleged..." 15

But that is not the evidence about SIBIYA. SIBIYA's evidence is stated in the - there are witnesses, there are guys from TOMS ...

MR BALOYI: ... who saw him in a black BMW.

MR JULY: There are guys from TOMS who know SIBIYA. 20

MR BALOYI: Actually you recall that the operation was on two occasions, and on both occasions there are witnesses who say - there are some contradictions, especially with TOMS. Some say no, he was there on the first day, some say

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they are not sure. But the eye witnesses are clear that he came out of his BMW, and they asked him, I think, where to detain them, or something to that effect.

MR MZINYATHI:

Yes.

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MR BALOYI:

I mean the evidence is clear there. Then on the second operation his name is also mentioned. We felt even if the cellphone records place him elsewhere, we have real evidence. At a later stage, during trial, we will get a cellphone analyst who will probably give an explanation. I mean, it could be that someone else had his cellphone. That is explainable.

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MR JULY:

But the thing is this, how do you go around the evidence - even in SIBIYA's own evidence he says he was tasked by the national office to provide personnel for this operation. He does not deny the operation. He was tasked by the national office to provide personnel, and he provided the personnel, therefore he knew about the operation. The physical presence we will have to deal with - whether he was involved in the assault or not. But on the other ones of kidnapping and all those things, all that we

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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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STATEMENT OF LIEUTENANT COLONEL NDANDULENI RICHARD MADLONGA

Lieutenant Colonel Richard Madlonga states under oath in English that:

(1)

I am a police officer in the South African Police Service holding a rank of Lieutenant Colonel with personal No 0481932-2, stationed at Thohoyandou SAPS as a commander of crime prevention, contact number 015960 1049 or 0766 906 426.

(2)

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

(3)

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

(4)

In 2010 which was two weeks before the 27 November, there was a convoy of vehicles from Zimbabwe entering into South Africa. I started to be suspicious and I approached them. The convoy was approaching the immigration offices and it was some type of vehicles which are illegal. It was a white double cab. It was late in the afternoon of which I cannot remember the exact time. The people were dressed in suits and were approximately 10 to 12 in number.

(5)

When I approached them, one of them introduced himself to me as the leader of the group and he said to me he is a Superintendent Neube from the Household Unit in Harare. He then requested me if they could not find a place and sit down and discuss. I then took them to my office and set down for discussion. We then went to my office together with his colleagues. Superintendent Neube told me that he is going to Pretoria to meet General Dramat. He said to me maybe I know about the Chief Superintendent who had been murdered. He said that the suspects are in Gauteng and he had organised with General Dramat to assist them in tracking the suspects.

(6)

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

(7)

I phoned General Dramat on his cell phone and he responded by saying that he is aware of the Zimbabwean police and I must let them come. I used my landline if I did not use my official call phone. I took the Zimbabwean police's passports and taken them to the immigration office to be stamped. The registrations of their vehicles were also documented. I handed their stamped passport and gate pass and they cross the entry gate into South Africa.

Handwritten signatures and initials:
NM Madlonga
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668549
As7

RJM-0812

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(8)

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

(9)

The following day after the departure of Zimbabwean police, I received a call from Captain Maluleke who is also known as "cowboy". It was on 08 November 2010 between 16 and 17:00, when he called and introduced himself as cowboy and I asked as to who is cowboy and he said he is Captain Maluleke and was with me at Port in Cape Town in 2008. When he said that he is Captain Maluleke, I remembered very well who he was. Captain Maluleke asked me about where I was. I told him that I had already crossed the checkpoint and I am coming to town. He told me to stop where I was and wait for him. After thirty minutes he came and was driving a sedan which I think is a BMW. He was with a male person who was sited on the front passenger seat. The person moved to the back seat and I occupied the front passenger seat. I left my car next to a tree which is at the turn to Mansfield.

(10)

While I was on the front passenger seat heading to the border gate, he told me that the Zimbabwean police whom I assisted some weeks back were looking for suspects in connection with the death of police chief in Zimbabwe, and know they have found them. He told me that he was sent by his big bosses to assist in deporting them because we do 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.

(11)

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

(12)

When we 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 us. We could not even hand the documents that Captain Maluleke gave me to the immigration officers of Zimbabwe because of the commotion. I knew that they were police officers because I had been working at the border for a long time and I knew them. I even saw the vehicles that crossed two weeks ago when Superintendent Ncube entered the country. One of the Zimbabwean police came and thanked us and said that we must not use the other gate but use the one we used when we entered.

(13)

Captain Maluleke told me that what happened is top secret and people must not know of what happened. Captain Maluleke drove me back to where he found me and I entered into my car and drove home. In 2012 of which I cannot remember the month and date, Captain Maluleke phoned and told me that there is a person from Head Office who will be coming for investigation and that I must cooperate with him. Later a person came to

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

(14)

I know and understand the content of this statement

I have no objection in taking the prescribed oath

I consider the prescribed oath to be binding on my conscience

Deponent's signature:

[Handwritten Signature]

Date:

2013-04-08

I certify that the above statement was taken down by me and the deponent has acknowledged that he knows and understands the content of this statement which was sworn or affirmed before me and the deponent's signature was placed thereon in my presence at Thohoyandou on the 2013-04-08 at 14:50.

Commissioner of oath:

INNOCENT HUMAHLA KHUMISA

Signature:

[Handwritten Signature]

Rank:

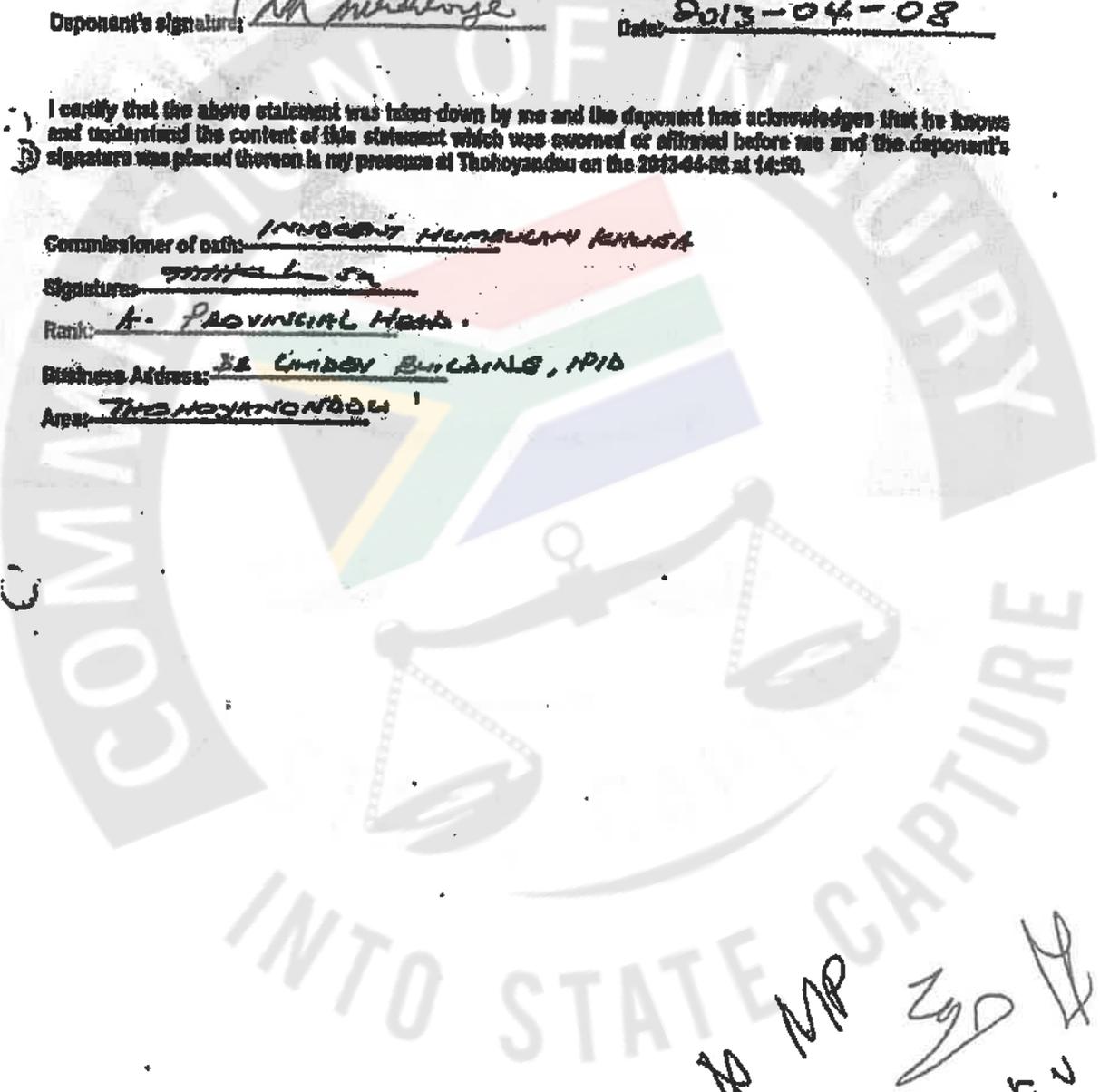
A. PROVINCIAL HEAD

Business Address:

33 LIMBOP BUILDINGS, 1P10

Area:

THOHOYANONDOU



[Handwritten initials and signatures]
K. MP
ZyD
K V
S J

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

**REPLYING AFFIDAVIT OF HUMBULANI INNOCENT KHUBA
IN RESPONSE TO ANSWERING AFFIDAVIT OF SANDILE JULY**

I, the undersigned,

HUMBULANI INNOCENT KHUBA

do hereby make an oath and state:

- 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 employ of the Independent Police Investigative Directorate ("IPID") as a Provincial Head for Limpopo based in Polokwane.
- 3 I have previously deposed to affidavits before this Commission. In this affidavit I respond to Mr Sandile July's answering affidavit dated 8 May 2020 in response to the supplementary affidavit of Mr Robert McBride in which Mr McBride dealt with the report compiled by Werksmans Inc. Mr July is a director of Werksmans and was the



author of that report. For the sake of convenience, I will refer to that report as "*the Werskmans report*".

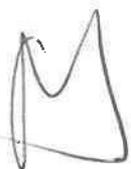
- 4 Mr July has also deposed to an affidavit dated 15 June 2020 in which he responds to an affidavit of mine dated 6 December 2019. I do not deal with that affidavit, at least not directly. This is because I was initially given Mr McBride's answering affidavit dated 8 May 2020 to respond to. It was only later, that I was provided with Mr July's 15 June 2020 affidavit. By that stage it had already taken me a substantial amount of time, during a generally busy work schedule, to wade through Mr McBride's earlier affidavit. I have not had a sufficient opportunity to interrogate Mr July's further affidavit fully as this was only provided to me recently. However, most of the "*evidence*" provided by Mr July in his 15 June 2020 affidavit is, in any event, a duplication of the "*evidence*" in his earlier affidavit. There are, however, issues that were not covered in his earlier affidavit and I will endeavour to deal with those issues here. To the extent that I do not (given the pressure to finalise this affidavit), I must be taken to have denied them.

A. IPID'S DISCIPLINARY PROCEEDINGS AGAINST ME

- 5 In the disciplinary proceedings instituted by Mr Kgamenayane against me, I was represented by an attorney, Mr Phooko.
- 6 IPID was represented in those proceedings by Advocate William Mokhare SC. I do not recall who Advocate Mokhare's instructing attorney was, but I imagine it was an attorney from the office of the State Attorney.

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- 7 I also noted his insertion which is in page 185, paragraph 277.3 of his affidavit in response to McBride affidavit in which he stated that he was dealing with unfaithful managers of IPID and that I lacked integrity as my version has changed with conditions and circumstances. I deny that this is true.
- 8 I have disposed to affidavits in matters relevant to the present proceedings in the following circumstances:
- 8.1 I was requested by Adv. Mosing to depose to an affidavit relating my investigations of the case Diepsloot CAS 390/07/2012 (*the Rendition matter*).
- 8.2 I also deposed to a confirmatory affidavit in support of an application brought by Mr McBride, a copy of which is attached marked "HIK1".
- 8.3 I further deposed a confirmatory affidavit in Mr Sesoko's disciplinary inquiry a copy of which is annexed hereto as **HIK2**.
- 8.4 After my dismissal on the 30 September 2015, I deposed to a founding affidavit in my urgent application to the Labour Court hereto annexed **HIK3**.
- 8.5 Before I was arrested and appeared at Pretoria Magistrate court, I deposed to a warning statement hereto annexed **HIK4**.
- 9 I deny that my version has changed with the changing conditions and circumstances. I respectfully submit that it has remained consistent throughout.



10 Mr Kgamanyane also challenged my integrity when he dismissed me on 30 September 2015. He too claimed that I lack integrity in deposing to an affidavit after a settlement agreement with the employer. I have testified at length to the Commission on how the settlement agreement came about, and my version was supported by my lawyer attached marked "HIK5".

B. BACKGROUND.

11 It is important for me to show that the rendition investigation was not an ordinary investigation, as it was riddled with challenges including political interference.

12 In July 2012 Mr Sesoko telephoned me and informed me that I would be appointed to conduct an investigation into a matter involving the rendition of Zimbabwean nationals to Zimbabwe, who were subsequently killed (*"the Rendition investigation"*). Mr Sesoko asked me to travel to Pretoria to meet with the Executive Director, Mr Francois Beukman (*"Beukman"*), the Secretary of Police, Ms Jenny Irish-Qhobosheane (*"Qhobosheane"*) and him. I agreed to do so.

13 At the meeting, Ms Qhobosheane provided some background to the Rendition matter and advised us that the Minister, Mr Nathi Mthethwa (*"Mr Mthethwa"*), wanted IPID to investigate it but we should hold off the investigation until further notice.

14 I only received the docket from Mr Sesoko, on 23 October 2012. In preparation of the present affidavit I went through some of the documents that were part of the



docket (I do not have access to the complete docket). I noticed that at the time when the docket was handed over to me, there were already approximately 20 statements in the docket. I had not picked this up before, but it appears from some of the statements in the docket that after the meeting with Ms Qhobosheane referred to above, investigations were still being conducted by members of Crime Intelligence.

- 15 Mr Sesoko explained to me that the Executive Director, Ms Koeki Mbeki ("**Ms Mbeki**"), would like to meet with me to discuss the case. The docket contained several statements that had been taken from members of the Crime Intelligence Department ("**Crime Intelligence**") and friends and relatives of the Zimbabwean nationals who had apparently been deported to Zimbabwe.
- 16 It was clear from the commissioned statements in the docket that the investigation had been conducted by Colonel Moukangwe ("**Col. Moukangwe**"), Lieutenant Colonel Khoza and Lieutenant Joseph July Mahlangu. When I first met them (which was only subsequently), Col. Moukangwe and Lieutenant Colonel Khoza, informed me that they were members of Crime Intelligence. I do not know where Lieutenant Mahlangu was stationed and I never met him. These three officers were the commissioners of oaths, of one or more of the witness statements that had been taken from the different witnesses whose statements were contained in the docket that was handed to me.
- 17 Crime Intelligence is a department within the South African Police Service ("**SAPS**"). It is essentially an intelligence agency responsible for tracking criminal elements. Its

main function is to gather information through covert intelligence and counter-intelligence and the collection of crime intelligence.

18 My investigation into the Rendition matter commenced shortly after I had been handed the docket by Mr Sesoko. After I had already commenced with the investigation Ms Mbeki instructed me to work with Col. Moukangwe. She explained that Col. Moukangwe had been the previous investigation officer. By that stage, I had already contacted Col. Moukangwe, but had done so on the basis that he would brief me as the new investigating officer and not that he would work with me and continue to deal with the matter. The instruction from Ms Mbeki, however, was that I should work with him.

19 However, Ms Mbeki instructed me to keep Col. Moukangwe's involvement in the matter a secret (she used words to the effect that he should "*not be known*"). I found the instruction somewhat strange but did not raise the issue with Ms Mbeki. I did however mention it to Mr Sesoko.

20 In a subsequent meeting with Ms Mbeki she instructed me not to work with, or to discuss the case with Mr Sesoko. This was extremely unusual and contrary to the Standing Operation Procedures ("**SOPs**") of IPID, which require that all national investigations be directed by the National Head of Investigations. At the time, Mr Sesoko was the Acting National Head of Investigations. I conveyed to Mr Sesoko that I had been instructed by Ms Mbeki not to involve him in the matter. I do not recall precisely what Mr Sesoko's response was, but I do recall him saying that we

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would have to abide with the instruction. I also recall that he appeared to be surprised by the instruction.

21 At certain stages in the investigation, Col. Moukangwe would telephone me and request me to email specific documents to him. For this purpose, he requested that I should email the documents to june16@gmail.com. I recall him requesting me to send him the so-called success report to that address. If I recall correctly, he also requested me to send him the statements of Capt. Madilonga and Constable E. D. Mkasibe to that email address. In each instance, he would telephone me and request me to email a specific document to that email address. He would emphasise that I should not send it to him from my work email address but had to do so from a different address. On some occasions I was staying at the Southern Sun Hotel, corner Beatrix and Church Streets in Pretoria (now corner Steve Biko and Church Streets). He requested me to use the email facilities of that Hotel. On other occasions I happened to be at the office when he contacted me. On those occasions he would request me to go to the Hotel to send the email using the Hotel's facilities and not to use my office email. I did not use the email facilities of the same Hotel in each instance, but cannot recall which other Hotels I went to.

22 Col. Moukangwe did not want me to send any documentary evidence or witness statements to his work email address (which I can no longer recall) or his private email (which was botsotsomoukangwe@gmail.com). We had exchanged our respective email addresses when we initially met with each other (that is, when I had contacted him and requested him brief me regarding his investigations as the investigating officer).

- 23 I do not recall Col. Moukangwe providing me with any explanation as to why I had to go through this very secretive process. I initially assumed that he was merely being cautious and given that he was from Crime Intelligence assumed that was normal.
- 24 After emailing him these documents, there were leaks to the media relating to the very documents I had sent him. I initially did not realise that he might be responsible for the leaks. Subsequently, an article appeared in the Sunday Times of 13 October 2013 in which the statement of Col. Madilonga was published. I will endeavour to obtain a copy of the *Sunday Times* article. My recollection is that it contained substantial extracts from his statement. The article immediately struck a chord with me because I had been very concerned for Col. Madilonga's safety.
- 25 When I realised that he was the leak, I approached Ms Mbeki and asked her to subject all the members of the investigation team to a polygraph test. I explained to her that I was concerned about the leaks and that it was necessary to ensure the integrity of the investigation.
- 26 It became apparent that the Rendition investigation was being used to remove Dramat when General Ntlemeza, who at that stage was the Deputy Provincial Commissioner of the SAPS in Limpopo, started showing interest in the case. I explained the reason for this when I testified at the Commission, which I summarise below:
- 26.1 General Ntlemeza contacted me numerous times asking about the progress of the case and wanting to know when I would finalise the investigation report.

He claimed to be close to the key witness, Madilonga, and that he was taking care of his security.

26.2 He made a point of assuring me that Lieutenant General Richard Mdluli ("**General Mdluli**") had my back, as it were, coming to see me specifically to tell me this. He told me that he had met with General Mdluli at the Airport and that General Mdluli had apparently requested him to tell me that I must not be afraid when dealing with the rendition case because there were people who were looking after me.

26.3 General Ntlemeza informed me that he had been told that he was not going to head IPID, as he had previously relayed to me, but was going to be appointed to Head the Hawks instead. He stated that the delay of my report to NPA was delaying his move to the Hawks. I informed him that I was still needed to obtain General Lebeya's warning statement as he had received one of the success reports. He immediately called someone to get General Lebeya's number for me and I called General Lebeya in his presence to arrange to obtain his warning statement;

26.4 After I had sent the first report to Advocate Mosing, General Ntlemeza stopped asking me about the report.

26.5 The last time I met with General Ntlemeza was on 6 December 2014. He said that his time to move to the Hawks had arrived and that there was going to be a "*hit on Dramat*" so that he could replace Dramat. He stated that I should watch the news on TV in the coming weeks, which I did. What he had told me



unfolded precisely as he had said and General Dramat was suspended and removed and General Ntlemeza was appointed as Head of the Hawks.

27 The Minister of Police, Mr Nkosinathi Nhleko, made a media statement in which he said that he had suspended General Dramat on the basis of the IPID report. I was surprised when I heard of this because the so-called first report which I had prepared was submitted to Adv. Mosing of the NPA. It contained a recommendation that both Generals Dramat and Sibiya be charged, which latter recommendation had been changed by me on receipt of General Sibiya's cell phone records. I had not submitted a report to the Minister containing a recommendation in respect of disciplinary proceedings. It was thus apparent that the report I had sent to Adv. Mosing had been forwarded to the Minister and the Minister had relied upon this report to suspend General Dramat.

28 I have already explained in my previous affidavit about the attempts by Mr July to contact me to arrange for an interview with him. I also explained that I had indicated that he should contact my superiors, Mr Sesoko and Mr McBride. I understand that he attempted to do so. It appears that his efforts did not, however, bear fruit. I was later contacted by the Minister's personal assistant. I have her mobile telephone number and will provide it to the Commission, but have been requested not to include it in this affidavit. She telephoned me approximately twice or thrice. The PA indicated that the Minister wanted to meet with me. I indicated that I was willing to meet with the Minister but that he should first had to speak to Mr McBride to allow me to do so. She called me later to indicate that she could book me a flight to Cape Town over the weekend and that I could be back at work by the Monday. I indicated

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that she still needed to get the permission of Mr McBride before I could be released. I was subsequently contacted by the Minister. He simply said to me that I should cooperate with Werksmans.

29 Mr McBride was suspended on 24 March 2015 and Mr Kgamanyane was appointed as the Acting Executive Director in his stead. I received a telephone call from Mr Kgamanyane instructing me to go to Duma Nokwe Chambers in Sandton to meet with Adv. Mokhari, SC. I went to Duma Nokwe Chambers and introduced myself to the receptionist and requested to see Adv. Mokhari. The receptionist called him. Adv. Mokhari's chambers was obviously on one of the upper levels. He came down the stairs and entered the reception where I was seated. He was not accompanied by anyone else. While we were in the reception area he said he wanted me to provide him with a confirmatory affidavit in support of the Minister in the disciplinary hearing against Mr McBride. He did not tell me what to say in the affidavit. I told him that if I were to provide him with a confirmatory affidavit in support of the Minister I would be lying. He then advised me that I could leave. The meeting lasted less than three minutes.

30 On 21 May 2015 I received a telephone call from Ms Netsianda, the head of Corporate Services of IPID. She informed me that she had a letter that the Minister wanted served on me that day. It was approximately 15h50. I was in Polokwane at the time. She was at the IPID head office in Pretoria. She indicated that she would come to me and when she was closer would telephone me so that we could meet. Ms Netsianda and I met later that evening. She handed me the letter. It was a letter of suspension.



- 31 The call was recorded through recording application on my phone and was transcribed by iAfrika Transcription marked "HIK6". She further confirmed through a confirmatory affidavit attached hereto marked "HIK7".
- 32 The letter of suspension had been signed by Mr Kgamanyane. It was apparent, however, that he was acting under the compulsion of the Minister.
- 33 Ms Netsianda and I met at a hotel just outside Polokwane. The meeting took place at approximately 20h30 to 21h00 that evening. She was accompanied by her husband. The fact that Ms Netsianda was prepared to travel almost 260 kilometres from Pretoria to Polokwane at the end of the business day and had made arrangements with her husband to accompany and drive her to meet with me suggests that the Minister had placed a great deal of pressure upon her to deliver the letter to me that day.
- 34 The involvement of the Minister and his interest to get us out of the department can be further deduced from the conversation between Mr Sesoko and Mr Kgamanyane which was recorded and transcribed annexed marked "HIK8". From this conversation it is clear that Mr Kgamanyane was carrying out the instructions of the Minister and not independently as the acting Executive Director of IPID.
- 35 If I had deposed to the affidavit in support of the Minister, I would in all probability not have been suspended or dismissed. This is apparent not only from what had transpired up to that point but also because of the subsequent settlement agreement to which I will refer shortly.

- 36 I was persecuted for my involvement in the so-called "*second report*". This was the first time I had ever been charged with misconduct in my career. When I was dismissed, it was after 16 years of loyal service in the department.
- 37 The disciplinary hearing against me started on 22 September 2015. IPID's legal representative, Advocate Mokhari, approached my attorney, Mr Phooko, to propose that the disciplinary proceedings against me be separated from those against Mr Sesoko. At that stage the disciplinary enquiry was to proceed against both of us simultaneously. Mr Sesoko had taken ill and was in hospital and the proceedings could not continue against him. Mr Phooko and I were seated in the boardroom where the disciplinary enquiry was to take place. Adv. Mokhari requested Mr Phooko to meet with him outside. They left the boardroom together. I remained in the boardroom. I was not involved in the discussions between them. After the two of them had met, Mr Phooko returned and requested to consult with me to explain what had been discussed and the proposals that had been made. Several discussions took place between Adv. Mokhare and Mr Phooko, on the one hand, and between Mr Phooko and me, on the other, in order for me to fully understand what was being proposed. When the exchanges were complete, I understood that what Adv. Mokhare had proposed was that my matter and that of Mr Sesoko would be separated and IPID wished to strike a deal with me. At some stage during these exchanges it had been suggested that I should provide IPID with a written statement under oath in which I admitted to the charges against me. I had rejected this proposal and made it clear that I was not prepared to do so. Eventually, the proposal that was made by Adv. Mokhare was that we enter into a settlement agreement in



which I pleaded guilty to the charges in exchange for a final written warning which would remain on my personnel file for six months. Adv. Mokhare explained that I would be given until the following day to consider the proposal. In the meantime, the chairperson was advised that the disciplinary enquiry of Mr Sesoko was separated from mine and that his enquiry would be postponed to a future date.

38 When Mr Phooko and I met to discuss the proposal he explained that Adv. Mokhare had made it clear that if I persisted in having a full hearing, I would be dismissed.

39 Mr Phooko, advised me that although I had a very strong case he recommended that I should accept the offer because I would be dismissed irrespective of the merits of the case. I cannot recall from my discussion with Mr Phooko whether Adv. Mokhare had actually stated that I would be dismissed "*irrespective of the merits*" of the case or whether Mr Phooko had merely inferred this. Either way, it was my understanding from what he had told me that I would be dismissed irrespective of the merits of the case against me.

40 I consulted with various members of my family. They advised me to accept the offer because the consequences of losing my job were far-reaching and more damaging than a final written warning. I telephoned Mr Sesoko who, as I have indicated, had been admitted to hospital at the time. He advised me not to enter into the agreement. He explained that if I accepted the offer I would forever be regarded as a person who was dishonest.

41 I felt that I had no choice. I had worked incredibly hard to reach that point in my career. At one stage I had lived under a bridge while putting myself through

university. My concern was that if I was dismissed I may find myself and my family living on the streets again. Under the weight of these unbearable choices, and placing the interests of my family first, I accepted IPID's offer and on 23 September 2015 we signed the settlement agreement. A copy of the settlement agreement is attached hereto, marked "HIK9".

42 On 25 September 2015, Mr Sesoko called me to ask me if it was true that I had falsely implicated him in the settlement agreement. I denied that I had. He told me that Mzilikazi Wa Africa from the *Sunday Times*, was going to publish a story about the settlement agreement and it would appear on the front page of the newspaper that coming Sunday.

43 It was clear to me that somebody associated with IPID had leaked the settlement agreement to Wa Africa. This was clearly contrary to the understanding that the settlement agreement was confidential and would not be made public.

44 It must be borne in mind that in terms of the settlement agreement I had pleaded guilty to the charges against me in exchange for a final written warning. The charges against me were that I was guilty of fraud and defeating the ends of justice. I have already explained that what I had done in producing the so-called second report did not and could not constitute a crime. I respectfully submit that Adv. Mokhare and Mr Kgamanyane must have appreciated this, as well. The agreement to provide me with a final written warning in exchange for pleading guilty has to be understood in this context. Mr Kgamanyane, as the Acting Executive Director of IPID, was the accounting officer as contemplated in the Public Finance Management Act, 1 of

1999. If he genuinely believed that I was guilty of fraud and defeating the ends of justice, he would be exposing himself to serious wrongdoing by agreeing to provide me with a final written warning.

45 To allay Mr Sesoko's fears, I drafted an affidavit dated 25 September 2015 in which I explained that my settlement agreement with IPID did not implicate him and there was nothing in that agreement preventing me from deposing to an affidavit in support of him. I faxed the affidavit to Mr Sesoko's attorney. I intended for him to use the affidavit in his own disciplinary enquiry. A copy of my affidavit has been attached above marked "HIK2".

46 I also informed Mr Sesoko that I would be willing to give evidence in support of him at his upcoming disciplinary hearing.

47 Mr Kgamanyane, the Acting Executive Director of IPID, got wind of the fact that I had deposed to an affidavit in support of Mr Sesoko. I do not know how details of this affidavit had come to the attention of Mr Kgamanyane. I understand, however, from a subsequent article that was published in the *Sunday Times* that the affidavit had been provided to Wa Africa by Mr McBride and the details of the affidavit were quoted in that article.

48 On Sunday, 27 September 2015, the *Sunday Times* published an article titled "*The Top Cop turns on McBride over Drama*". I annex a copy of this article hereto marked "HIK10".

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49 When reading this article, I realised for the first time how the settlement agreement had in fact not been a genuine resolution of the dispute between IPID and me, but was in fact part of the efforts of Mr Kgamanyane to justify the Minister's decision to suspend Dramat and McBride.

50 This was also made evident when I read an article that appeared in the *Mail & Guardian* on 22 April 2015. The article reported that in exchange for his resignation, Dramat had been offered a R3 million severance package, in addition to receiving R60 000 per month until he turned 60 years of age. I attach a copy of this article marked "HIK11". The article reported that according to a source "close to the process" the then National Police Commissioner, General Phiyega had made the settlement on behalf of the Minister, Mr Nhleko. In fact, it will be recalled that Dramat had not been suspended by General Phiyega. He had been suspended by the Minister.

51 The Werksmans report was dated 24 April 2015.

52 It was clear to me that the rendition investigation and the January report were convenient instruments to remove Dramat and replace him with General Ntlemeza. If there was a genuine belief that Dramat was guilty of the allegations against him, the Minister would not have concluded so generous a settlement with General Dramat.

53 When I presented myself to work on 28 September 2015, I received a call from Mr Kgamanyane who wanted to know why I had deposed to an affidavit supporting Mr Sesoko. I told him that I did so as it was the truth. After the settlement, I received a



letter from Mr Kgamanyane on 29 September 2015, asking me to provide him with reasons why he should not replace the final written warning, agreed to in my settlement agreement, with a dismissal. A copy of this letter is attached hereto, marked "HIK12".

54 On 30 September 2015, I responded to Mr Kgamanyane's letter, stating that there was nothing contained in the settlement agreement precluding me from deposing to an affidavit in support of Mr Sesoko. I reminded him that the settlement agreement signed by IPID was binding and that IPID was not entitled to renege on that agreement and replace the sanction agreed upon with a dismissal. I indicated that to do so constituted a repudiation of the settlement agreement and I accordingly intended to approach the High Court to set aside the settlement agreement and continue with my disciplinary hearing. A copy of this letter is annexed and marked "HIK13".

55 I was dismissed that afternoon. A copy of my letter of dismissal is attached, marked "HIK14". I might add that this letter of dismissal was also hand delivered to me at Limpopo by an employee of IPID from Gauteng who must have already left Pretoria to deliver the letter to me before I had responded to Mr Kgamanyane. Mr Kgamanyane, accordingly, dismissed me without any regard to the representations made by me. Less than an hour after I received the letter of dismissal, I also received a message from Mzilikazi wa Africa through Telegram (which is the name of a mobile telephone application) saying, "*how are you surviving the storm, do you wanna talk?*" I have not been able to find a copy of this Telegram. It was clear to me that he was referring to my dismissal. After all, he had only the week before published the article

in which he recorded that I had concluded a settlement agreement with IPID in terms of which I was given a final written warning.

56 I did not respond to his message. I was, however, surprised that he knew of my dismissal so soon. I later heard on a radio station that I had been dismissed and Mr Mokoena had been appointed Acting Provincial Head in my stead.

57 When Mr Sesoko was dismissed in his absence (as he was still admitted in hospital) by Advocate Zondo on 16 August 2016, I realised that the views expressed by Mr Phooka that had I not accepted the offer of settlement, I would have been dismissed anyway, were correct.

58 On 28 June 2019 Mr Maoka, who was the head of Litigation and Advisory Service within Programme 3 (Legal Services) of the IPID, provided me with a copy of an opinion drafted by Adv. T F Mathibedi SC. The opinion is attached marked "HIK15". Under paragraph 35 and 36 of the opinion, Advocate Mathibedi commented as follows:

"The conduct of Kgamanyane in summarily dismissing Khuba, is contrary to the plea agreement concluded between Khuba and IPID. In his submission, Khuba, and correctly so, contends 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 a contravention of the Public Finance Management Act, Act 1 of 1999 ("the PFMA"). The situation becomes grave when such unbecoming 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. The conduct of Kgamanyane referred to above occurred in violation of the constitutional rights of Khuba".

- 59 My dismissal was, however, not the end of my ordeal regarding the rendition investigation. I was harassed by members of DPCI who frequented my house mocking me about the challenges laying ahead of me after my dismissal. I recorded one of them attempting to persuade me to make a false statement against Mr McBride and Mr Sesoko. The transcript has already been placed before the Commission.
- 60 On 16 March 2016 I was arrested and criminally charged for fraud and defeating the ends of justice annexed marked "HIK16". I was kept in the holding cells at Pretoria Central Police station until I appeared in court and was released on R1500 bail.
- 61 After three court appearances, the charges were withdrawn against. This showed me that there was no justice which was being served and I had been a casualty of the manifest intent to have Generals Dramat and Sibiya and Mr McBride removed from office. Those in a position of power abused their positions and state resources in order to achieve this. Such experience has altered my life a great deal. It is an experience I will live with as long as I am alive.



C. REGULATORY FRAMEWORK THAT GUIDED THE RENDITION INVESTIGATION

62 I was appointed to investigate the rendition case in 2012 and received the docket Diepsloot CAS 390/07/2012 on 23 October 2012. This investigation was a National Investigation and interprovincial because the Zimbabwean National who were alleged to have been illegally renditioned, were arrested or kidnapped from Diepsloot in Gauteng but illegally renditioned through the Beit Bridge border gate in the Limpopo Province.

63 In the so-called first report that I prepared and signed, I indicated that the case had been investigated in terms of section 28(1) of the Independent Police Investigative Directorate Act, 1 of 2011 ("**IPID Act**").

64 The case was registered in the IPID Case Management System bearing Case Control Number (CCN) 2013030375 falling under Gauteng Province. This was in line with Clause 7.5.14 which provided that "*[w]here resources are utilised from multiple offices, the jurisdiction will remain within the Province where the matter arose, but the custodianship and supervision will reside with the CD: Investigation and Information Management who will establish the task team and the terms of reference*".

65 The investigation was guided by the SOP and Regulations to the IPID Act, annexed hereto marked "**HIK17**," "**HIK18**" and "**HIK19**". I was trained on the IPID Bill



before the IPID Act was promulgated and signed into power and was appointed to be a lead person in Limpopo and Eastern Cape. I conducted public hearings, made presentations and answered questions from members of the public about this bill. I participated in the drafting of the Regulations and the SOPs.

66 At the time of being appointed to investigate the illegal rendition of the Zimbabwean nationals, I was a Director responsible for investigation and acting Provincial Head for Limpopo office.

67 Even though I was a Director and also acting as a Provincial Head for Limpopo office, my appointment was that of a Case Worker which in terms of the SOP means, "*any official who handles cases and includes a Data Capturer/CMS Clerk, Investigator, Senior Investigator, Principal Investigator, Assistant Director Investigation, Deputy Director Investigations and Director Investigation*".

68 As a Case Worker, in terms of the SOPs my reporting obligation lay with the National Head of Investigation who is also a Programme Manager. At the time of receiving the appointment, Mr Sesoko was the acting National Head of Investigations appointed by Ms Mbeki.

69 According to clause 5.2.11 of the SOPs, the Programme Manager (PM) must coordinate and supervise interprovincial task team investigations and draft terms of reference for the relevant task team.

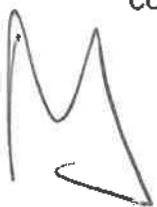
70 It was on this basis that I was required to report to Mr Sesoko and receive guidance in relation to the investigation from him. That having been said, it must be borne in



mind that Ms Mbeki had expressly and categorically instructed me not to work with, or to discuss the case with Mr Sesoko. This was not only unusual, it was contrary to the IPID SOPs, which required that all national investigations be directed by the National Head of Investigations. In fact, I had in other, unrelated matters involving national investigations, I had reported to Mr Sesoko as the National Head of Investigations.

71 Apart from guiding the investigation at various stages, Mr Sesoko ought to have quality-checked my report and made a recommendation to the Executive Director, Ms Mbeki, as outlined in the SOPs. She, then, had to approve the report and make the referral to the NPA. Mr July in paragraph 113 of his affidavit states that Mr Sesoko was at no stage my supervisor. This is not true. The SOP clearly indicates that in guiding an interprovincial task team, the Programme Manager must supervise such investigation. I will deal with this issue under a separate heading below.

72 Mr July states in paragraph 253.2 of his affidavit that Ms Mbeki will testify before the Commission that she never instructed me not to work with Mr Sesoko in the investigation but advised me not to put Mr Sesoko at the forefront of the investigation because he (Mr Sesoko) had a criminal record, which she was concerned might compromise the investigation. I have not seen an affidavit from Ms Mbeki to this effect and am not sure where Mr July got this information from. Nevertheless, on the assumption that Mr July correctly records what Ms Mbeki has told him, I deny this allegation. That is not what she told me. While it is true that Mr Sesoko had a criminal record, if Ms Mbeki believed that Mr Sesoko's criminal record could compromise any of the investigations he supervised, she would not have appointed



him as a Programme Manager and National Head of Investigations, as she had. Mr Sesoko had previously, under the Independent Complaints Directorate, been a Provincial Head at the level of Director in the North West Province.

73 When the IPID Act came into effect, Mr Sesoko was appointed by Mr Beukman as the Acting National Head of Investigations as the Programme Manager, stationed at national office in Pretoria. At the time, Ms Mbeki was the Head of Legal Services. After the departure of Mr Beukman, Ms Mbeki was appointed as the Acting Executive Director and she appointed Mr Sesoko as the Acting Head of Legal Services and the Acting Head of Investigations. It clearly makes no sense that she would allow Mr Sesoko to guide the Marikana investigation where more than 30 miners had died but demonstrate caution when it came to my involvement in a case of assault and kidnapping.

74 To demonstrate my state of mind at that point in time, I refer to my email dated 30 September 2013, a copy of which is attached above marked "HIK20". In that email, which was addressed to Ms Mbeki, I requested her permission to utilise the services of Mr Sesoko in drafting questions for both General Dramat and Captain Maluleke. The email reads as follows:

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

discussed with my supervisor Mr Mokoena and I will be back in the office on 2013/10/03".

75 I had written the email to Ms Mbeki precisely because of her previous instruction to me that I should not include him in the investigation. I was concerned that if I sought his assistance in drafting questions (as set out in the email), she may consider that I had acted in defiance of her earlier instruction and therefore sought her permission. If, as she apparently alleges, she had merely instructed me not to place him at the forefront of the investigation, the request set out in the above email would not have been necessary at all.

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

77 At that point, in January 2014, Ms Mbeki was no longer coming to the office as she had taken up employment with another Department. When I enquired about Ms Mbeki's availability from Ms Tshiamo Mahibila ("**Ms Mahibila**"), Ms Mbeki's secretary, to sign my report, she informed me that Ms Mbeki would only sign financial documents of IPID and not investigation related matters. I then signed the report and handed the report to Advocate Mosing, together with the docket. Previously Adv. Mosing had kept the docket, but allowed me to uplift it to update the docket. I thus

returned the docket to him when I provided him with my report. I was told by Adv.Mosing to include the investigators' report and correct certain things, which I did.

78 My signing of the report was contrary to the IPID Regulations. I did this only because Advocate Mosing insisted that I sign the report and hand it to him. There were investigations that were still outstanding. The outstanding aspects included statements and expert reports regarding the analysis of cell phone evidence as aforementioned.

79 Clause 7.10.4 of the SOPs provides that *"No Case Worker acting as DI/PH will approve the completion of a file investigated by himself or herself"*. This meant that I should have submitted the report to the Executive Director for approval in line with Reg. 5(3)(i).

80 In paragraph 41 of his affidavit, Mr July states that Adv. Mosing advised me that I should include an Investigator statement. I recall the discussion. In paragraph 115 of his affidavit Mr July states:

"Accordingly, when the report was submitted on 22 January 2014, Adv. Mosing advised Mr Khuba that in order to complete the investigation, it was necessary that he, as investigator appointed in terms of the IPID Act to conduct the investigation, incorporate his statement explaining how he conducted his investigation. As such, Adv. Mosing inscribed the word "draft" on that report".

- 81 Mr July seems to be receptive to the argument that 22 January 2014 report without the investigator statement qualifies as a "draft," despite me having made a recommendation and having signed the report (see annexure HIK 21). However, he claims that a final report in terms of the IPID SOP is the one which contains a recommendation. This is contrary to his above assertion that the report with the recommendation and signature could still be regarded as a draft by Adv. Mosing. If the absence of Investigator statement makes the report a draft, I was correct to regard the 22 January 2014 report with Investigator statement, recommendation and signature a "draft" because it did not have cell phone analysis, warning statements of suspects and other witnesses.
- 82 We were initially not aware that there had been two signed reports dated 22 January 2014. If indeed it is correct that Adv. Mosing wrote "draft" because he required me to insert my investigation statement and correct the matters he had requested me to correct in my October 2013 draft report, this does not take the matter any further because as a matter of fact, issues were outstanding, as conceded by Adv. Mosing and the report could not have been a final report. Moreover, even if it had at that stage been regarded as a final report, this would not preclude IPID changing its recommendations in the light of new evidence or a further analysis of the evidence at hand.
- 83 In paragraph 47 of his affidavit, Mr July states that a warning statement is not material evidence and that it is not required to render the report or the investigation final. It is interesting to note that according to Mr July, a warning statement cannot render a report with a recommendation "final" but an Investigator's Statement can.

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This is merely an expression of an opinion outside the ambit of the SOP: 001-POL-PR2 which define what final report is. Final report is defined as;

"An investigation report which documents the entire investigation and contains the conclusion, summary of affidavits and technical reports, written recommendations SAPS/DPP with regard to the actions of the SAPS/MPS member concerned".

84 From the definition, it is clear that a recommendation is not the only element required in the final report. The technical reports, which includes expert evidence, is equally important as appears from the definition. At the time when I submitted the January report, the expert analysis of cell phone records, which is a technical report, was outstanding. The warning statement is stated in clause 3 (c) of the SOP's to be a crucial statement that must be summarised in the IPID report. This is essential as it affords the person implicated an opportunity to respond to the allegation and may contain exculpatory evidence which could impact upon the recommendations made by IPID, if accepted.

85 Mr July again confused what is regarded as a complete investigation and final report in paragraphs 142 and 143 of his affidavit. The SOP defined completion as, *"a case investigative report where investigation has been completed but where a recommendation cannot be made to the DPP due to outstanding technical reports, however recommendations may be made to SAPS"*.

86 A completed investigation could not be sent for decision to the NPA without the expert report. However, the final report, which includes the summary of the

- statements obtained, recommendations and the expert report/s would be eligible for the referral of the docket for decision by NPA.
- 87 The position with regard to completion has been changed in the new SOP's because cases regarded as completed would just pile up in the office while they could not be decided upon by the NPA. The department has now moved from "**Completion**" to "**Decision Ready**" which therefore means that all cases will have all affidavits (including warning statements) and expert reports before referral NPA.
- 88 Mr July in paragraph 49 of his affidavit stated that the submission of a docket together with a report with recommendations does not prevent an investigator, in this case Mr Khuba, from placing additional information in the docket which has already been submitted to the NPA. This line of thinking is incorrect. The report is informed by what is in the docket and not vice versa. The NPA does not take decision based on what is in the report but what is in the docket. Whether the additional information was in the report or not, it could not have prevented the NPA from making a decision in this matter. There have been instances where we mistakenly put a wrong report in a docket for DPP decision, e.g. report relating to assault case on murder docket. The DPP would not return the docket but make a decision based on what is in the docket.
- 89 Under paragraph 261.2 of his affidavit, Mr July denies that Adv Mosing advised me through the email of 28 February 2014 to collect the docket but to simply a request by me to Adv. Mosing place the evidence in the docket. This interpretation is incorrect. The docket management in terms of filling of evidence is the responsibility



of the Investigator and not the prosecutor. I could not have delegated that responsibility simply because the docket was with the NPA.

90 Mr July further stated that what I purported to do on 28 February 2014 was to file additional information (warning statements from the Generals who had earlier refused) into the docket that had already been submitted to the NPA for a prosecutorial decision. This statement seeks to elevate the report above the docket, forgetting that the docket informs the report. It would not make sense to place new evidence in the docket without updating the report, as the report is based on the evidence contained in the docket.

91 Mr July during his interview with Adv. Mosing asked whether new evidence would justify changing the report or does one add to the report. The transcript is annexed marked "HIK22". Adv. Mosing said as follows under paragraph 5 on page 39;

"You would normally make a supplementary report to say: This was the decision at that stage, now I have conducted a further investigation, and this further investigation changes the initial recommendation"

92 Noting from the above response by Adv. Mosing, it is clear that another report to supplement the first one is important, more so if the evidence is crucial to alter the initial recommendation.

93 Under paragraph 84, Mr July stated that,

"The trio knew and was fully aware that IPID reports and recommendations were not insignificant. They matter. The deletions were effected in order to suit their

ultimate recommendations, viz. that no criminal charges should be levelled against General Dramat and Sibiya. This was done with the objective of misleading the NPA”.

94 It is not true that the January 2014 report was deleted. I signed the January report and submitted it to the NPA. I however might have worked on the soft copy that I sent to Mr Sesoko on 23 January 2014, which had already changed my recommendation with regard to General Sibiya. It cannot be true that January report was deleted. The NPA was in possession of the two reports when they made their decision as confirmed by Adv. Mzinyathi and Mr Baloyi during the interview with Mr July. The transcript is annexed marked “HIK23”. Mr July also confirms this in the Werksmans report under paragraph 5.4.14 that “*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. Mr July was well aware when he submitted his Werksmans report that those who dealt with the rendition case were never influenced and could not have been influenced by either the January or the March report.

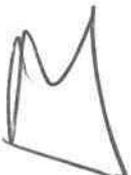
95 In page 23 under paragraph 20 to 25 and page 24 paragraph 5 to 15, Advocate Baloyi stated the following;

“There is so much made about the first and the second report, but I do not look at the 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 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. For our purpose 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 a file, and say – it's a summary basically, and it helps us in that way. Firstly, as I said, the reason why I did not 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 issue I would want to look at he might have overlooked".

96 Under paragraph 25 in page 24 to 25, Adv. Baloyi stated that he read the docket from the front to the cover page without looking at the reports. Despite this Mr July believes that NPA can and could have been influenced. However, those who made the decision in the case are in no way supporting what he says. If his investigation was objective, meaning he had no interest in a particular outcome, he would have captured the above line of thinking and explained why he does not agree with them.

97 I also called and discussed the issue of the report with another Advocate, Adv. Chabalala guiding the investigation of the task team I recently led. He confirmed that the NPA can never be misled by an investigator's report because it is merely an opinion. However, he said that an expert report can mislead the NPA because it forms part of evidence. I therefore believe that Mr July's persistence with this view in his affidavit despite our pointing out to him in our affidavits dealing with his report that this is contrary to what was expressly told to him by members of the NPA, is done solely not to concede that his recommendation in his report that we should be



charged for fraud and defeating the ends of justice were both wrong and defective. His credentials as outlined in his affidavit compels me to take this line of thinking.

98 The fact that IPID may be required to submit a report to the NPA, together with criminal recommendations appears in the Act does not make it peremptory that such a report be acted upon by the NPA. On the contrary, the converse is true; the NPA is obliged to act independently in making a decision whether or not to prosecute. The prosecutor may or may not take the recommendations made by IPID into account, but is in no way bound by those recommendations. If it was so in relation to recommendation to NPA, the Act would have given it the same weight as the disciplinary recommendation in terms of section 30.

99 In terms of section 7 (4):

"The Executive Director must refer criminal offences revealed as a result of an investigation, to the National Prosecuting Authority for criminal prosecution and notify the Minister of such referral".

100 This referral takes place by sending the docket to the NPA, which is a criminal investigation. The Act talks about referral of criminal offences revealed during the investigation. The practice of referring criminal investigations to the NPA, together with a recommendation arose as a result of the practice that took place during the ICD era in which dockets would have reports that contain recommendations to the NPA. It is not a requirement of the IPID act that a referral is accompanied by recommendations. This is confirmed by Adv. Mosing during his interview with Mr



July on 14 April 2015 in page 22 under paragraph 10 and 15 of the transcript. He said;

"It is true that when Khuba was requested to draft a report, because it was our understanding that the ICD previously – and now IPID – when they do an investigation they would compile a report, with clear recommendation as to who must be charged or not, and they then submit it with the docket. He did compile the first report which is dated 22 October 2013. I have a copy of it here. He submitted to us and then..."

101 The ICD was regulated in terms of Chapter 10 of South African Police Service Act 68 of 1995. This Chapter has since been repealed and replaced by the Independent Police Investigative Act 1 of 2011. In the same chapter, the ICD was never required to make recommendation to NPA but only to SAPS. Attached hereto is a complete Chapter 10 of the South African Police Service Act 68 of 1995, annexed marked "HIK24". Section 53 (6)(g) provided that,

102 The Executive Director may submit the result of an investigation to the attorney general's office for his or her decision.

103 On the other hand, section 53(6)(i) provided that,

"The Executive Director may submit recommendations to the commissioner concerned".

104 It is clear that even during ICD era, the Act never required that the recommendation be made to the NPA. The clear intention of the legislature is that recommendations

be made by IPID to the National Commissioner as to the appropriate disciplinary action that should be instituted against a member of the police services who has been investigated by IPID. This is a binding recommendation. The recommendation to SAPS is dealt with in section 30 of IPID Act which provides as follows:

"The National Commissioner or the appropriate Provincial Commissioner to whom recommendations regarding disciplinary matters were referred, as contemplated in section 7(6) and (7), must-

- (a) within 30 days of receipt thereof, initiate disciplinary proceedings in terms of the recommendations made by the Directorate and inform the Minister in writing, and provide a copy thereof to the Executive Director and the Secretary;*
- (b) Quarterly submit a written report to the Minister on the progress regarding disciplinary matters made in terms of paragraph (a) and provide a copy thereof to the Executive Director and the Secretary, and*
- (c) immediately on finalisation of any disciplinary matters referred to it by the Directorate, to inform the Minister in writing of the outcome thereof and provide a copy thereof to the Executive Director and the Secretary"*

105 The above section shows that the Legislature intended to make the recommendation by IPID to SAPS binding on the National or relevant Provisional Commissioner. Although the SOP requires the simultaneous referral of criminal conduct to the NPA with its recommendation of a disciplinary sanction to SAPS, I could not send a recommendation to SAPS because the investigation was not complete. I only

referred the matter to the NPA with recommendations in view of the the pressure from Adv. Mosing of NPA on me to do so.

106 Mr July, under paragraph 82 of his affidavit stated the following about the IPID recommendation to NPA:

“With this understanding of the framework applicable to IPID, it follows that its reports must be beyond reproach, objective and free from dishonesty on the part of those who prepare reports to be submitted and referred to the NPA. Although the prosecutions authority is not bound by the recommendations made by IPID in its reports, such reports are a useful tool in helping the NPA in making a prosecutorial decision. Therefore, it is important that the NPA is not misdirected or misled by IPID in its reports or recommendations. The recommendations by IPID are not some insignificant recommendations which can be rejected by the NPA without consideration. They are made for a reason by an institution performing a very important constitutional function, i.e. to keep police action in check”.

107 The above insertion is contrary to what Mr July stated in the Werksmans report. I would also like to demonstrate that what is now averred by Mr July is unfounded and represents a desperate attempt to now advance an argument that the NPA could have been (not was) misled by the so-called second IPID report.

108 On 31/01/2019, a recommendation report to the NPA was signed by a member of Provincial Management in my province annexed marked “**HIK25**”. This report does not have summary of statement (despite the docket having 12 statements), analysis

of evidence and specific recommendation on who to charge and with what offence. Its recommendation is as follow;

“Based on the information contained in the case docket, it is the view of the IPID that the NPA should in terms of section 179(2) of the Constitution of the Republic of South Africa make a decision whether or not to prosecute or institute criminal proceedings against the member and to carry out any necessary functions incidental to instituting criminal proceedings”.

109 The above recommendation clearly demonstrates mere referral to NPA. A recommendation expressed in a report is merely the opinion of an Investigator.

110 The NPA took a decision not to prosecute on 15 February 2019 in relation to the same case, with no significance attached to the recommendation report annexed marked “HIK26”. The truth is, a referral to the NPA primarily serves as a useful tool to the prosecutor to enable him/her to navigate the docket. This is also supported by both Adv. Baloyi and Adv. Muzinyathi who stated they took a decision without considering the two reports despite having the reports at their disposal.

111 Unlike the recommendation to the NPA, the SAPS recommendation contains analyses of evidence and a specific recommendation as appears from the departmental recommendation attached hereto marked “HIK27”. The reason for this is to give effect to section 30 of IPID Act 1 of 2011 which compels SAPS to consider IPID’s recommendation. It is therefore clear that IPID recommendations to SAPS are not some insignificant recommendations which can be rejected by SAPS without consideration.

112 In paragraph 137 Mr July quoted what was stated by Mr Angus as follows:

“what ANGUS says, is that what you believed to be the factual situation at the time when you signed the report, even if it changes later on, that report remains the final report. If things have to change you will then have to deal with it, and how do you deal with those issues that have cropped up”

113 My response to this question was aligned to the value of the recommendation to the NPA. Even if I had only attached the additional evidence and not updated the report, it would not have changed anything with regard to the manner in which the NPA makes the decision on cases. The same applies to the update that I did resulting in the so called March report: it did not affect the decision which NPA took on the matter. This was confirmed by Adv. Baloyi during his interview with Mr July that he did not look at the reports because they are not evidence.

114 Even though one can regard a report with recommendation as final, my situation was different when it comes to January report because I had outstanding evidence but I was under pressure to submit the docket and the report to Mosing. During my interview with Sandile July in 26 March 2015, 13 April 2015 and 23 April 2015 I was able to show that there was outstanding evidence. The fact that a report with recommendations can be regarded as final, does not make the January report a final report. Adv. Mosing and also Adv. B Moeletsi also identified such report as a draft in their statements submitted by them in the criminal proceedings against us, despite the fact that it had recommendations and my signature. I have annexed these statements to my response to the Werksmans' report.

115 In paragraph 3.1.3 of Werksmans report, 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. The email by Advocate Mosing to Ms Mbeki dated 05/07/2013 hereto annexed marked "HIK28", illustrates that they were going to decide in this case as it says:

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

116 No one draws up charge sheets without having taken a decision on who to charge and with what offence. It is clear that a decision was taken by him, instructed by his principals. Whether it is a provisional or final charge sheet, it always contains names of accused persons and charges which shows that a decision has been taken. It is not true that we knew that he was not going to decide on this matter.

D. MY INTERVIEWS WITH WERKSMANS

117 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.

118 I wish to repeat that at the start of my interview I expressly asked Mr July if I was being investigated, either criminally or for disciplinary purposes. I was assured by Mr July that this was not the case. However, this does not appear from the transcript provided by Werksmans to Adams and Adams. This does, however, appear from the transcript of Mr Sesoko's interview with Werksmans, who asked the same question and was given the same assurance. Mr July has stated in his affidavit to the Commission responding to Mr McBride's affidavit that they did not have the transcript of Mr Sesoko's interview, apparently because Mr Sesoko mistakenly took Werksmans' recording device. Mr Sesoko denies this and has told me that he sat on the other side of the table and his recording device was nowhere near that of Werksmans'. He says he would have had to reach across the table in order to take Werksmans' recording machine. This is also contrary to the email dated 3 June 2015 sent by Werksmans to Mr Marais of Adams and Adams annexed hereto marked "HIK29". In that email by Mr Buthelezi it is stated that :

"During the Sesoko interview, we experienced technical problems with the recording, However, Mr Sesoko has an audio recording of the interview".

119 This email was sent in response to the request for the recordings from Werksmans.

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120 Moreover, in our criminal proceedings, Mr July deposed to an affidavit dated 23 March 2016 in which he stated that the first consultation with me on 26 March 2016 was not transcribed and instead attached "a copy of a draft summary of the interview, which was drafted by a candidate attorney at Werksmans, Mr Kwazi Buthelezi". I annex marked "HIK30" and "HIK31" respectively a copy of the affidavit deposed to by Mr July and the notes taken by Mr Buthelezi. These notes do not record the assurances given to me by Mr July.

121 It is not true that the interview with me was not transcribed; the transcript was provided by Werkmans itself to Hogan and Lovells, the attorneys representing IPID in our disciplinary proceedings. The transcript is annexed marked "HIK32". Pursuant to an arrangement between Mr Marais and Werkmans, these transcripts were obtained from Werkmans and sent by Hogan Lovells to Adams and Adams on 27 May 2015. My first interview with Werkmans had thus been transcribed a year before Mr July deposed to his aforementioned affidavit. I dealt with this in paragraph 8 of my supplementary affidavit. Mr July does not deal with this in his response to my affidavit. He also does not explain why the recording was not provided to the NPA.

122 I have noted that most of what I said during the three interviews has been quoted and taken out of context by Mr July in his statement. I read all my transcripts in relation to what was raised by Mr July in his affidavit. There are many instances where he posed long statements with multiple assertions. He apparently understood my response of "yes" as my confirmation of the correctness of his assertions. That is not correct. I was merely acknowledging what he was saying and not necessarily

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confirming its correctness. This is evident through what I said after acknowledging the issues he wished me to deal with.

123 I should further state that my interviews with Werksmans took place more than a year after submission of the first report to the DPP. I did not have all the documentation before me. Subsequently, I was called upon to prepare affidavits. I had to comb through my emails to prepare my evidence. This process assisted in reminding me of some facts that I had forgotten about.

124 Mr July statement to the commission raised issues of concern to me regarding supervision which I would like to respond to.

125 In paragraph 184 Mr July stated that he does not know in what capacity Mr Sesoko was apparently "*advising*" me nor why it was necessary for him to do so given that two NPA prosecutors, Advocates Mosing and Moeletsi were advising me. Mr July fails, with respect, to appreciate that the IPID reports are done by IPID for the NPA and not by IPID in collaboration with NPA. The SOP's regulate the conduct of IPID officials and not the NPA. Adv. Mosing was supposed to guide the investigation and not the report. Mr Sesoko, on the other hand, was supposed to guide both the investigation and the report. Unfortunately, he could not guide the investigation because I was instructed not to involve him. The only opportunity he had to guide the investigation was after I had been instructed by Mr McBride to involve Mr Sesoko after hearing that I had been told by his predecessor, Ms Mbeki to exclude him. This instruction was given as he was obliged to act as my supervisor in preparing the report from IPID to the NPA.

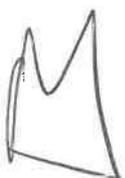
126 It should be noted that the rendition investigation started in October 2012 and ended in March 2014. The narrative that Mr July gives only focuses on the events of January 2014 and March 2014 when the so called first and second reports were submitted.

127 Under paragraph 113 of his affidavit, Mr July stated the following;

"It follows that Mr Sesoko, was never at any stage Mr Khuba's supervisor. Even as Head of Investigatio, he was not a supervisor of the Chief Director Investigation in terms of the Act, Regulatios and SOP".

128 This is not true. Mr Sesoko recommended my claims as a supervisor at the time when he occupied the same position I held (see annexure **HIK33**). My performance assessment for the Financial Year 2013/2014 reflect him as a supervisor annexed marked "**HIK34**". Mr July further contradicts his own assertion under paragraph 30 with what he said under paragraph 62.3 where he stated that "on 2 March 2015 the same email was forwarded to Mr Sesoko under cover of a separate email, requesting him to grant Mr Khuba permission to consult with Werksmans for the purposes of the investigation". If his assertion under paragraph 30 was correct, he would not have sent an email to Mr Sesoko requesting him to grant me permission to consult with him.

129 During my interview with Mr July on 13 April 2015, he made reference to my interview where I stated that Mr Sesoko was my supervisor at a particular stage of the investigation. This is on page 2 paragraph 15 where said the following:



"But he may not have seen the report. You also testified that he was your senior sort of, although the Executive Director gave you specific instructions not to involve him, you did inform him about the report".

130 This question was asked by Mr July specifically acknowledging that I informed him that he was my supervisor or senior, and I was given specific instruction not to involve him. This means that he could not carry out his supervisory duties over the rendition investigation because I was instructed not to involve him.

131 This issue of supervision also appears under paragraph 114 and 116 of his affidavit. The comments were taken from the transcript dated 26 March 2014 where I said that:

"I was worried, and I then phoned ADVOCATE MOSING, 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."

132 The above comment is correct and one has to understand that I was appointed on 23 October 2012, Sesoko, the Acting Head of investigations, handed a letter of appointment and a docket to me to investigate the illegal renditions of five Zimbabwean nationals (Diepsloot CAS: 390/O7/2012). At that time, Mr Sesoko was a Programme Manager – Investigation and Information Management (IIM). Since the rendition investigation was both a National and a Interprovincial investigation, it had to be managed and supervised by the Programme Manager. At the beginning of this investigation I was instructed not to involve him in the rendition investigation.

133 Furthermore, at the beginning August 2013, things started to change regarding acting in higher positions. I was sent to Eastern Cape for one month, while Mr Sesoko was sent back to Mafikeng. Mr Morema was appointed as an acting National Director Investigations, until his fall out with Ms Mbeki.

134 From September 2013, I was supervised by my Deputy, Mr MD Mokoena who was appointed Provincial Head for Limpopo province. He could not approve the rendition investigation despite being my supervisor because the investigation was not provincial but National. His acting letters for four consecutive months including January 2014 when in the January report was submitted to Mosing are annexed hereto marked "HIK35", "HIK36", "HIK37" and "HIK38".

135 Again in paragraph 181, Mr July stated that even if section 7(4) empowers the Executive Director to approve and sign a report prepared by an Investigator (which is not correct), it should be recalled that Mr Khuba signed the first report, both as an Director Investigation or as a Provincial Head. This justification is incorrect because Clause 7.10.4 the SOP's provides that:

"No Case Worker acting as DI/PH will approve the completion of a file investigated by himself or herself".

136 My email date 30/09/2013 to Ms Mbeki which I also testified about to the commission and says:

"With reference to my response to adv. Mosing, on 02/10/2013 we will be meeting with Adv. Mosing in an attempt to draft questions for the purpose of

interview with both General Dramat and Lt Col Maluleke. Humbly request the services of Mr Sesoko during the meeting. I have already discussed with my supervisor Mr Mokoena and I will be back in the office on 2013/10/03".

137 The above email including annexures are annexed above marked "HIK35"- "HIK38". It clearly shows that from September 2013 to the end of January 2014, Mr Sesoko was not my supervisor and I was then barred from reporting the rendition investigation to him. I was appointed to act again as the Provincial Head for Limpopo office in February 2014 when Ms Netsianda was appointed as acting Executive Director by the Minister.

138 Under paragraph 116 of the Mr July affidavit, he quoted my comment I made in my interview dated 13 April 2015 in which I emphasized the predicament I found myself in regarding the January report. I was informed that I should not involve Mr Sesoko in the rendition investigation and making me signing off would have been in contravention of the instruction given. Mr Sesoko would not have approved the report, even if I was allowed to involve him, as he did not have the approval authority but could have only recommended. These events that happened at a time of reshuffling of acting arrangements across the apartment resulted in me reporting directly to Mokoena, who was responsible for provincial investigations.

139 Under paragraph 197 and 198, Mr July stated that the version of McBride is contradicted by Khuba during his interview with Werksmans. Mr July further stated that the docket they collected had the first report in it. This is not true. My response during my interview with Mr July on 23 April 2015 is at page 22 of the transcript,

under paragraph 5 to 20 was, I cannot remember but I know that when we send dockets the report is part of "B". I have also testified about this before the commission that when I checked the diary, I realised that the report was not noted as being part of the docket. Adv. Mosing also said during his interview with Werksmans that I submitted a signed report which he regarded as a draft but he requested me to submit another report with my Investigator statement, which I did on the later date. This means that the report was handed to him and not filed in the docket. This report was urgently requested because Adv. Mosing noted mistakes which he had said had to be corrected on the draft of 22 October 2013, had not been corrected in the report dated 22 January 2014. Adv. Baloyi, however, confirmed that he had both reports which supports the fact that it was not removed.

140 Mr July stated under paragraph 181 states that Mr Sesoko was aware of the January report. This is not in disputed because I sent a report on 23 January 2014 to him. However, this was not the first report as the one I sent him was my amended report in which I had changed my prior recommendation that General Sibiya be charged. What he did not know was whether I had already sent a report to NPA in which I had recommended that both General Dramat and General Sibiya be charged. The report I sent to Mr Sesoko is not the same as what I sent to Mosing.

141 Mr July, under paragraph 182 stated that I further confirmed that during February 2014 I, Mr Sesoko and Col. Moukangwe attended at the NPA's offices and demanded that arrest warrants be issued against the suspects implicated in the first report, because, so he said, the NPA was taking its time in making a decision to prosecute.



142 Under page 2 paragraph 20 and page 3 under paragraph 5 to 15 of the interview with Werksmans on 13 April 2015, Mr July asked as follows:

“Mr July: So when McBride asked you – may be before McBride, do you remember the date when you went to see the NPA?”

143 My answer was that I cannot remember but it was before Mr McBride joined us. I never went with Col Moukangwe and Mr Sesoko to demand warrants for the arrest of Generals Dramat and Sesoko from the NPA. On the contrary, I had already changed my recommendation with regard General Sibiya. What I also remember is that in meetings we had with adv. Mosing, Col Moukangwe would always asked him about when are were arresting these Generals. Mr Sesoko was not part of these meetings. I was so used to it that I never took it seriously. I never personally asked Adv. Mosing for warrants of arrests. I never met with Adv. Mosing personally or anyone else at the NPA after I signed the so-called first report.

144 If the issue of the warrants was true, it could have been confirmed by Mosing during his interview with Mr July. The issue about the warrants cannot be true because after I submitted the docket and the report to Adv. Mosing, my further interaction with Adv. Mosing about the case was through the emails dated 27 and 28 February 2014. It is a common cause that if we had sought warrants we would have sought them from Adv. Mosing who was guiding the investigation. However, Mr July asked Adv. Mosing whether he met with me, Moukangwe and Sesoko as confirmed by Mr Moukangwe and Mr Khuba. Advocate Mosing responded as follows:

"I think the only time I met MR SESOKO was once, when he was part of this thing. That that could not be the meeting that is referred to. I remember it was also at a venue which was not the usual venue where they use to meet. Due to the nature of the case, we were also meeting at the office places because of the need to keep the matter confidential. That was the only time SESOKO came, and it was here at the PETROPORT".

145 It is clear from the above interview with Adv. Mosing that there was no meeting were warrants of arrests were sought from him with Mr Sesoko. However, even though Mosing said he met with Mr Sesoko once at Petroport, Mr July seems not to take his version in this instance. I explained in my evidence before the Commission that I had asked Mr Sesoko early on in the investigation to meet the people I had been told to work with at the Petroport as I was concerned about my instructions to keep their involvement secret.

146 Mr July stated under paragraph 225 that I had a discussion with him off the record in which I told him that I was afraid of Mr McBride because of his struggle credentials. I deny that I ever told them or anyone that I was scared of Mr McBride. During the discussion I shared with them an incident that I have already testified about at the Commission. This happened when Mr McBride, Mr Sesoko and I went to the KZN office and decided to see the former Premier Senzo Mchunu. During such meeting, Mr McBride told Mr Mchunu that Minister Nhleko told him that the comrades in KZN would not be happy with him if he continues to investigate corruption cases against Toshan Panday. Mr McBride asked the premier whether it was true that he would not be happy and if he is protecting corruption. Mr Mchunu immediately

responded by saying that he was not saying that it was not him who was unhappy and that he wanted Mr McBride to investigate corruption.

147 I was very surprised about how bold Mr McBride was in challenging the Premier after he had been told what the Minister had said. It was not that I was afraid of Mr McBride, but rather that I was surprised how bolden he was in the face of political pressure. Having served under people who were so afraid of the politicians that when the Minster wanted something, everything would stop in the Department to attend to his/her request or instruction, I could not believe what I had witnessed Mr McBride doing. It was this that I conveyed to Werksmans; it had nothing to do with my being afraid of him, but rather being shocked at how strong he was in standing up to politicians.

148 This was something that I was unable to do when faced with the instruction from Ms Mbeki to exclude Mr Sesoko, when I knew that he ought to properly have supervised the rendition investigation, and to work with Colonel Moukangwe, when I knew that properly, an IPID investigation was supposed to be independent. I also succumbed to pressure when I was persuaded by Adv. Mosing to sign the so-called first report, knowing full well that Mr Sesoko had to quality check it and that Ms Mbeki, as the Executive Director, had to approve and sign it.

149 I mentioned this to Werksmans as it had created a strong impression in my mind and had occurred two days before my interview with Werksmans.

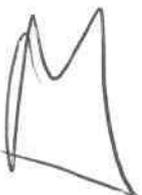
150 After explaining what happened, Mr July asked me whether he was a suitable person as the IPID had and my actual words were I have my reservations. It was after my

experience with Minister Nhleko and Mr. Kgamanyane that made me to realise that his approach to the Premier was the correct one.

151 I concluded a settlement agreement with the department on 23 September 2015 in which I pleaded guilty to the charge. If it was true that I was afraid of Mr McBride, I would never have done this. In my plea agreement I consulted Mr Sesoko, a person I was charged with and not Mr McBride.

152 Under paragraph 247.9, Mr July stated that it cannot be true that the involvement of CIG undermined the independence of IPID. This is in relation to the comment I made during the interview of the 27 March 2015 that Colonel Moukangwe was very supportive during the investigation. Being supportive does make the involvement CIG's right. It was precisely because of the involvement of Crime Intelligence and the instruction of Ms Mbeki to exclude Mr Sesoko that made Mr McBride adamant that the whole investigation should be re-looked at under Mr Sesoko's supervision when I briefed him on the investigation. I understand that this was because of the involvement of Crime Intelligence officers in the rendition itself.

153 During my interview with Mr July on 23 April 2015 dealt with by him in paragraph 252.8 and 252, I outlined what happened when I collected the docket from Adv. Van Zyl. The report mentioned was not the January 2014 report but the expert cell phone report relation to the analysis of General Sibiyi's cell phone records. It is not true that I was instructed by Mr McBride to collect the docket. On the contrary, I requested his permission to travel to Gauteng in order to uplift the docket. It is normal procedure to collect a docket to update the docket as the investigator is the administrator of the



docket. In addition, it was necessary for me to have the physical docket in order to go through its contents with Mr Sesoko following the instruction from Mr McBride that I do so.

- 154 Under paragraph 42, Mr July stated that Mr Sesoko was involved in the preparation and submission of the first report to the NPA. This is not true. Mr July is confusing the process in the second report with that of the first report. Mr Sesoko was not involved in the drafting of the first report but was involved in the drafting of the second report.

E. OUTSTANDING EVIDENCE

- 155 When I submitted the so-called first report in January 2014, there were some outstanding investigations which Adv. Mosing was aware of. This included the analysis of the cell phone records of the suspects, warning statements and witness statements. The latter included Ms Qoboshiane's statement which I only got subsequently on 17 February 2014.

- 156 Under paragraph 131, Mr July stated that I was in possession of the expert report but was not happy about it. He further stated that,

"It should thus be emphasised that the expert analysis was not new evidence, it was merely a typed version of the handwritten analysis that had been previously provided".

157 This is not true. The first draft was a spider web that showed numbers that called certain individuals such as Captain Maluleke, General Sibiya and General Dramat but there was no plotting that could show their location when they made or received calls. I could not prove that General Sibiya was at Fourways on 5 November 2010 without plotting coordinates on google maps. It is not true that the draft was hand written. The draft was a typed version. However, the expert had written on it during our discussion when I explained to him precisely what was needed. If this draft was anything to go by, it is questionable why Adv. Mosing could report such analysis as outstanding in his memorandum dated 12 November 2013 to Adv. Jiba and memorandum dated 13 February 2014 addressed to both Adv. Jiba Adv. Chauke annexed marked "HIK39" and "HIK40".

158 Under paragraph 132 of his statement, Mr July stated that Mr Khuba dealt with an analysis of General Sibiya's cell phone records under paragraph 5.5 of his first report and explained what was discovered after those records were analysed. He further stated that analysis showed that General Sibiya had been kept updated on the progress of the three operations that formed part of the rendition of the Zimbabwean Nationals. The analysis mentioned above was not an expert analysis by my own assessment or opinion which cannot be admissible in court. Expert analysis was key to explain these patterns and location of such individuals when they made or received calls.

159 Mr July further confuses the cell phone analysis with the handwritten expert report. Under paragraph 130 he stated that;

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"Adv. Mosing's reference to "Handwriting expert reports" is to the handwritten expert report of the analysis of Gen. Sibiya's cell phone records. It is the same report Mr Khuba referred to in his interview held with us on 27 March 2015".

160 This is not true. The "Handwriting Expert Reports" mentioned in Adv. Mosing memorandum is an analysis of handwriting on documents which Captain Maluleke used purporting to be authentic Home Affairs documents. Such handwriting examination was done by Lieutenant Makgalwa and is annexed marked "HIK41". The one I referred to during my interview on 26 March 2015 is the spider web on calls received and made by certain individuals which was scribbled on by the cell-phone expert during our discussion. His report was not handwritten but typed. He merely made notes on the spider web report during our discussion. These notes in no way constituted his final report. I do not have a copy of this spider web report as it is contained in the docket.

161 Under paragraph 133, Mr July stated that eye witnesses corroborate each other in their assertion that General Sibiya was at the scene of operation. He also stated that analysis showed that General Sibiya had been kept updated on the progress of the three operations that formed part of the rendition of the Zimbabwean Nationals. He quoted paragraph 32 of my January 2014 report which states that:

"There is evidence and witnesses corroborate each other that General Sibiya was both at the scene and planning venue".

162 He also quoted from my January 2014 report which says that in other operations cell phone record of Warrant Officer Makoe, Captain Maluleke and Col Neethling clearly

showed continuous contacts with General Sibiya during and shortly after the operation.

163 Mr July takes these as strong evidential material to suggest that General Sibiya was involved in the rendition of Zimbabwean nationals.

164 However, Mr July fails to appreciate that if he had indeed had General Sibiya been at the same scene of the operations as claimed by the witnesses, there would have been no need for them to continue to call him during the course of the operation to update him. With respect, Mr July cannot have it both ways; he cannot both accept the version of the so called witnesses which place him at the scene and accept that he was receiving SMS messages updating him of the progress in the operation. Had he been at the scene of operation as alleged, there would not have been any need to update him on the progress of the operations.

165 In paragraph 131 of Mr July's affidavit, he states that in his interview with Col. Moukangwe on 30/31 March 2015, he confirmed that when the first report was submitted to the NPA, they were in possession of and knew about the analysis of General Sibiya's cell phone records, that the analysis placed Gen. Sibiya in Pretoria and that they (Col. Moukangwe and Mr Khuba) had questioned the eye witnesses on this issue before submitting the report. This is not true. The interview with witnesses was done by me to establish how the Zimbabwean nationals knew General Sibiya by his first name, considering that he was such a senior person. These interviews took place way before the issue of the analysis of General Sibiya's cell phone records.



166 I further stated the following in my interview with Mr July on 13 April 2015 under from line 25 p4 of the transcript,

"Let me expand. There was a telephone record we got in terms of section 205. That telephone record was like a raw data. It was not yet integrated to an extent where it could guide us to say where? I need to be very clear, because I was one of the people who was persistent that this person must be put as a suspect – what is his name?"

167 It is clear from my discussion with Mr July that the cell phone analysis of General Sibiya's cell phone record was a deciding factor in changing my initial recommendation that he be charged. I would have been entirely remiss had I not changed my recommendation in the face of this evidence. It is for this very reason that I changed the report which I sent to Mr Sesoko on 23 January 2014 to amend my recommendation that General Sibiya be charged. Under paragraph 15 of page 7 of my interview with Mr July on the 13 April 2015, I indicated that the report I have sent had already changed it might not be on recommendation.

168 In paragraph 140 Mr July stated that:

"It has also been claimed that an expert analysis of Col. Madilonga's statement was also outstanding when the first report was submitted. This is not true. During the interview with Werksmans on 27 March 2015, Mr Khuba told us that Col. Madilonga's statement was taken to an expert for analysis in September 2013".

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169 Even though the statement analysis was done in September 2013, I was only able to receive the statement analyses report in March 2014. This report is dated 17 March 2014 and is annexed marked "HIK42". The analysis only dealt with Colonel Madiionga statement with markings and footnotes without indicating the person who analysed such. The report is core in the admissibility of expert evidence and identity of such expert is crucial. I thus still required the expert to provide a letter enclosing her report confirming that she had undertaken the analysis.

170 Mr July states in paragraph 122, the first report included Dramat's warning statement (which is dealt with at page 29, paragraph 1 of the report). He states that I identified General Dramat's statement as A94 of the docket. He further stated that it is not true that General Dramat's warning statement was outstanding when the first report was submitted to the NPA.

171 General Dramat submitted two statements. The first one is the one Mr July has referred to as A94. This first statement did not have the details required because he only gave his political background and did not specifically address the issues relating to the case itself against him. His first statement was received on 23 October 2010 by email from Ripley Incorporated, annexed here together with the statement annexed marked "HIK43". He complained about the questions being too broad in our first request. Adv. Mosing advised me to send further questions for him to respond properly to the allegations levelled against him.

172 I then sent the questions to his attorney His lawyer responded on 12 November 2013 in which they requested indulgence as they were still waiting for the SAPS to

approve the cost of legal assistance to General Dramat annexed marked "HIK44". I copied the email received to Adv. Mosing who responded on 13 November 2013 as follows;

"Noted. Has the questions been forwarded to him I assume. I thought that in his previous correspondence he indicated that he will not be making use of the state Attorney's office anymore. I will await your response thereto".

- 173 The above comment by Adv. Mosing clearly shows that he was aware of the further questions sent to General Dramat after the initial statement we had received from him in October 2013. His second statement was not part of the January report. In the docket it was filed as 94/2 in March 2014 as a supplementary statement.
- 174 I have already stated even before the commission that the change in the view towards General Dramat was as a result of the review of the evidence performed under the supervision and guidance of Mr Sesoko which made me understand that what we (Adv. Mosing and Moelelsi and Colonel Moukange and I) regarded as evidence against Dramat was in fact not evidence, but purely supposition that could not ground his criminal prosecution. It is apparent that Adv. Mosing was in agreement that the expert cell phone analysis of General Sibiya's cell phone records made it clear that that any charges against him based on the witness statements were not sustainable.

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F. CONCLUSION

175 There is no doubt that the Werksmans report was used to justify departmental and criminal charges against us.

176 Mr July understanding that the NPA could have been influenced by an IPID recommendation to justify a charge of defeating the ends of justice against us was without foundation and contrary to what he had been expressly told by the prosecutors seized with the decision whether to prosecute Generals Dramat and Sibiya. I find it remarkable that he has, in the face of all of the evidence, defended his recommendations that not only Mr Sesoko, Mr McBride and I be charged, but that Generals Dramat and Sibiya had a case to answer in the rendition investigation.



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 22 day of July 2019, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

D.W. N.M. Meyer
016(3082)

COMMISSIONER OF OATHS

FULL NAMES:

Dietrich Moritz Meyer

SOUTH AFRICAN POLICE SERVICE
CLIENT SERVICE CENTRE
MIDRAND
22 JUL 2020
SUID AFRIKAANSE POLISIEDIENS

DESIGNATION:

Midrand SAPS.
Amulet Rd Halfway House

ADDRESS:

Midrand



ANNEXURE “HIK 1”



HIK1
ANNEXURE H

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.

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6.1 During and about October 2011, allegations about the SAPS involvement in the illegal rendition of Zimbabwean nationals were first reported in the *Sunday Times*. The media reports prompted a Parliamentary question from a COPE Member of Parliament to the Civilian Police Secretariat ("the Police Secretariat") on 28 October 2011, about the alleged SAPS involvement in the illegal rendition of Zimbabwean nationals.

6.2 Shortly thereafter, the then Executive Director of IPID, Mr Francois Beukman ("Beukman") instructed Matthews Sesoko, the then Acting Chief Director of Investigations at IPID ("Sesoko") to initiate an investigation into the matter. Beukman advised Sesoko that the head of the Police Secretariat, Ms Jenny Irish-Qhobosheane ("Irish-Qhobosheane") had requested an investigation into the allegations raised by COPE. This meeting is confirmed by Sesoko, whose affidavit accompanies this affidavit.

6.3 Sesoko appointed me to head the investigation. However, not long thereafter, Beukman, Sesoko and I were called to a meeting with Irish-Qhobosheane. We were instructed to hold-off the investigation apparently on the instruction of the then Minister of Police, Mr Nathi Mthethwa.

6.4 About a year later – during or about early October 2012 – Colonel Moukangwe ("Moukangwe") of the SAPS Crime Intelligence Gathering division ("CIG") came to Sesoko's office at IPID. Moukangwe handed over the docket that CIG had opened into the

Handwritten notes:
 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.

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renditions matter. Moukangwe advised Sesoko that an investigation had already been conducted by CIG, and that the matter was being handed over to IPID on the instructions of the Minister of Police (Mr Nathi Mthethwa). After consulting the new Acting Executive Director of IPID, Ms Koekie Mbeki ("Mbeki"), Sesoko handed over the CIG's docket to me for investigation. These facts are confirmed by Sesoko.

6.5 Shortly after I began my investigations, I briefed Mbeki on the case and informed her that I would consult with Sesoko in the course of the investigation. This was common practice. As the National Head of Investigations at IPID, Sesoko was ordinarily consulted and briefed on all national investigations.

6.6 To my surprise, Mbeki categorically instructed me not to work with or discuss the investigation with Sesoko. Mbeki instructed me instead to collaborate with Moukangwe from CIG in the conduct of the investigation, and to keep this collaboration secret. This was the first and only time that I had received such instructions about an investigation. - Not informed Mbeki about this

6.7 Mbeki's instruction was an unusual and problematic one because members of the CIG were themselves involved in the arrest of the Zimbabwean nationals that were subsequently rendered to Zimbabwe. It also seemed to be a problematic instruction given the widely known history of animosity between Lieutenant-General Richard Mdluli ("Mdluli"), the previous Divisional Commissioner of

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CIG, and Major-General Shadrack Sibiya ("Sibiya"), then the Provincial Head of the DPCI for Gauteng Province and who was one of the subjects of the investigation.

6.8 I was instructed by Mbeki to report directly to her in the matter, and to keep her abreast of the progress in the investigation through regular reports. I sent weekly progress reports on the investigation to Mbeki, and also periodically sent her copies of the working draft of the investigation report.

7 On perusing the file of CIG's investigation of the rendition, I became concerned that the investigation that CIG had conducted was not reliable or adequate. This was because -

7.1 The CIG investigation file comprised of statements of CIG members who were involved in the rendition operation, as well as statements of Zimbabwean nationals (including the victims of the illegal renditions and relatives of victims). However there were no statements from any Home Affairs officials or members of the Tactical Operations Management Section of the DPCI ("TOMS") who were allegedly involved in the rendition operation.

7.2 The statements that CIG had obtained, particularly those of the CIG officials, were replete with hearsay. Also, the language used to describe Sibiya in one of the CIG witness statements was remarkably similar to the language used by a CIG official to describe Sibiya in another case involving Sibiya that I was

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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.

Its a lie as Mosing says he never uttered these to me.

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 ("Madifonga") had made. Madilonga's first statement was obtained by Warrant Officer Nthlamu of the DPCI's Integrity Management Unit on 30 November 2011. I obtained the second statement on 8 April 2013. I sought an expert analysis of the second statement from Precision Forensics, because Madilonga's evidence was essential to sustaining any charges against Dramat and I had concerns about Madilonga's credibility. The main red flag was a recordal in Madilonga's second statement, which suggested that he had been placed under pressure to give manufactured evidence in November 2011:

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

14.6 A copy of Madilonga's three statements are attached marked IK2.

My concerns about Madilonga's credibility were confirmed by the expert analysis that I subsequently received from Precision Forensics on 17 March 2014, a copy of which is attached marked IK3. Precision Forensics concluded that Madilonga's statement

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should be included in the ongoing investigation as his statement "proved to be deceptive".

15 After I sent the January 2014 report to Mosing, I continued to gather and analyse the evidence. On 27 February 2014, I sent Mosing the expert report on General Sibiyi'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, Sibiyi, 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 Sibiyi, the statement of Dramat was not part of the report, the statement of the

² Werksmans' report at para 3.1.19. See also para 3.1.33.

³ Werksmans' report para 3.1.20.

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Secretary of Police was not part of the report, and the other statement I cannot remember, but it was quite a substantial number of statements.⁴

16.2 Dramat had not refused to give warning statements. He gave two warning statements on 23 October 2013 and 23 November 2013 (attached as IK6 and IK7), but these statements had not yet been incorporated into the January 2014 report.

16.3 Sibiya had advised that he would respond to formal questions,⁵ and did indeed furnish a warning statement on 21 February 2014. A copy of that statement is attached as IK8.

17 In addition to the outstanding evidence, I was also concerned that the formalities required for finalising an IPID investigation could not be concluded before I submitted the January 2014 report. I conveyed these concerns to Mosing at the time.

18 I indicated to Mosing that the report had to be signed off by the Acting Executive Director of IPID and that it was contrary to IPID's policy for an investigative report to be signed off only by the investigator. I explained to Mosing that meeting these requirements was difficult at the time, because –

18.1 With the imminent appointment of McBride as the Executive Director, Mbeki was seldom at the office and I could not reach her

⁴ Interview 27 March 2015, Transcript, p. 41.
⁵ Werksmans' report para 3.1.25.1.2.

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to get her authorisation and signature. When I tried to contact her telephonically, I was told by Mbeki's PA, Tshiamo Mahibifa, 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.

- 21 After Sesoko and I were tasked by McBride with finalising the report, I would visit the Pretoria office from Limpopo whenever I could. I would sit at Sesoko's computer to make changes to the draft as we discussed them. Sesoko and I re-evaluated all the evidence and debated what findings could reliably and sustainably be made on the evidence. I would then effect the changes to the report on Sesoko's computer.
- 22 Sesoko's input was important because he has a prosecutorial background, so has a good understanding of what findings a prosecutor will accept as sustainable. He also brought a more objective perspective to bear on the evidence, because he had not been involved in the investigation.
- 23 In finalising the report and presenting the final report to McBride for authorisation, we sought to conduct a thorough, critical and objective review of the totality of the evidence and to present only recommendations that were supported by credible evidence.
- 24 I have traversed each of the differences between the January 2014 report and the March 2014 report highlighted by the Minister in his answering affidavit. The Minister has relied on the comparison of the two reports contained in the Werksmans' report.⁶

⁶ The differences are summarised in the Minister's answering affidavit at para 44 (with subparagraphs incorrectly numbered as para 42), and are tabulated in the Werksmans' report at pp. 34 to 45 of the report.

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25 I explain each of the differences that the Minister contends evidences a sinister motive to "suppress" evidence against Dramat and Sibiyá. There is no basis for the Minister's allegations.

26 First, It is correct that the summary of Madllonga's statement was changed to remove Madllongá's description of a call that Madllonga 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 respondent 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 Madllonga's allegation of what Dramat had stated when called by Madllonga, 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

⁷Dramat 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 Siblya's visit to Zimbabwe in August 2010

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and Sibiyá'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 Sibiyá of more than a year before. There was also no denial on the part of Dramat or Sibiyá that they went to Zimbabwe on this occasion and of Sibiyá'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 Sibiyá's cell phone records was informed by the expert mapping and location analysis of the cell phone records, which I only received after the January 2014 report.

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- 46 The import of the expert analysis is discussed at various points in the evaluation of evidence in the March 2014 report (including at pages 31 and 33), and is summarised in the findings as follows:

"The evidence that suggest[s] that Major General Sibiya was at the scene during the arrest of Zimbabwean nationals is contradicted by cell phone evidence that suggests that he was nowhere near the scene. It is clear that members of Crime Intelligence had been trying hard to pull Major General Sibiya into the operation. This can be deduced from the following quotations in their statements, "I saw a figure in a BMW and Warrant Officer Makoe referred to him as General Sibiya", and "I heard that General Sibiya was in a blue BMW". The cellphone record of Major General Sibiya was acquired and analysed by an expert, it was discovered that at the time the witnesses claim that he was at Fourways Shopping Centre, he was in Pretoria."

- 47 The reference to the fact that more than 30 SMSes were sent from Sibiya to Dramat (and other SAPS officials) was removed from the March 2014 report because it had no evidentiary value. Given the working relationship between Dramat and Sibiya, nothing could be deduced from the fact that Sibiya sent automated SMSes to Dramat. The content of Sibiya's SMSes could also not be ascertained, since I could not retrieve either Sibiya or Dramat's cell phones from the time. At the time of my investigation, I was told that these phones had been returned to DPCI Supply Chain, but the department no longer had them. It was thus impossible to establish, from an examination of the handsets, the content of the SMSes.
- 48 Also, since Dramat never responded to the SMSes sent by Sibiya it is not known and could not be verified whether these were even received.

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- 49 In respect of the cell phone analysis of Maluleke, the reference to the single SMS Maluleke sent to Dramat was removed because there was no evidence that this was received by Dramat. The reference to the interaction between Sibiya and Maluleke in the form of received and outgoing calls was also removed because the fact of the interaction of colleagues had no evidentiary value. The content of these calls was not known and impossible to determine.
- 50 Likewise, the reference to the cell phone interaction between Colonel Neethling and Sibiya was removed from the March 2014 report because the mere fact of this interaction between colleagues (Neethling reported directly to Sibiya) had no evidentiary value. However the statement by Neethling that "*he believed that he reported the operation to Sibiya*" was still recorded in the March 2014 report (at page 10).
- 51 Seventh, that the complaint was received from the Civilian Police Secretariat and the background to the investigation is detailed in the March 2014 report, at para 1.1 and 5.7. The fact of the deportation of the Zimbabwean nationals as "illegal immigrants" is recorded in the March 2014 report, as well as Dramat's statement that "*all Zimbabwean nationals were deported through Home Affairs for being illegal immigrants*" (at p. 27). There were no material omissions in this regard.
- 52 Eighth, the allegations in the January 2014 report that the officers who were part of the operation in which Dube and Nyoni were arrested (on 11 January 2011) were personally congratulated by Dramat and were

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warned not to tell anyone about the operation is reassessed in the March 2014 report.

52.1 It is not correct (as the Minister suggests) that "the March 2014 report is silent on this finding issue".⁸ The March 2014 report states the following in this regard:

"After the arrest of Johnson Nyoni, he was taken to DPCI head office in Silverton. At the DPCI offices photos were taken and members of TRT and Crime Intelligence corroborate each other in that regard. However, Constable Mkasibe stated that Lt General Dramat came to house number 3 from house number 1 and addressed them. There were six members of TRT and none of them ever mentioned the incident. If it is true that he addressed them, other people could have had a recollection of the incident more so because Lt General Dramat is the head of the DPCI. According to Constable Mkasibe and Constable Mugwenya, Lt General Dramat was with Colonel Polelo when he addressed them but Colonel Polelo cannot remember such event. It is clear that the version Mugwenya and Mkasibe [gave] are not corroborated and therefore do not provide basis for a prima facie case against Lt General Dramat."

52.2 The alleged 'congratulations incident' was doubtful. Even if it did occur, the context of the alleged incident rendered the meaning of any congratulatory statement by Dramat unclear. Gordon Dube, the other suspect arrested by CIG and the TRT unit on the same day, was wanted in South Africa on several charges of murder and robbery. This means that if Dramat did congratulate the SAPS members for the arrests that day (which was not corroborated), it may have been that he did so for the apprehension of a wanted suspect by the SAPS for the commission of violent crimes in South Africa.

⁸ Answering Affidavit para 42.9.

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- 53 Ninth, the reference to the letter sent by Zimbabwean authorities to Colonel Ntteni (which listed the names of two of the suspects wanted in Zimbabwe, and certain of the SAPS officers in the arrest of the Zimbabwean nationals) was removed from the March 2014 report because it had little evidential value. The letter was nevertheless in the docket.
- 54 There was no evidence that this letter was sent to Dramat -- It was only sent to Colonel Ntteni of CIG. A copy of the letter, which is addressed only to Ntteni is attached marked IK9. Subsequent related correspondence was also circulated, but only among certain officers at CIG. This correspondence is attached marked IK10.
- 55 There is also no evidence to suggest that Dramat lied to Parliament, and did not genuinely believe that the named Zimbabweans had been deported as illegal immigrants (as he had been advised by Maluleke). In this regard, the March 2014 report stated (at p. 33) that:

"[W]hen the renditions issue hit the media at the end of 2011, acting National Commissioner of the South African Police Services Lt General Mkhwanazi (A99) called the head of DPCI Lt General Dramat to explain what happened. Lt General Dramat attended the meeting with Captain Maluleke and for the entire duration of the meeting, Captain Maluleke explained why he arrested Zimbabwean nationals. If Lt General Dramat had full knowledge of the purpose of the arrest, he could have provided an explanation or justification during the meeting thereby convincing the acting National Commissioner that the operation was both lawful and necessary. It is in the same breath that Captain Maluleke provided a report to Lt General Dramat which was used as a basis to respond to a parliamentary question."

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56 I trust that the above explanations will remove any misunderstanding as regards the contents of the March 2014 report.

57 I confirm that the March 2014 report is the only report that I consider to be a "final report" on the rendlions 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

INNOCENT KHUBA

THIS DONE SIGNED AND SWORN TO BEFORE ME AT *Polokwane*
THIS THE *19th* DAY OF *June* 2016 AT *17:30*

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.

Leon Frederick de Lange

COMMISSIONER OF OATHS

LEON FREDERICK DE LANGE
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
LEBOSIPANE
20 WATERMELON STREET
POLOKWANE B.S.A.

CAPACITY

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ANNEXURE “HIK 2”



HIK 2
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IN THE DISCIPLINARY HEARING
(HELD AT PRETORIA)

In the disciplinary enquiry between

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE Employee

And

INNOCENT KHUBA 1ST Employee

MATTHEWS 2ND Employee

AFFIDAVIT

I the undersigned

Innocent Khuba

Do hereby declare as follows that

1. I am an adult male currently employed by Independent Police Investigative Directorate (IPID) as a Provincial Head for the Limpopo Province.
2. The facts deposed hereto are within my personal knowledge and I believe same to be both true and correct and binding on my conscience.

C.L.M

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C.L.M

3. I will in this affidavit set out brief background facts regarding matters explained herein and thereafter explain circumstances in relation to Mr Sesoko.

Background Facts

4. I was immediately prior to making this sworn statement facing certain charges of misconduct relating to a matter that came to be commonly known as illegal rendition of Zimbabwean Citizens (rendition or rendition matter).
5. I was appointed on or about 2012 as the lead investigator in the rendition matter by Ms K Mbeki (Ms Mbeki). Upon my assignment to this matter Ms Mbeki gave me specific instruction not to involve Mr Sesoko in the investigations and that I should instead co-operate with Colonel Moukangwe of SAPS Crime Intelligence, Advocate Mosing and one Adv Moeletsi.
6. In the normal course of events in terms of IPID processes I must liaise with Mr Sesoko when conducting the investigations.
7. I must also state that Advocate Mosing and Advocate Moeletsi are not IPID employees.
8. In the course of my rendition investigation I submitted various progress reports to Ms Mbeki and Advocate Mosing. In respect of one of the progress reports, with which I also surrendered the docket, Advocate

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Mosing insisted that it should be signed. Mr Sesoko was not present or aware that I had submitted the report to Adv Mosing.

9. In view of the fact that Ms Mbeki had gone awol and therefore not available to sign, Advocate Mosing advised that I should append my signature to it. Normally Ms Mbeki would have been the person legible to sign this report as required by Advocate Mosing. Upon Mosing's insistence I voluntarily signed this report before handing same to him. For purposes of convenience, I would refer to this report as the January report.
10. At the time of submitting the January report Advocate Mosing was aware of the outstanding investigations.
11. At or about this time which was about March 2014, Mr Robert McBride (McBride) was appointed as the new Executive Director. Like all other persons who were dealing with what is termed high profile cases, I gave a briefing to him on the high profile matters that I was investigating including the renditions matter and also that I was instructed by Ms Mbeki not to include Mr Sesoko in the investigation. I further advised McBride that I have now completed all outstanding investigations as requested by Advocate Mosing and that I have already requested retrieval of the docket from the Director of Public Prosecution (DPP).
12. McBride instructed me to henceforth include Mr Sesoko in the further investigations if any and in finalising the renditions report.

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13. After retrieving the docket from the DPP I proceeded to work with Mr Sesoko in finalising the renditions report. This was in March 2014. I emailed one of the progress reports to Mr Sesoko's computer from which we proceeded to finalise the renditions report based on all the evidence available. I worked on Mr Sesoko's computer when finalising the report.
14. In compiling the final report Mr Sesoko would assess the evidential value of assertions made in the report and I would input into the report submissions that are supported by the evidence available.
15. I wish to state categorically except for what I stated above that neither McBride nor Sesoko instructed me to either make any specific changes in the report or to exonerate any person in the report.
16. During January or February 2015 I was phoned by Mr Sesoko inquiring whether I have knowledge of the signed report dated January 2014 (The January Report).
17. I could not immediately recall this specific report and only did so when two pages of the report were sent to our spokesperson, one Mr Dlamini, by a Journalist by the name Mr Mzilikazi wa Afrika.
18. It was only at this time that remembered that it is the report I had previously sent to Advocate Mosing.
19. Hitherto Mr Sesoko and McBride were not aware of this fact or existence of the January report. Both Gentlemen became aware of the unfolding events when an inquiry was made by the Journalist aforesaid.

G.L.M

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My Guilty Plea

20. In respect of my plea to the charges that I was facing I do not in any way given the manner in which the charge/s are phrased implicate or intend to implicate or in any manner suggest that Mr Sesoko is also guilty of the charge/s that he is facing.

21. In fact in my plea bargain with my employer, it was also agreed though same is not included as a term in the settlement agreement that I am free to testify for Mr Sesoko should he find it necessary to call me as a witness.

[Signature]
DEPONENT

THIS DONE AND SIGNED BEFORE ME AT Polokwane THIS 25 DAY OF September 2015. AFTER THE DEPONENT DECLARED THAT HE/SHE IS FAMILIAR WITH THE CONTENTS OF THIS AFFIDAVIT AND REGARDS THE PRESCRIBED OATH AS BINDING ON HIS/HER CONSCIENCE AND HAS NO OBJECTION AGAINST TAKING THE SAID PRESCRIBED OATH. THERE HAS BEEN COMPLIANCE WITH THE REQUIREMENTS OF THE REGULATIONS CONTAINED IN GOVERNMENT GAZETTE R1258 DATED 21 JULY 1972 (AS AMENDED).

[Signature]
C/L no 10187
COMMISSIONER OF OATHS

SOUTH AFRICAN POLICE SERVICE
POLOKWANE
2015-09-25
COMMUNITY SERVICE CENTRE
015 290 6577/8
SOUTH AFRICAN POLICE SERVICE

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[Signature]

ANNEXURE “HIK 3”



HIK3

IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT BRAAMFONTEIN

Case No. J2031/15

In the matter between:

HUMBULANI INNOCENT KHUBA



Applicant

and

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

HUMBULANI INNOCENT KHUBA

do hereby make oath and say that:

1. I am the applicant, an adult male and was employed by the Independent Police Investigative Directorate in the capacity as Chief Director: Investigations, Limpopo Province.

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2. The facts deposed herein are, unless otherwise stated to the contrary, within my personal knowledge and to the best of my belief both true and correct.

The respondent

3. The first respondent is the Independent Police Investigative Directorate ("IPID"), an independent police complaints body established in terms of Section 3 of the Independent Police Investigative Directorate Act No. 1 of 2011, with its Head Office situated at No. 114 Madiba Street, Pretoria.

My case

4. The Acting Executive Director of IPID, Israel Kgamanyane ("Kgamanyane") unilaterally revoked a written settlement agreement in which, a sanction of a final written warning was contained, and summarily replaced the agreement with a summary dismissal.
5. The unilateral revocation of the settlement demonstrates the bad faith, high handedness and deliberate undermining of the principle of legality as there are no lawful grounds for the termination of my employment with IPID.

Material facts

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6. On 01 October 2014, I was promoted to the post of Chief Director: Investigations, Limpopo Province.
7. I was placed on suspension with pay on 21 May 2015 and on 6 July 2015 I was notified of a disciplinary hearing against me and my superior, Matthews Sesoko ("Sesoko") for dishonesty and defeating the ends of justice. A copy of the disciplinary notice is attached hereto marked Annexure "A".
8. My disciplinary hearing was settled on 23 September 2015 on the basis that IPID would impose a final written warning that was valid for 6 months and I would return to work on 28 September 2015. A copy of the settlement agreement is attached hereto marked Annexure "B".
9. On 25 September 2015, I provided Sesoko with a statement setting a brief background to the facts relevant to the charges against Sesoko, an undertaking that I did not implicate Sesoko in my settlement with IPID and that I am free to give evidence in support of Sesoko's case. A copy of my statement to Sesoko is attached hereto marked Annexure "C".
10. On 28 September 2015, I presented myself for work. At about 12:00 p.m. I received a telephone call from Kgamanyane who enquired on the statement that I provided to Sesoko.

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11. The next day a letter was hand-delivered to me by the IPID Head of Security. A copy of Kgamanyane's letter is attached hereto amrked Annexure "D".
12. The letter stated, *inter alia*, that, "in breach of your guilty plea and the agreement for a lenient sanction short of dismissal as contained in the settlement agreement, and without my knowledge or consent deposed to an affidavit in Polokwane, which contradicted the terms of your guilty plea as contained in the settlement agreement."
13. I was invited to provide an explanation for deposing to the affidavit, which Kgamanyane believed to be a contradiction of the settlement.
14. I provided an explanation to Kgamanyane stating, *inter alia*, that, "the settlement agreement was between me and the employer and that I was never meant to implicate or exonerate him (Sesoko) as a second respondent in the case I was initially charged with. Deposing to a statement against or in favour of an employee does not require the permission of an Accounting Officer and therefore cannot be held against me as misconduct."

"...the agreement does not have any condition or terms which require me to depose or not depose statement regarding this matter or testify in favour or against Mr Sesoko... If the employer made an offer for settlement

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agreement with ulterior motive, unfortunately I failed to read such during the acceptance of the offer. I concluded the agreement in good faith and putting the interest of my family first."

"The same Plea Agreement which was signed by the employer does not have clauses that allow the imposition of dismissal without a hearing on the so called new misconduct or any contravention if there really was such. This clearly shows that this agreement was used as an instrument of victimisation by the employer. With this threat of dismissal, I am convinced the employer made such offer in bad faith."

15. A copy of my letter is attached hereto marked Annexure "E". I was summarily dismissed by Kgamanyane the same day. A copy of my dismissal letter is annexed hereto marked Annexure "E1".

My employment with the Independent Complaints Directorate ("ICD") and IPID

16. I commenced employment with the IPID, formerly Independent Complaints Directorate ("ICD") on 1 January 1999 as the Assistant Director Investigation for the Northern Cape Province. During February 2000, I was requested to supervise the investigations in the Free State Province. At the end of 2000, I was appointed as the Acting Head of the Northern Cape Province Provincial Office.

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17. During June 2001, I was appointed as the Provincial Head for Limpopo Province as a Deputy-Director. During 2003, I was also assigned the responsibility of managing the Mpumalanga Provincial office. On 1 July 2007, I was promoted to the level of Director.
18. During 2011, I was transferred to Kwa-Zulu Natal Province for a period of six months to assist the office with achieving the Departmental Strategic objectives. After completion of the six month period I reverted back to my post in Polokwane.
19. At the beginning of 2012 I was re-assigned back to Kwa-Zulu Natal Province to head the task team investigating the so-called Cato Manor police death squad. I was forced to leave this post after my life was threatened during an investigation into the Cato Manor police investigation. I returned to Polokwane as Provincial Head for Limpopo Province as a Director.
20. During 2012 I was appointed to investigate all complaints against Major General Shadrack Sibiya ("Sibiya") who was stationed with the Directorate for Priority Crime Investigations (*the Hawks*).
21. On 1 April 2012, the ICD was transferred to IPID.
22. On 23 October 2012, I was appointed by Sesoko to investigate the illegal rendition of five Zimbabwean nationals.

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23. On 1 October 2014, I was appointed as the Provincial Head for Limpopo Province as a Chief Director. A copy of my appointment letter is attached hereto marked Annexure "F".

The Zimbabwe renditions

24. On 23 October 2012, Sesoko, the Acting Head of Investigations, handed a letter of appointment and a docket to me to investigate the illegal renditions of five Zimbabwean nationals. The investigation was known to be a National Project as the renditions did not occur within the Limpopo Province. I was brought into the investigation as an "outsider" as the investigation was a high priority matter which required my final report to be approved by the IPID Executive Director.
25. I was instructed to assemble my own team to assist me in the investigation, which I did. The docket contained 13 statements from members of the Crime Intelligence Department, friends and relatives of those deported to Zimbabwe.
26. Ms. Koekie Mbeki ("Mbeki"), the then Acting Executive Director of IPID, instructed me to collaborate with a member of Crime Intelligence, Colonel

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Moukangwe ("*Moukangwe*") in the investigation. Mbeki also instructed me to keep Moukangwe's involvement in the matter secret.

27. I found Mbeki's instruction not in keeping with the Departmental practices and processes. The instruction was unusual and problematic because members of the Crime Intelligence were themselves involved in the arrest of the Zimbabwean Nationals. Nonetheless I complied with Mbeki's instructions.
28. Upon meeting with Moukangwe, he then in turn told me to work with two members from the National Prosecuting Authority ("*NPA*"), namely, Adv. Anthony Mosing ("*Mosing*") and Billy Moeletsi ("*Moeletsi*"). He advised the pair had been guiding the investigation since its inception.
29. I commenced the investigation by obtaining statements from officials from the Department of Home Affairs. I was accompanied by Moukangwe.
30. During the course of the investigation I met with General Dramat ("*Dramat*") of the Hawks together with Moukangwe. I requested the internal investigation file from the Hawks, which was provided to me.
31. I studied the contents of the Hawks docket and I became suspicious of the statement of a certain, Lieutenant Colonel Madilonga ("*Madilonga*") who was posted at the Beit Bridge Border Post.

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32. On 8 April 2013, I met with Madilonga, without Moukangwe, to clarify certain issues on his statement. During the interview Madilonga stated that Zimbabwean Police officials met him at the Border Post and showed him the cellphone number of Dramat. They said that they were meeting with Dramat in connection with Zimbabwean citizens in South Africa who were involved in the murder of a senior police officer.
33. Madilonga stated that he obtained permission from his superiors to call Dramat, who Madilonga alleged, confirmed that the Zimbabwean Police officials were meeting with him.
34. I then gathered documentary evidence on the Zimbabwean nationals and their deportation. At this stage of the investigation Mbeki gave me an instruction that I should not involve Sesoko in the investigation. Again, I found this instruction to be unusual as Sesoko was my immediate superior and I reported to him regularly on my other investigations.
35. I also interviewed members from Crime Intelligence from Pretoria Central with Moukangwe. These members provided important information on the arrest of two of the Zimbabwean nationals.
36. I then compiled a preliminary report which I forwarded to Moukangwe, Mosing and Moeletsi. During the months that followed, we met on several



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occasions and they gave their input on the analysis of evidence contained in the report.

37. During or about August 2013, I sent the cellphone records of Sibiya, Dramat and others suspected in the renditions to a Cellphone Data Analysis Expert. Amongst these records were the cellphone records of a certain Lieutenant Colonel Maluleke ("Maluleke") who allegedly spearheaded the arrests of all the Zimbabwean nationals.
38. The Data Analysis expert sent me an incomplete report which did not contain details of locations of persons making or receiving calls. This was an important consideration as some witnesses had alleged that Sibiya was present at the scene at the time of the arrests.
39. I met with Mosing during this time and he was aware that the finalisation of the investigation was delayed by the Data Analysis expert and outstanding warning statements.
40. During October 2013, I drafted questions for a Warning Statement for Dramat. Dramat initially responded by providing a brief history of his political background without properly responding to the questions sent to him. I persisted in having these questions directly answered by Dramat who provided the answers during November 2013.

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41. During December 2013, I drafted questions for Sibiya but sent them first to Mosing for his input before sending them to Sibiya. After receiving the questions back from Mosing I then forwarded the questions to Sibiya. Upon receiving the questions Sibiya indicated that he intended to consult with his legal representative before providing answers. Also, Sibiya had met with Sesoko to express his anger at being served with the questions. Thus, Sesoko became a facilitator between Sibiya and I.
42. During December 2013, Mosing contacted me and stated that the investigation should be finalised. I requested him to be patient and wait for the outstanding Data Analysis report in the form that he required and for Sibiya's answers. I must state that the cellphone data analysis report that was in the docket did not give an indication of the location of the relevant persons making and receiving calls. However, Mosing was impatient and pressured me into submitting a report on the investigation.
43. During January 2014, I met with Mosing and delivered the investigation report to him. The report did not have the outstanding evidence with regard to the warning statement of Sibiya and the cellphone records providing the street location of the relevant individuals making and/or receiving calls. I was adamant that the report had to be approved by the IPID Head as it was a national investigation.

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44. On 26 February 2015, Sibiya responded to the questions previously sent to him. However a few days before receiving Sibiya's statement I also received the cellphone data analysis report from the expert in the manner and form required by Mosing. It was bulky and in manual form.
45. On 27 February 2015, I submitted Sibiya's response to Mosing by email. I could not simultaneously email the cellphone data analysis report as it was bulky. On 28 February 2015, Mosing informed me that he referred the investigation docket together with his own report to the Directorate of Public Prosecutions ("DPP") in Johannesburg. I attach a copy of Mosing's email as Annexure "G".
46. On 3 March 2015, Robert McBride ("*McBride*") commenced employment as the Executive Head of IPID.
47. I met with McBride on 4 March 2015. He requested an update on the Zimbabwe renditions, which I provided to him. I briefed McBride on my appointment, the persons who were assigned to assist me in the investigation and whom to exclude from the investigation.
48. McBride expressed his concerns with the lack of independence in the investigation, the methodology of the analysis of evidence and the exclusion of Sesoko from the investigation.

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49. On 5 March 2015, I met with Sesoko, Glen Angus ("Angus") and McBride. I informed them that the investigation docket was with Gauteng DPP in Johannesburg. I also informed them Mosing took the investigation docket without Sibiya's warning statement and the Data Analysis report in the form required by Mosing.
50. McBride then permitted Angus and I to fetch the investigation docket from the Gauteng DPP in Johannesburg in order to supplement the docket with the outstanding information. Sesoko was delegated to assist in the process.
51. On 6 March 2015, Angus accompanied me to Johannesburg to fetch the investigation docket from the Gauteng DPP offices in Johannesburg. I noticed that docket did not contain my report.
52. The Cellphone Data Analysis report exonerated Sibiya from being at the arrest locations. I then finalised the report with guidance from Sesoko. McBride then approved the report. Sesoko, McBride and I signed the report as the supervisor, Executive Head and compiler, respectively.
53. McBride then personally handed the investigation docket over to the NPA.
54. The final report recommended that Maluleke should be charged with kidnapping and defeating the ends of justice.

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55. The final report recommended that Sibiya should be exonerated based on the cellphone data analysis report which did not place him at the scene of the arrests as alleged by witnesses.

56. Upon an independent review of all available information there was no evidence that Dramat in fact had knowledge of the illegal renditions. This conclusion is based on the following among others:

56.1. There is no evidence that Dramat received the success reports. In any event the same success reports that claim that Dramat had a meeting with the Zimbabwean Police lacked detail about the meeting itself. There is no indication of what was discussed and who was part of that meeting.

56.2. The fact of a meeting with Zimbabwean Police takes the matter no further as Dramat does from time to time meet with Zimbabwean Police

57. It is on this basis amongst others that Dramat was exonerated in the report.

McBride's suspension and approaches from IPID

58. During March 2015, McBride was suspended from work and Kgamayane was appointed as Acting Executive Head of IPID.

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59. Soon thereafter IPID made approaches to me to explain the existence of two reports (my preliminary report and the final report). I was also called to three interviews at Werksmans Attorneys about the existence of the two reports. At the commencement of these interviews I was assured that the information gathered would not be used against me at a later stage. However, this was not the case as I was later suspended and charged with dishonesty and defeating the ends of justice.

60. I was suspended from work on 21 May 2015 and on 6 July 2015, I was charged with Sesoko.

The disciplinary hearing and my settlement of the charges

61. The disciplinary hearing against Sesoko and I was set down for 17 July 2015. However, this was postponed to 13 to 17 August 2015 for the commencement of the hearing. I could not attend as I was booked off-sick for depression and the hearing did not commence.

62. I understand however that Sesoko raised certain preliminary matters that required a response from the Employer. A preliminary hearing commenced only in respect of the issues raised by Sesoko.

63. On 23 September 2015, I was present for the hearing but Sesoko was not. Sesoko's legal representative advised the Chairperson that he had been

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booked to undergo a surgical procedure. The employer's representative then approached my attorney to propose a settlement of the charges on the basis that IPID would issue me with a final written warning that was valid for six months if I pleaded guilty to the charges.

64. I accepted IPID's offer and signed the settlement agreement. I also intended to avoid a costly and acrimonious hearing and to mend the relationship between IPID and myself.
65. On 25 September 2015, Sesoko called me to enquire on the details of the settlement agreement. I informed him of the agreement but he did not trust me and thought that I had falsely implicated him. In order to allay his fears I drafted an affidavit setting out the background of the relevant facts and I also stated that I did not implicate him in the settlement agreement and further that I was free to give evidence in support of his case at his upcoming disciplinary hearing.
66. I presented myself to work on 28 September 2015. At about 12:00 p.m. I received a call from Kgamanyane who stated that he was informed of my statement and wanted to know the details contained in the statement. There appeared to be no issue as Kgamanyane did not seem to be upset by the statement.

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67. On 29 September 2015, I received a letter from Kgamanyane asking me to set out why I should not be dismissed for giving Sesoko a statement.
68. On 30 September 2015, I responded to Kgamanyane's letter. However, I was dismissed by that afternoon.

Advances from the Hawks

69. On 2 October 2015, I received a telephone call from a certain Brigadier Rammela ("Rammela") from the Hawks. He asked to meet with me at the provincial office of the hawks in Polokwane. I advised him to come over to my home in Polokwane.
70. Rammela came over within the hour together with another employee from the Hawks by the name Colonel Mahlangu ("Mahlangu"). He asked me to draft a statement in which I referred to my January and March reports. He also wanted me to state that McBride had pressured me to change my report in order to exonerate Sibiya and Dramat. At this point, I asked to speak to my lawyer and Rammela responded by stating that he could arrange for me to be reinstated at IPID. I again stated that I would need to consult with my attorney.

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71. The next day, 3 October 2015, Rammela came over to my home again. He brought a docket which he claimed contained a charge of perjury against me with case number 2454/05/2015 opened at Pretoria Central. He told me that I would be arrested if I do not co-operate and give a statement against McBride and Sesoko. I refused to do so and told him to arrest me. He told me to think over my decision and that he would meet with me and my attorney on Monday, 5 October 2015 at my home at 15:00 p.m.

72. Later that day, I received a telephone call from Mahlangu which I recorded on my cellphone. I have made a transcript and a translation of the conversation. A copy of the transcript and the translation is attached hereto. Once again, Mahlangu encouraged me to draft the statement and to assure me that the General, whom he mentioned as General Ntlemeza, the National Head of the Hawks would reinstate me. A copy of the transcript of the conversation is attached hereto marked Annexure "H".

IPID's unlawful conduct

73. My case is based on IPID's unilateral revocation of the settlement agreement.

74. Section 77(3) of the BCEA states:

"(3) The Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of

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employment, irrespective of whether any basic condition of employment constitutes a term of that contract."

75. The material terms of the settlement agreement are that:

72.1 I pleaded guilty to the charges against me;

72.2 IPID would impose a sanction of a final written warning which is valid for six months;

72.3 The suspension would be uplifted and I would report for duty on 28 September 2015;

72.4 There were no other terms and conditions to the settlement agreement and no party would have claims for any undertakings or representations not contained in the agreement.

76. The settlement agreement contains no condition that I would not be able to assist Sesoko in his disciplinary enquiry or to make a statement to Sesoko.

77. Further, my statement to Sesoko contains a summary of the background facts that I have set out above. There is nothing improper in the statement and I have not set out any falsities or lies in the statement.

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78. There is no reason to revisit the sanction that was agreed upon between IPID and I. The initial sanction was what we agreed upon and one which I accepted. IPID unilaterally revisited the sanction on the basis of a truthful statement and unilaterally imposed another sanction of dismissal in breach of the settlement agreement.

79. The opportunity afforded to me to make a representation does not accord with the principle of fairness as the charge against me contained in Kganyane's letter was not decided by an independent trier of fact in a hearing and there was also no opportunity to mitigate on the sanction.

80. I submit that the visits by members of the Hawks have revealed that my employer's biggest problem is that I do not want to give a statement implicating McBride and Sesoko.

Bad faith, high handedness and deliberate undermining of the principle of legality

81. I submit that the conduct of my employer is high handed and a complete disregard for the law of our country.

82. In the least, the agreement reached between myself and IPID created a reasonable and legitimate expectation that I would not face any disciplinary

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action on the same charges. Instead, I have been subjected to two differing sanctions for the same offences.

83. In any event and I submit that I am entitled to fair labour practices. IPID has ignored and flouted the provisions of Section 23 of the Bill of Rights of our Constitution and provisions of the LRA in summarily terminating me. This, regrettably from an oversight complaints body which appears to have the same tendency as organs of State to behave as if they are above the law.

84. My cause of action is premised on my right to fair labour practices and that I cannot be dismissed unfairly.

85. There are no lawful grounds for the termination of my employment and I submit that the termination of my employment is as a result of the truthful statement made to Sesoko.

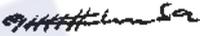
Urgency

86. I was dismissed on 30 September 2015. Thereafter I sought legal advice from my current attorney and during this time the Hawks had approached me. I also had to consult with Counsel in Johannesburg, who settled this application. I submit that I have set out the time period and the circumstances which render this application to be urgent.

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87. I submit that this application is urgent because it also deals with abuse of power by IPID to falsely implicate McBride and Sesoko which is using State resources to pursue their own interest.
88. I submit that it is imperative that the court comes to my rescue in my interest and the interests of the public. I have no other recourse other than to turn to this court to prevent continued illegal conduct.
89. Wherefore, I pray that the court grants the relief sought in the notice of motion to which my affidavit is attached.



 DEPONENT

THIS DONE AND SIGNED BEFORE ME AT BEHONI THIS 07 DAY OF OCTOBER 2015, AFTER THE DEPONENT DECLARED THAT HE/SHE IS FAMILIAR WITH THE CONTENTS OF THIS AFFIDAVIT AND REGARDS THE PRESCRIBED OATH AS BINDING ON HIS/HER CONSCIENCE AND HAS NO OBJECTION AGAINST TAKING THE SAID PRESCRIBED OATH. THERE HAS BEEN COMPLIANCE WITH THE REQUIREMENTS OF THE REGULATIONS CONTAINED IN GOVERNMENT GAZETTE R1258 DATED 21 JULY 1972 (AS AMENDED).



 COMMISSIONER OF OATHS





FULL NAME:

ADDRESS:

DESIGNATION:

Moruthane Lekoko Mateme
46 Victoria Avenue
Commissioner of Oaths
Practising Attorney
RSA



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ANNEXURE “HIK 4”



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ANNEXURE

CRIMINAL PROCEEDINGS**In the matter between****THE STATE****And****HUMBULANI INNOCENT KHUBA****DEFEATING THE ENDS OF JUSTICE AND FRAUD: PRETORIA CENTRAL CAS 2454/05/2015**

1. On Wednesday of 24/02/2016 at 18h45 i was at home when three males arrived and introduced themselves as members of the DPCI based in Pretoria. They introduced themselves as Brigadier N Xaba, Lt Col H W Maluleke and Captain Sewele. Brigadier N Xaba who was the main speaker of the group; informed me that the purpose of their visit was to obtain a warning statement in connection with a case of defeating the ends of justice and fraud opened against me. According to him, these charges arise from the two recommendation reports made in rendition case which I understood to be Diepsloot Cas 390/07/2012. I was provided with the case number for defeating the ends of justice and fraud case which is Pretoria Central Cas 2454/05/2015.

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- 2 I remembered that it was the same case which Brigadier Rammela and Col Mahlangu of the DPCI showed me on 3 October 2015 when they requested me to make a witness statement implicating Mr McBride and Mr Sesoko in order to be reinstated after my dismissal without a hearing on the same matter. The same case had a charge of perjury and was cited in my founding affidavit to the Labour Court (Case No J2031/15), page 18 and paragraph 71. This is confirmed by telephonic call made to me by Col Mahlangu which was recorded and transcribed in which he encouraged me to make a statement against above mentioned individuals in order to be reinstated.
- 3 Brigadier Xaba gave me two pages document with 25 questions which he requested that I should respond to in my warning statement. The last question (question 25) requires me to give additional information in justification of my action. I hereby start with question 25 which provide with an opportunity to give background and challenges encountered during the investigation of Diepsloot Cas 390/07/2012.
4. Background

4.1 On 23 October 2012, Sesoko, the Acting Head of investigations, handed a letter of appointment and a docket to me to investigate the illegal renditions of five Zimbabwean nationals. The letter was from the acting Executive Director Ms K Mbeki. However the investigation of Rendition case against the DPCI was requested by Minister Mthethwa in 2011 and shortly after the request, the Police Secretary, Ms Jenny Iris-Qhobosheane gave instruction to the then Executive Director Mr Beukman (in a meeting which I also attended) to hold-off the investigation until further communication from the Minister. At that time I was informed that I would be a lead investigator hence the request that I be part of the meeting between Ms Qhobosheane and the former Executive Director Mr Beukman.

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4.2 Mr Sesoko informed me that the reason for my appointment was that General Sibiya complained about the conduct of the North West Task team which was initially assembled to investigate cases of alleged assault against him, including Diepsloot Cas 390/07/2012. At that time I was dealing with high profile cases in the department which included Cator Manor "DEATH SQUAD" in Durban.

4.3 I was instructed to assemble my own team to assist me in the investigation, which I did. The team was comprised of the following individuals, Mr Kenneth Ratshitali, Mr L Maphetho, Mr N Mulaudzi and Mr. T Mashaphu who are all investigators from Limpopo IPID office. The docket contained 13 statements from members of the Crime Intelligence Department, friends and relatives of those deported to Zimbabwe. It was clear from the commissioned statements that the investigation was conducted by Col Maukangwe and Captain Koza of Crime Intelligence (CIG).

5. Challenges in the investigation of Diepsloot Cas 390/12/2012

5.1 When I began with my investigations, Ms. Koekie Mbeki, the then Acting Executive Director of IPID, instructed me to collaborate with a member of Crime Intelligence, Colonel Moukangwe ("Moukangwe") in the investigation. Ms Mbeki also instructed me to keep Moukangwe involvement in the matter secret.

5.2 I found Ms Mbeki's instruction not in keeping with the Departmental practices and processes. The instruction was unusual and problematic because members of the Crime Intelligence were themselves involved in the arrest of the Zimbabwean Nationals. Nonetheless I complied with Ms Mbeki's instructions.

5.3 Upon meeting with Moukangwe, he told me to work with two members from the National Prosecuting Authority ("NPA"), namely, Adv. Anthony Mosing ("Mosing") and Billy Moeletsi ("Moeletsi"). He advised that the pair had been guiding the investigation since its inception.

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- 5.4 Shortly after I began my investigation; I briefed Mbeki on the case and informed her that I would consult with Mr Sesoko in the course of investigation. This was common practice. As the National Head of Investigations at IPID, Sesoko was consulted and briefed on all national investigations. To my surprise Ms Mbeki categorically instructed me not to work with or discuss the case with Mr Sesoko. She stated that the person I could collaborate with was Mr Moukangwe of CIG. This was the first and the last time I received instruction to exclude the National Head of investigation on national project investigation in my almost 16 years of service with the department.
- 5.5 I then complied with the instruction of the Acting Executive Director and informed Mr Sesoko about it. I investigated the case, sometimes accompanied by Mr Moukangwe. However every time I gathered crucial evidence in his absence, I would telephonically informed him of the type of evidence obtained. He would always request me to fax or email him a copy. I enquired from the acting Executive Director whether I should share the copies of the docket with him. She informed me that he is a member of the investigation team and has a right to the content of the docket. She reiterated that the only thing required of me was to keep his involvement secret.
- 5.6 My worst fear about the arrangement was confirmed when Sunday Times ~~started to publish certain evidence as they appear in the docket.~~ Mr Moukangwe always wanted me to send copies of the documentary evidence and witness statements to an email which is June16@gmail.com even though I had his private email which is botsotsomoukangwe@gmail.com. He preferred that I email from Southern Sun hotel on Church Street in Pretoria rather than using the Department's email. The Sunday Times of 13 October 2013 had just published the details of Madilonga's statement and how it implicated Dramat. I was very concerned about the safety of Madilonga whom I regarded as key witness. I phoned Adv. Mosing the same Sunday and he also expressed his disappointment. I then requested Ms Mbeki in a letter

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dated 31/10/2013 that everybody involved in the investigation especially my team be polygraphed. The acting Executive Director told me that she would look into my request but nothing was done. Adv. Mosing expressed his interest in undergoing polygraph test with the rest of the investigative team. However, Col Moukangwe asked why I was worried about leaking of information whereas the Minister and my boss were not. He said they would never ask me about it, and really did not.

5.7 On the other hand, General Nhlemeza, the then Deputy Provincial Commissioner in Limpopo requested a meeting with me few months after obtaining Lt Col Madilonga's statement in 2013, I met with General Nhlemeza. We met at Wimpy, Cycad Centre in Polokwane. He said he had valuable information that could assist me in the investigation of rendition case. General Nhlemeza and I were close from working relation between IPID and SAPS in the province.

5.8 The General was with an officer from Eastern Cape claiming that when he attended a course in Cape-Town, Lt Col Maluleke confessed to him that he arrested Moyo in Zimbabwe by posing as a South African doctor who wanted to treat Moyo in South Africa. I interviewed him in the presence of General Nhlemeza and took notes by writing on my phone notepad. Advocate Mosing also took interest in the case regarding Moyo when I informed him of what General Nhlemeza has brought through Eastern Cape officer and also what was in Maluleke's laptop. He did his own investigation and emailed me

a statement which was about the arrest of Moyo, which he indicated that he got it from the person who prosecuted Moyo. He also instructed me to obtain Moyo's statement from prison and check his hospital record at Musina hospital of which I did. However I could not confirm the allegation that Lt Col Maluleke posed as a doctor or he was in Zimbabwe when Moyo was arrested. Moyo story was not part of the March 2014 report but part of January 2014 report. This is also part of why I am being charged for not including it in March 2014 report despite its irrelevance to the case.

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- 5.9 During the meeting, General Nhlemeza informed me that he had transferred Lt Col Madilonga to Burgersfort and if I need him for anything I should contact him. I informed him that I am worried about Col Madilonga safety since he is a key witness. He assured me that Madilonga is his man and he is taking care of him. He then requested my wife's number as he suspected that my own number might have been intercepted. As a result, I started to have concerns about the credibility of Madilonga's statement. The main red flag was a recordal in Madilonga's second statement, which suggests that he had been put under pressure to give manufactured evidence in November 2011. I then took his statement for analysis by expert as confirmed by email dated 04/10/2013. The expert confirmed my suspicion.
- 5.10 In September 2013, General Nhlemeza called me using my wife's number and requested me to come to his house. When I arrived he asked me about the progress in the case. I informed him that there are still outstanding statements including the warnings statements of the suspects which I would be able to obtain before the end of the month. He told me that he regret to inform me that his political principals want him to head the hawks and not IPID. I said to him that I am disappointed because I was expecting him to join us as he earlier said. He promises to keep contact and assist in any investigation that I would be tasked to do.
- 5.11 Again in October 2013, my wife called me while I was watching TV and informed me that "~~Mhlekezi~~" (referring to General Nhlemeza) was at the gate. She then handed me her phone and he requested me to order the security to open for him as he had valuable information to tell me. When he was inside, he said that he has urgent information to tell. He said on Friday he was at the Airport and he met with Mdluli who requested him to tell me that I must not be afraid when dealing with rendition case because there were people who were looking after me. He said he was asked by Mdluli to deploy people for my safety and that if I see any suspicious car behind me I should call him. I was surprised because I never met or spoke with Mdluli. During my entire investigation with Col Moukangwe, he never mentioned

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Mdluli's name. However, I did not enquire anything on what he said but told General Nhlemeza that if I see anything suspicious, I would call him. General Nhlemeza asked, when would I submit my report to NPA. I informed him that even though I had requested warning statement from Dramat, I was battling to get hold of General Lebeya who signed one of the success reports. He then called someone immediately who gave him General Lebeya's number. He said my report was the one holding everything regarding his move to the Hawks. I then called General Lebeya in his presence and put him on an open speaker. I requested him to provide me with a statement regarding rendition and he said I should come to his office in Pretoria. After refreshments, General Nhlemeza left. What General Nhlemeza said got me worried. I spoke to my wife saying that by accepting the request to investigate rendition case, I do not know what I got myself into.

5.12 The article of 13 October 2013 coupled with what General Nhlemeza said gave me a final thought to request the acting Executive Director to remove me from rendition investigation. I did not tell her about what General Nhlemeza said but I only told her that I was not happy with the leaking of information. She said I had to continue with the investigation of the case because there was no one who could do it and that the Minister would not be happy with that.

5.13 I only informed one of IPID employees whom I trusted about what happened when General Nhlemeza visited me. When I sent a report to Adv. Mosing,

General Nhlemeza stopped asking me about the report. The last time I met with General Nhlemeza was on 06/12/2014 at Wimpy Cycad Centre. He had just called me to tell me the good news. I arrived at approximately 15h00 with my wife but she remained in the car. I found him seated inside. He said that his time to move to the Hawks had arrived and that there was going to be a hit on Dramat. He encouraged me to watch the news on TV in the next coming weeks. What he told me happened exactly as he said. His last communication with my wife was 31/01/2015 where he sent her a message at 16h06.

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- 5.14 During January 2014, I met with Mosing and delivered the investigation report to him. The report did not have the outstanding evidence with regard to the warning statement of Sibiya and the cell phone records providing the street location of the relevant individuals making and/or receiving calls. Adv. Mosing, Moeletsi and Moukangwe had previously met on several occasions with me and they gave their input on the analysis of evidence contained in the report. I was adamant that the report had to be approved by the IPID Head as it was a national investigation. At that time the acting Executive Director was no longer coming to the office. When I enquired from Tshiamo Mahibila, the Secretary to the Acting Executive Director, she said that Ms Mbeki only signs financial documents of the IPID and not investigation related matters. Advocate Mosing told me that nevertheless I should sign the report and send it to him. There are numerous emails exchanged between me and Adv. Mosing on this issue including the one where I requested him to give me time.
- 5.15 I must state that the cell phone data analysis report that was in the docket did not give an indication of the location of the relevant persons making or receiving calls. However, Mosing was impatient and pressured me into submitting a report on the investigation even though he earlier requested me to instruct the Expert to cover such points.
- 5.16 February 2014, Sibiya responded to the questions previously sent to him. However few days before receiving Sibiya's statement, I also received the cell phone data analysis report from the expert in the manner and form required by Mosing.
-
- 5.17 On 27 February 2015, I submitted Sibiya's response to Mosing by email. On 28 February 2015, Mosing responded via email as follows, "*Dear Mr Khuba, In light of the fact that the matter has been referred to the DPP of South Gauteng for decision, you are requested to file these evidence in the docket which is presently with the DPP SG and in future forward any additional evidence or other matter directly with him. Kind Regards.*"

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5.18 On 3 March 2015, Robert McBride ("*McBride*") commenced employment as the Executive Head of IPID.

6. The Hawks members have been in my house four times now regarding the same case. I shiver to the core of my spine with fear because I just realised that I investigated a case which was so politically charged to an extent that certain outcome were needed. I was fired without a hearing and even that seems not to be enough. These charges of defeating the ends of justice and fraud are as baffling as my departmental case itself. It is my first time to hear that a recommendation which is just the view of the investigator about the case can give birth to a criminal charge.

6.1 In 2013 I was given appointment letter to investigate Boksburg CAS 322/04/2011, 21/04/2011 and 486/03/2011 involving General Sibiya. The case was already investigated by Mr De Jager, an assistant Director in Gauteng office. He had made recommendation report in which he recommended that General Sibiya should not be charged criminally. I review the already signed report and gathered additional evidence. On 13 November 2013 I made a report in which I recommended that General Sibiya be criminally charged. However, the DPP Gauteng informed me that despite my recommendation they are still of the view that there is no enough evidence to sustain a prima facie case. The question is where did they get the view that there is no evidence because my report clearly recommended criminal charges against him? It is clear that NPA is not bound by the view of

~~the investigator on any case but guided by the evidence in the docket. They~~
decided not to prosecute him in this case even though I recommended prosecution.

6.2 Mr Beukman tasked me to investigate a case of *Mzillkazi wa Afrika* in August 2011 wherein he was arrested in Gauteng by the Hawks and transported to Nelspruit for detention. The case was reported by a Member of Parliament and already investigated by Poopedi who was a Monitor in Gauteng office. He submitted a report in which he recommended disciplinary steps against members of the Hawks. The report was approved by Adv. Moleshe who was

the Provincial Head at the time. I reviewed his report and gathered additional evidence and consulted Criminal Procedure Act as well as SAPS Standing orders. On 06 September 2011 I gave a report with a recommendation that no member of the Hawks be criminally or departmentally charged. The findings in my report were then communicated to the Member of Parliament concerned. No one brought criminal or departmental charges against me on these cases.

7. Every time when I think of what I got myself into by accepting the task, it gives me nightmares. I fear for my personal safety because members of the Hawks had already made advances, asking me to make a statement that implicates McBride and Sesoko in order to be re-instated into my position. It seems as I am viewed as the only gate to deal with McBride and it kills me with fear. Who knows what is next with me, I am really afraid. These are the most powerful people in the country and it seems as my life is at their mercy. I spend sleepless nights thinking of the worst. I just pray that all ends in opening cases against me without any physical harm. I will be able to defend myself in court. All the evidence that I have regarding what happened during the investigation, I am ready to produce in court.
8. When I concluded an agreement with the employer on 23/09/2015, it was because I feared the worst and took my family interest at heart. I grew without a father and took myself to the University sleeping under bridges in order to attend evening classes. I never wanted my children to go through what I went through. It is clear ~~that sometimes no matter how hard one try to choose a path, some paths chooses~~ us.
9. I would like to respond to the remaining 24 questions as follows;

9.1 Question 1:

See 4.1 above.

9.2 Question 2:

See 4.2 and 5.1 above.

9.3 Question 3

See 5.3 above.

9.4 Question 4

See 5.1 above.

9.5 Question 5:

The investigation was not finished but nevertheless Advocate Mosing wanted the report and the docket. See 5.14 above.

9.6 Question 6:

Yes

9.7 Question 7:

Handed to Adv. Mosing.

9.8 Question 8

Advocate Mosing and Billy Moeletsi

9.9 Question 9:

I recommended criminal charges against General Sibiya, General Dramat, Lt Col Matuleke, Captain Nkosi, Warrant Officer Makoe and Constable Radebe.

9.10 Question 10:

Yes.

9.11 Question 11.

New evidence, Mosing email and McBride gave me permission to go to DPP.

9.12 Question 12

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Attach new evidence, update the docket and to do final report in terms of IPID regulations and IPID SOP.

9.13 Question 13

Attached new evidence in Sesoko's office and compiled final report.

9.14 Question 14

New evidence and review of existing evidence.

9.15 Question 15

It was with Mosing because I personally handed to him. And when I collected the docket, there was no report.

9.16 Question 16

Mr Sesoko

9.17 Question 17

New evidence and review of existing evidence.

9.18 Question 18

I was reminded that according to the IPID Act the Directorate makes recommendation to NPA and not with NPA.

9.19 Question 19

Yes

9.20 Question 20

I signed as an Investigator, Mr Sesoko as Supervisor and Head of investigation and McBride as an approving authority.

9.21 Question 21

I handed it to Mr Sesoko whom I believed that he gave it to Mr McBride.

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9.22 Question 22

No

9.23 Question 23

We arrived at different recommendation after new evidence and review of existing evidence.

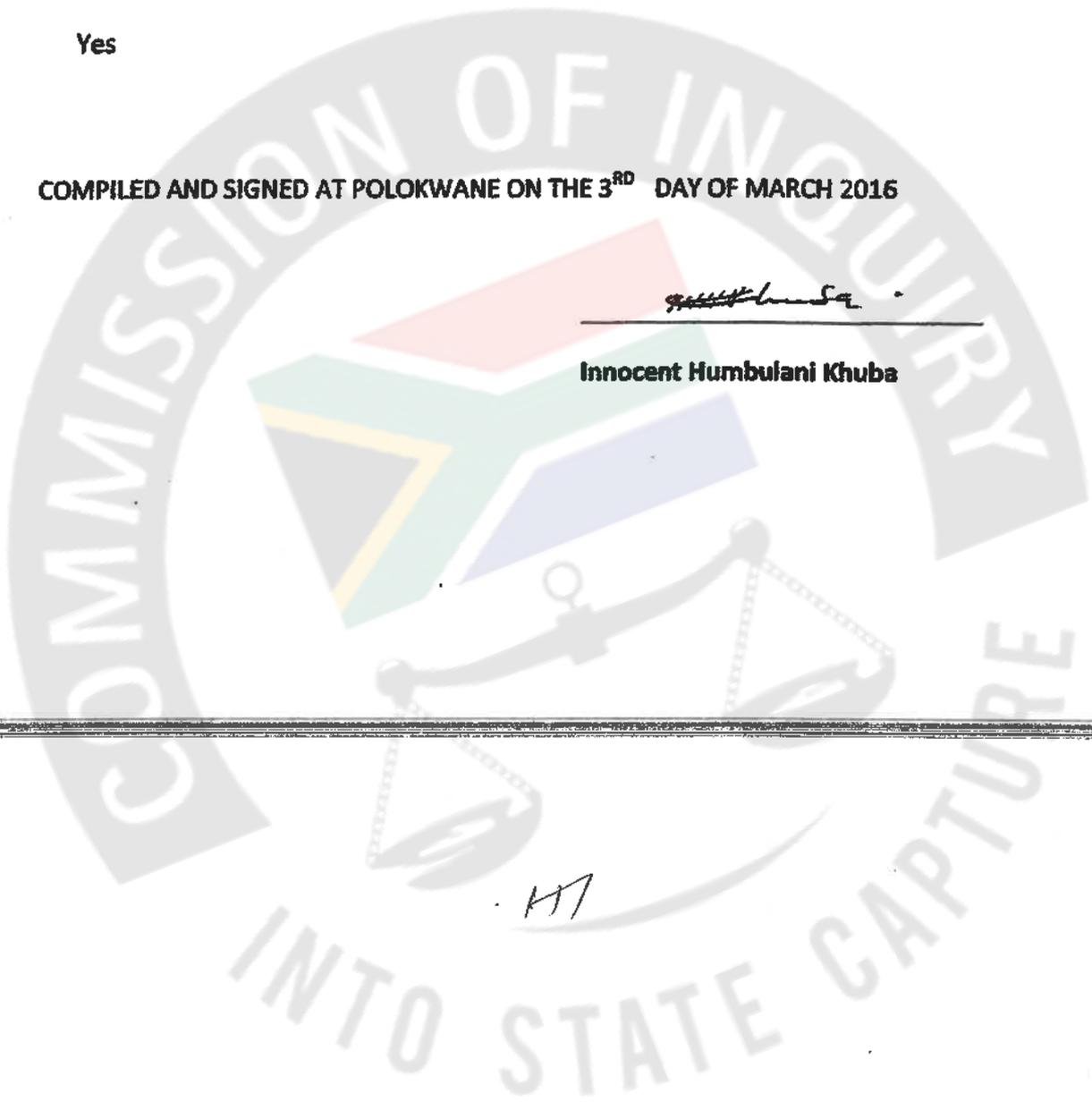
9.24 Question 24

Yes

COMPILED AND SIGNED AT POLOKWANE ON THE 3RD DAY OF MARCH 2016



Innocent Humbulani Khuba



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ANNEXURE “HIK 5”



H 1 K 5

IN THE LABOUR COURT OF SOUTH AFRICA
(HELD BRAAMFONTEIN)

CASE NO: J2031/15

In the matter between:

HUMBULANI INNOCENT KHUBA

APPLICANT

AND

INDEPENDENCE POLICE INVESTIGATIVE
DIRECTORATE

RESPONDENT

CONFIRMATORY AFFIDAVIT

I, the undersigned

MOLOKO EPHRAIM PHOOKO

do hereby state under oath as follows:

1.

I am an admitted practicing attorney of the High Court of South Africa, I depose to this affidavit the contents of which fall within my personal knowledge and are both true and correct.

2.

On the 22nd and 23rd September 2015 I represented the applicant in the internal disciplinary hearing wherein a settlement agreement was concluded.

3.

I wish to confirm the applicant's founding affidavit in so far as it relates to incidents of the 22nd and 23rd of September 2015.

4.

I have read the Founding Affidavit of **HUMBULANI INNOCENT KHUBA** and confirm the contents thereof to be true and correct in so far as same relate to me.



DEPONENT

THIS SIGNED AND SWORN TO AT MOKOPANE THIS 13TH OCTOBER 2015. THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS HEREOF.



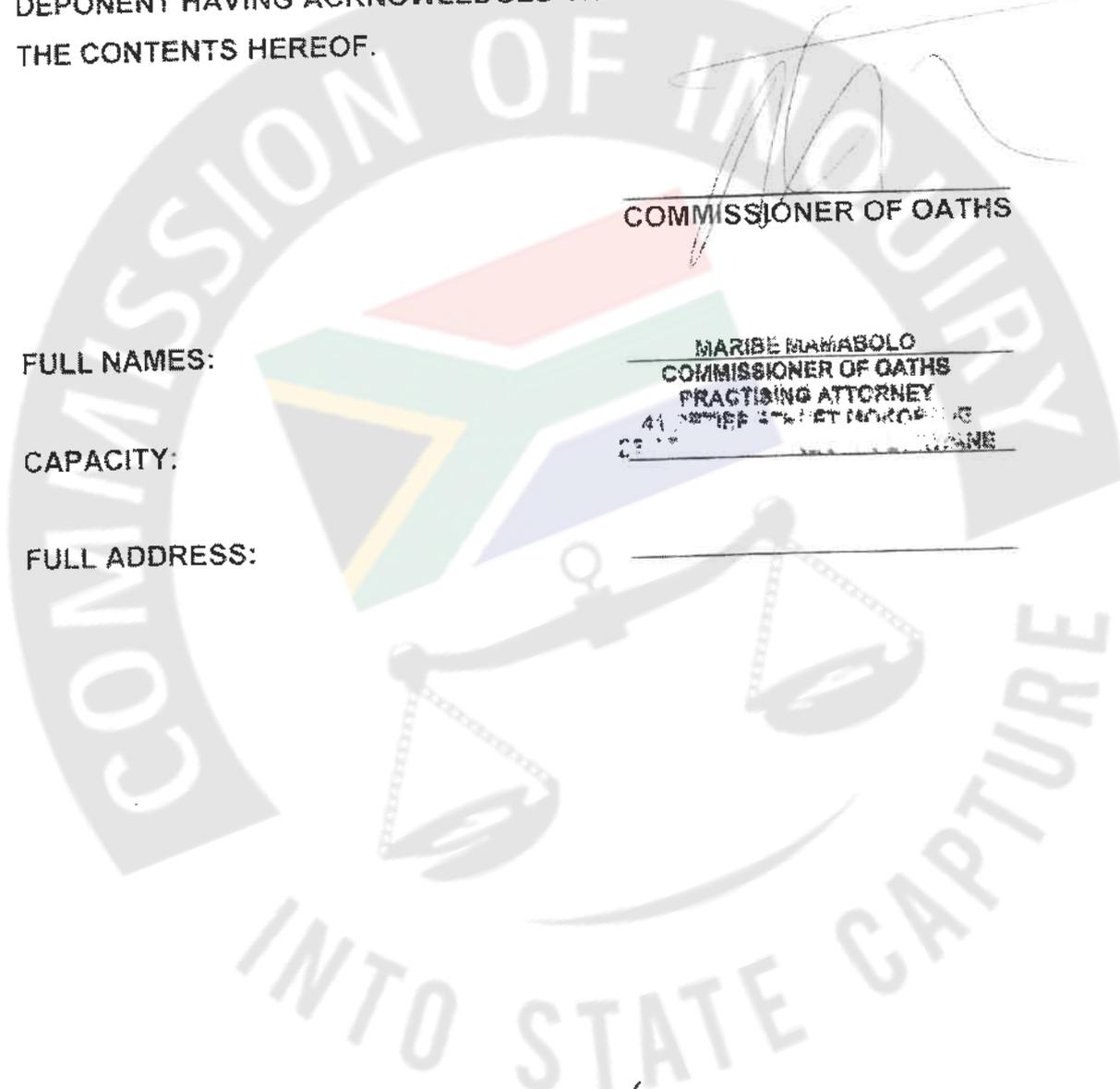
COMMISSIONER OF OATHS

FULL NAMES:

CAPACITY:

FULL ADDRESS:

MARISE MAMABOLO
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
41, 2015E STREET MOKOPANE
2317



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ANNEXURE “HIK 6”



HIK6

TELEPHONE CONVERSATION
BETWEEN MR. KHUBA AND MS. NETSIANDA

DATE OF THE CALL: 21/05/2015

TIME: 15:50

DURATION: 00.49

Transcription done by:

 iAfrica Transcriptions (Pty) Ltd
26 Thabo Mbeki Street
A.L. Smit Building, Office 3. Polokwane 0699
TEL: [+27] 015 291 5522 FAX: (015) 291 3146
Cell: 072 986 9821
e-mail: matlebjaner@iafricatranscriptions.co.za
www.iafricatranscriptions.co.za

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IAFRICA TRANSCRIPTIONS
TEL : 015 291-5522 EMAIL: info@iafricatranscriptions.co.za
FAX: 015 291-3146

Date : 17/2/2016

The Clerk of the Court
Polokwane

RE : PROBLEMS WITH THE TRANSCRIPTION: MR. KHUBA

1. Inaudibility due to the recording being unclear in some parts of the audio. Refer to (Inaudible) on page 1.

A. Els

A. Els (Signed)
Transcriber

NOTE: Transcriber can only transcribe what is recorded and what is clearly audible.

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MR. KHUBA 1
TELEPHONE CONVERSATION

MR. KHUBA: Mme Netsianda.

MS. NETSIANDA: Yes Mr. Khuba how are you?

MR. KHUBA: I am fine.

MS. NETSIANDA: Okay. I have been asked
(inaudible) where are you? I must come and
serve you with a letter.

MR. KHUBA: Okay I am in Polokwane.

MS. NETSIANDA: You are in Polokwane?

MR. KHUBA: Yes.

10 MS. NETSIANDA: Because, apparently the
minister said you must have the letter
today and I am still in the office, me.
which means I must drive right now. Will
you wait for me and then I will call you
when I am closer. So that we meet
somewhere?

MR. KHUBA: Yes. Yes.

MS. NETSIANDA: Okay. No, thank you so
much for your understanding.

20 MR. KHUBA: Okay. Thank you.

MS. NETSIANDA: Sure.

MR. KHUBA: Yes.

END OF CONVERSATION

(H)

TRANSCRIBER CERTIFICATE

I, the undersigned hereby declare that the
aforegoing document is a true and just
transcription and translation of the mechanically
recorded proceedings in as far as it is audible.

A. Els

.....
A.ELS - TRANSCRIBER

17/2/2016

Transcription done by:

<p>iAfrica Transcriptions (Pty) Ltd 26 Thabo Mbeki Street A.L. Smit Building, Office 3. Polokwane 0699 TEL: [+27] 015 291 5522 FAX: (015) 291 3146 Cell: 072 986 9821 e-mail: matlebjanaj@iafricatranscriptions.co.za www.iafricatranscriptions.co.za</p>
--

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H7

ANNEXURE “HIK 7”



HIK7
MS5 102

DISCIPLINARY PROCEEDINGS

In the matter between

IPID

The Employer

And

Matthews Sesoko

The Employee

CONFIRMATORY AFFIDAVIT

I the Undersigned

Nomkhosi Cleopatra Netsianda

Do hereby state under oath as follows that

I am an adult female person of 32 Kiloki Village Savannah Country Estate, Pretoria East 0164 and a suspended employee of IPID. I am holding a position of Chief Director Corporate Services at IPID.

The facts deposed hereto are within my personal knowledge and I believe same to be both true and correct.

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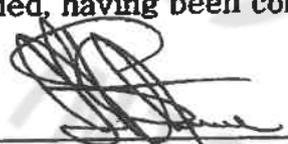
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1. I have read and understood the contents of the affidavit deposed to by Mr Matthews Sesoko.
2. I hereby confirm same in so far as they relate to me regarding the circumstances around the handing of a letter to Mr Khuba.
3. I confirm in addition that upon receiving instructions from the current Acting Executive Director Mr Kgamanyane, he specifically told me in no uncertain terms that the aforesaid letter must be delivered to Mr Khuba that same day and that those were the specific instructions of the Minister. At IPID when we refer to the term "Minister" it is the Minister of Police that we normally refer to.
4. I duly complied with the instruction and called Mr Khuba to arrange for delivery of the letter as properly articulated in the annexure to Mr Sesoko's affidavit marked "MS6"



 DEPONENT

I hereby certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Broom on the 03 day of MAY 2016, the regulations contained in Government Notice No R 1258 of 21 July 1972, as amended, and Government Notice No R 1648 of 19 August 1977, as amended, having been complied with.



 COMMISSIONER OF OATHS

Moruthane Lekoko Mateme
 46 Victoria Avenue
 Commissioner of Oaths
 Practising Attorney
 RSA

ANNEXURE “HIK 8”



HIK 8

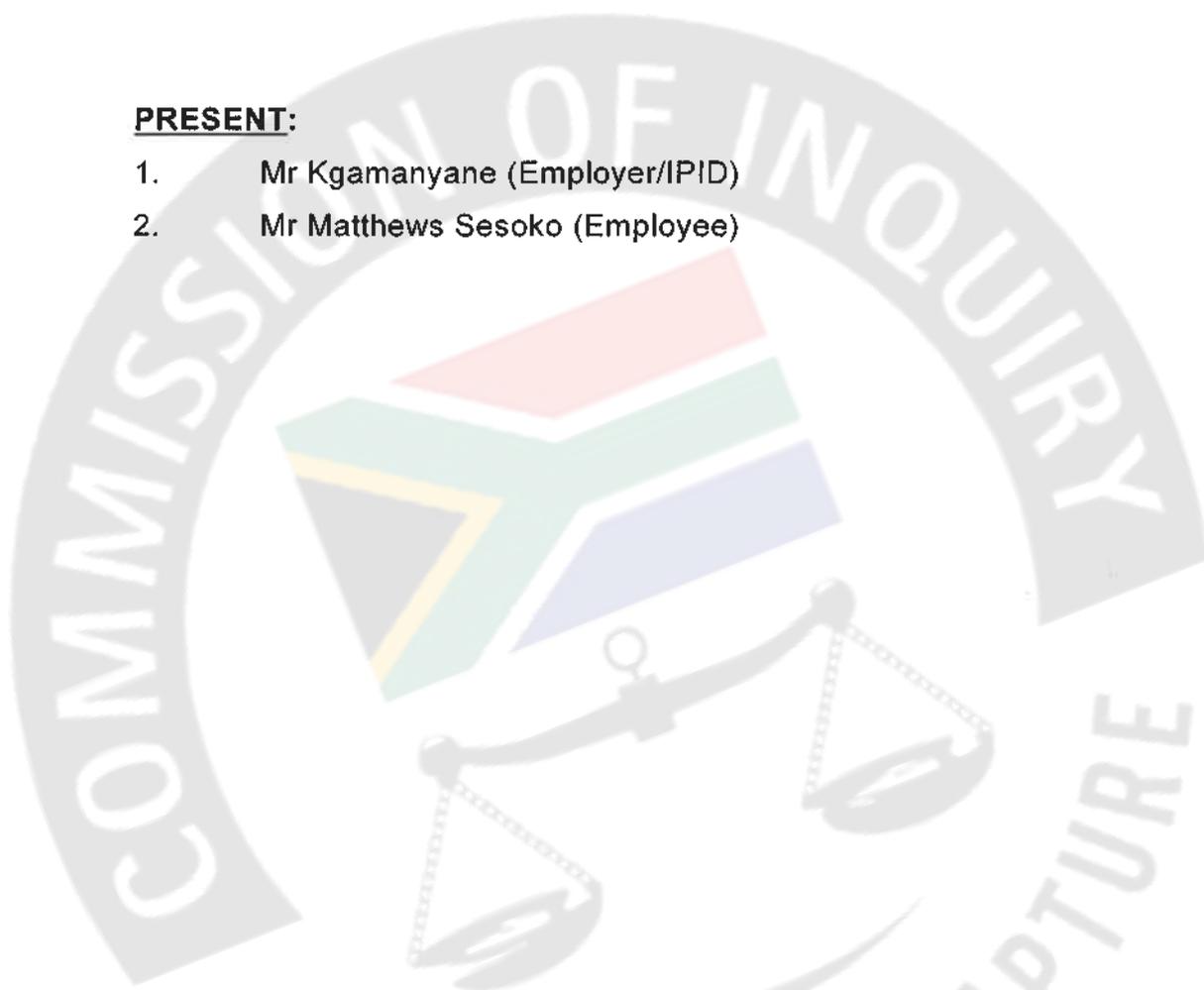
SUSPENSION MEETING

HELD AT: IPID HEAD OFFICE

DATE: 2015-05-11

PRESENT:

1. Mr Kgamanyane (Employer/IPID)
2. Mr Matthews Sesoko (Employee)



VERBIS TYPING & TRANSCRIPTION SERVICES
25 GRUNG ROAD, SELECTION PARK
SPRINGS 1559
TEL: (011) 812-2226 FAX: 086 5112359 CELL: 083 5665750

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IPID
M SESOKO

- 1 -

ADDRESS

SOUND FILE NAME: Suspension Meeting

MR SESOKO: (Indistinct) ten minutes earlier.

MR KGAMANYANE: Okay.

MR SESOKO: You never indicated that.

MR KGAMANYANE: The letters of notice.

MR SESOKO: Okay. Notice of suspension?

MR KGAMANYANE: Uhm.

MR SESOKO: Okay.

MR KGAMANYANE: We must get them by today. So as the
10 (inaudible) Chief the sooner (inaudible). Because it has been hanging
there and... (inaudible) they have been hanging for... for some time.

MR SESOKO: Uhm.

MR KGAMANYANE: That is (inaudible).

MR SESOKO: (Inaudible) or after explaining my notice suspension.

MR KGAMANYANE: (Inaudible) do that (inaudible) talk to him
because you still have to respond and go through the report and
consult.

MR SESOKO: Of course.

MR KGAMANYANE: You can still cancel it.

20 MR SESOKO: I have to cancel that, there is no way (inaudible), I do
not know what time you are giving me to respond.

MR KGAMANYANE: Uhm, it is up until Thursday.

MR SESOKO: But that becomes... so I have got 48 hours.

MR KGAMANYANE: *Dina le dipreparation tsa (They have
preparations for) Cape Town in disarray.*

IPID
M SESOKO

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ADDRESS

MR SESOKO: Obviously you will cancel it, you know.

MR KGAMANYANE: Uhm.

MR SESOKO: I understand your position because probably obviously you are being instructed to give us this notice of suspension and... I do not expect to get a different outcome after that, no matter what representation (inaudible)... (intervenes)

MR KGAMANYANE: Because... (intervenes)

MR SESOKO: I make.

MR KGAMANYANE: This thing e *tshwana le* (is like) as when *ho tshwanetswe ho khonfemiwe hore* (must be confirmed that) your a
10 police officer and they could say that before *reka ho khonfema* (before we confirm you) go and arrest your father. So, it is a difficult one, a very, very difficult one.

MR SESOKO: Uhm.

MR KGAMANYANE: Uhm.

MR SESOKO: No, you can just give me and I will, I will go and (inaudible).

MR KGAMANYANE: Uhm.

MR SESOKO: I still had, I have 15 days in this financial year.

20 MR KGAMANYANE: (Inaudible).

MR SESOKO: (Inaudible).

MR KGAMANYANE: Okay.

MR SESOKO: So...

MR KGAMANYANE: (Inaudible) so that *ba kgone ho patela*. (they are able to pay)

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IPID
M SESOKO

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ADDRESS

MR SESOKO: *Kene ke so kenye diforomo tsa teng (I have not submitted the forms yet). So, I can fill in the forms before ke tsamaya (I leave).*

MR KGAMANYANE: Okay.

MR SESOKO: *Maybe mphe (give me) until, mphe matsatsi (give some days) a up until Wednesday (inaudible), I do more consultation (inaudible) respond to that. I do not know (inaudible) decision may, will follow (inaudible) almost immediate. Only (inaudible) the rest of the week.*

10 MR KGAMANYANE: *(Inaudible) the rest of the week because (inaudible) nthwena ke, ke (this thing is, its) Wednesday.*

MR SESOKO: Uhm, *(inaudible) tomorrow.*

MR KGAMANYANE: *(Inaudible)?*

MR SESOKO: Uhm.

MR KGAMANYANE: *(Inaudible) he has not (inaudible) to me, ke ne ke batla honna teng (I wanted to be present) as and when, it is up to (inaudible) ko (at) government. We will just find out from (inaudible), ja, but whatever the response the is date ke di (it is) 13 but I was thinking hore (that) you will only, act on them on Monday.*

20 MR SESOKO: Uhm.

MR KGAMANYANE: *If whatever the decision, because if keya (I go to) Cape Town, ketlo ya (I will go to) Cape Town ka (on) Wednesday I will be (inaudible) ka Labone (on Thursday) then by (inaudible) on Friday ke (is) Good Friday. So, the response you can still respond ka (on) Wednesday but...*

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IPID
M SESOKO

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ADDRESS

MR SESOKO: Ja, okay, I will just fill in the form for...

MR KGAMANYANE: For five days.

MR SESOKO: For five days (inaudible)... (intervenes)

MR KGAMANYANE: (Inaudible).

MR SESOKO: (Inaudible) to Friday. And we will see the response but I, but I do not see it going any other way.

MR KGAMANYANE: No, no problem (inaudible)... (intervenes)

MR SESOKO: You know (inaudible) *akere (not so)?*

MR KGAMANYANE: [Laughs], (inaudible) sometimes *eba di* (it has)
10 formalities (inaudible).

MR SESOKO: *Eya (yes)*, I know for a fact that (inaudible) so... and after that report *e tswile (was released)* it was clear what was going to happen.

MR KGAMANYANE: Uhm. It was just a matter of time.

MR SESOKO: Uhm.

MR KGAMANYANE: Okay.

MR SESOKO: So... No, it is fine I will just fill in the forms.

MR KGAMANYANE: *Ke utlwa bare ba mo file ditshatshes (I heard that he has been served with chargers) last week ka di (on the), ka*
20 *Labone (on Thursday).*

MR SESOKO: Aow.

MR KGAMANYANE: Notice.

MR SESOKO: Okay.

MR KGAMANYANE: *Bare hearing etlo ba ka (It said that the hearing will be in) January.*

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IPID
M SESOKO

- 5 -

ADDRESS

MR SESOKO: Next week?

MR KGAMANYANE: Uhm.

MR SESOKO: Okay.

MR KGAMANYANE: I do not know (inaudible).

MR SESOKO: Uhm. Okay, *le rona re tshwanetse hore re e prephere (we must also prepare)* ourselves legal representation. I suppose it is the same as Khuba. If this is coming to me then it is obvious it is going to, for all those people who signed... (intervenes)

MR KGAMANYANE: Who signed (inaudible)... (intervenes)

10 MR SESOKO: The final report... (intervenes)

MR KGAMANYANE: Uhm.

MR SESOKO: Ja. So it is not something that it is, it is... it is really surprising, we have always thought, you know, because I would imagine from a legal point of view when you take action against McBride *hore (that), ka (with the)* report and then we have two other people who signed the report... (intervenes)

MR KGAMANYANE: *Ke yona ntwé ke ba botsa yona le (that is what I asked them)* last week (inaudible)... (intervenes)

MR SESOKO: (Inaudible) do that... (intervenes)

20 MR KGAMANYANE: (Inaudible) *bare (they say)* there is no way because *etla nna ntho ya hore (it will mean that)* all this discriminatory or *etla nna ntho ye ekareng ba targetile yena fela (it would seem as if they targeted him alone)*. You see?

MR SESOKO: Uhm. So, ja. (Inaudible) the right, I wonder if we should also expect to be arrested.

IPID
M SESOKO

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ADDRESS

MR KGAMANYANE: [Laughs].

MR SESOKO: For defeating the ends of justice.

MR KGAMANYANE: No, criminally they have not moved, I do not know but they have not moved.

MR SESOKO: We will see.

MR KGAMANYANE: But even if *baya ho e etsa (they do)* they will still take it to the DPP.

MR SESOKO: (Inaudible).

MR KGAMANYANE: Uhm. I do not think nto ya (*the question of*)
10 arrest its out of (intervenes)

MR SESOKO: Well, Gerrie Nel baile ba arresta (*they arrested*) you know.

MR KGAMANYANE: There would not be...

MR SESOKO 2: They arrested Gerrie Nel... (intervenes)

MR KGAMANYANE: (Inaudible)... (intervenes)

MR SESOKO: A senior advocate in the NDPP they arrested him the charges were withdrawn and then... (intervenes)

MR KGAMANYANE: *Bo Kgadi ne bare (Kgadi and others were saying)* (inaudible).

20 MR SESOKO: He sued the State and they paid him because...

MR KGAMANYANE: Uhm.

MR SESOKO: You never know these things, but I will see.

MR KGAMANYANE: Uhm.

MR SESOKO: I will see. I will see.

MR KGAMANYANE: Okay.

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IPID
M SESOKO

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MR SESOKO: *Nna* (myself) as long as re itse gore (we know that) we, we acted within the parameters of the law.

MR KGAMANYANE: (Inaudible), that will mean one of them if whatever decision, do you have anyone in mind to stand in?

MR SESOKO: I would rather not...

MR KGAMANYANE: [Laughs].

MR SESOKO: Advise you on that because I would rather you take that decision.

MR KGAMANYANE: Uhm.

10 MR SESOKO: Uhm. I would rather you take that decision (inaudible).

MR KGAMANYANE: Okay. No, let us cross that bridge when we arrive at it.

[Knock at the door].

MR KGAMANYANE: Come in.

[Female speaking in background]

MR SESOKO: Maureen can you please help me with the leave form?

MS MAUREEN: A leave form?

MR SESOKO: Yes.

MS MAUREEN: Just one?

20 MR SESOKO: Ja, just one.

MS MAUREEN: Okay.

MR KGAMANYANE: (Inaudible). *O tlile ko kae* (where in Mpumalange is he coming from) Mpumalanga?

MR SESOKO: (Inaudible) Protea.

MR KGAMANYANE: Oh Protea.

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MR SESOKO: Uhm.

MR KGAMANYANE: Okay. So, Maureen *ha a tsena (did not go there)* (inaudible)?

MR SESOKO: Ja, (inaudible).

MR KGAMANYANE: (Inaudible).

MR SESOKO: (Inaudible).

MR KGAMANYANE: So (Inaudible).

MR SESOKO: Ja.

MR KGAMANYANE: (Inaudible) that you sent us.

10 MR SESOKO: Uh-uh. *Kene kere vele ke ya leboha (I was saying I am indeed thankful)* (inaudible) *ba mo signele hore ba mofe (they should sign in order to give him/her)* (inaudible).

MR KGAMANYANE: (Inaudible).

MR SESOKO: Uhm.

MR KGAMANYANE: (Inaudible).

MR SESOKO: Obviously... (intervenes)

MR KGAMANYANE: *O kare Simon o na le call (apparently there is a call for Simon)* (inaudible) answer somebody (inaudible).

MR SESOKO: Uhm.

20 MR KGAMANYANE: So Possibly it will be via Simon (inaudible).

MR SESOKO: Uhm. We can do this thing (inaudible). I will just (inaudible) in my office (inaudible).

MR KGAMANYANE: Which one is that?

MR SESOKO: I do not know (inaudible) I just received this one.

MR KGAMANYANE: Okay. (Inaudible).

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MR SESOKO: Uhm?

MR KGAMANYANE: (Inaudible).

MR SESOKO: Uhm. (Inaudible).

[Inaudible, transcription not possible]

[Knock on door]

MR KGAMANYANE: Come in.

[Inaudible, transcription not possible]

MR KGAMANYANE: (Inaudible)...

MR SESOKO: Wednesday.

10 FEMALE SPEAKER: Wednesday.

MR KGAMANYANE: Yes. (Inaudible) I want to make (inaudible).

MR SESOKO: Radebe.

MR KGAMANYANE: Uh-uh. (Inaudible), report o e *signile akare* (He signed the report, not so)?

MR SESOKO: *Ha a, ke ke ke bua le yena* (No, I was talking to him) (inaudible) today so o *itse* (he said) eight 08:00 tomorrow morning because team a e *berekang le yona e na le information e baneng ba ilo e kereya* (the team he is working with had information they were going to get) (inaudible).

20 MR KGAMANYANE: *Ke ya Mpumalanga le yona* (is it that of Mpumalanga as well) ?

MR SESOKO: *Le* (and) Radebe?

MR KGAMANYANE: Uhm.

MR SESOKO: (Inaudible).

MR KGAMANYANE: *Ke case yako kae hante* (which case is that)?

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MR SESOKO: *Ke ya mo (that of) Gauteng.*

MR KGAMANYANE: Okay.

MR SESOKO: (Inaudible).

MR KGAMANYANE: Okay. Uhm.

MR SESOKO: *Ke e feng ya (which one is that of) Mpumalanga.*

MR KGAMANYANE: Oh, I wanted to ask you *ka ya maburu ale a (regarding those whites) Booysen.*

MR SESOKO: *Ya maburu (the whites) a Booysen re ne re so (we had not appointed a team yet) appoint a team*

10 MR KGAMANYANE: (Inaudible).

MR SESOKO: The discussions that that we had (inaudible)... (intervenes)

MR KGAMANYANE: *Oa hopola hore ba (you remember that) (inaudible).*

MR SESOKO: *Eya, hore (yes, that) we need to get someone ka hore bale ba (because the others) (inaudible) it would not be wise (inaudible) but we did agree hore (that) we will get people from outside the province to (inaudible).*

MR KGAMANYANE: (Inaudible) *ha ke tsebe hore (I don't know) how did he handle that one e le neng le mofile yona (that you gave him)*
20 (inaudible) *tsa (in) KZN?*

MR SESOKO: Uhm... No, (inaudible).

MR KGAMANYANE: Because what I say is (inaudible) *habana mosebetsi (they have no work) there ke ne ke nahana hore ae etse le (I was thinking that he should do it with) (inaudible) le Isaacs (inaudible) those guys.*

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MR SESOKO: Uhm.

MR KGAMANYANE: But *bare o ne a kupile hore otla feta mo wena kaosane (they say he had requested to pass here) because o (you will be in) North West so that o mofe yona (in order to give him) because ke boletse le yena ke le (I spoke to him in) Kimberly, o mofe yona but ka kereya hore o... (Give him but I discovered that) (intervenes)*

MR SESOKO: *Ke (is it) North West.*

MR KGAMANYANE: Yes.

10 MR SESOKO: Okay.

MR KGAMANYANE: (Inaudible) then at the end we recommend that ke approve.

MR SESOKO: Okay. *A kere (isn't) (inaudible) e ko (it is at) North West mara (but).*

MR KGAMANYANE: *Yona Matter oo (the same matter)?*

MR SESOKO: *Eya (yes), e (at) North West (inaudible).*

MR KGAMANYANE: *E ko (it is with) Mosimanegape?*

MR SESOKO: (Inaudible). *So, e ne ele (it was)... (intervenes)*

MR KGAMANYANE: (Inaudible) North West (inaudible)... (intervenes)

20 MR SESOKO: *E ne ele, ko (it was in) North West ha kaba botsa hore (I did not ask them) (inaudible) mara o ka mmotsa (but you can ask him).*

MR KGAMANYANE: (Inaudible).

MR SESOKO: *Ja, because e ne ele taba tsa hore (it's just a matter that) once we decided on the team (inaudible).*

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MR KGAMANYANE: Okay.

MR SESOKO: The team.

MR KGAMANYANE: No, it is fine.

MR SESOKO: Uhm.

MR KGAMANYANE: (Inaudible).

MR SESOKO: Uhm, that is still fine.

MR KGAMANYANE: *Ke wisha hore (I wish that) this project e ba tlatlang ka yona (they are brining) (inaudible). Ke wona fela mmereko o leng outstanding wa lona (Is that the only work outstanding you*
10 *have)?*

MR SESOKO: No, *hona le nngwe le yona ye re neng re so e (there is another one we have not yet) (inaudible) re kreile (obtained) an affidavit. (Inaudible) going to the office (inaudible).*

MR KGAMANYANE: Okay. Okay.

MR SESOKO: (Inaudible) on my desk. So, *le yona ene ele (it was only) one of those o neng ore hae boele morao (you said you will not) (inaudible) will have to see, we were hoping hore (that) by now the (inaudible)... (intervenes)*

MR KGAMANYANE: *Ke ne ke ntse (inaudible) signa (I was busy signing), ke signa... (I was signing) (intervenes)*
20

MR SESOKO: (Inaudible).

MR KGAMANYANE: *Ja, ke bone ntho ya hao mo... (I saw your things here) (intervenes)*

MR SESOKO: *E thomile (it has begun).*

MR KGAMANYANE: *Yaha Baloi (That of Baloyi)?*

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MR SESOKO: Eya. (yes)

MR SESOKO: I am not sure *hore ho etsahalang (what is happening)*.

MR SESOKO: *Bare baya ka (inaudible)*.

MR KGAMANYANE: *Ho tla tlaya ka hore (it will depend on that)*
(inaudible) *bae isitse (they took it to) Witbank.*

MR SESOKO: Okay.

MR KGAMANYANE: (Inaudible).

MR SESOKO: Okay.

MR KGAMANYANE: Yes, (inaudible).

10 MR SESOKO: Okay. No, if *ele panel e decidileng jwalo (it is the panel that has made that decision)* then (inaudible).

MR KGAMANYANE: Uhm.

MR SESOKO: Because I know *kene ke pusha (I was pushing)* this thing, apparently *ntho ena e ile ya tswa (this thing was issued)*, there is one weakness *e tshwanetse e ye (it should go)* (inaudible). *Ho ile ha tswa (an order was issued) order.*

MR KGAMANYANE: Uhm.

MR SESOKO: Ja, *ka hore re ne re entse (because we did)* (inaudible) for competency *kadi test tsa batho bana (with these people's tests)*. *Ba yetsa order balo efa nthwena, balo (they made an order and gave it to)* (inaudible) but they do not inform us. So, (inaudible).

20

MR KGAMANYANE: So, *beba sa le informi (they did not inform you)?*

MR SESOKO: Eya (yes), and it is not like it is not the only procurement *e ba etsang jwalo ba ntshang di order be ba sa informi*

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(that they did like that where they issued orders without informing) end user. So, they need to develop a process where immediately ho issuer di order ba informe di (on issuing the order they inform) end user immediately so that ba kgone ho followa (they are able to follow) the service provider. So, bona ho isiwa di order ko bona kwa (they issue orders on their own) but they do not inform the end user. So, le yona ya nthwena (inaudible) bae intshitse (also in this instance they issued) but (inaudible) but they did not inform us. So, ha re ntse re followa up hore hante ho etsahalang ka (while we follow precisely
10 what is happening) this thing in terms of hore kgale ba ntshitse (that they have long issued) order.

MR KGAMANYANE: I do not know hore ba etsang ka yona (what are they doing with it) (inaudible). Ka (In) May o ya court nou ke ilo (he is going to court, now I am going) (inaudible) Bare no (they said no) (inaudible) haya patelwa (I was not paid for). Ha ke founela TWF bare no haba kereyi order (when I called TWF they said they can't find the order).

MR SESOKO: Uhm.

MR KGAMANYANE: (Inaudible).

20 MR SESOKO: Uhm.

MR KGAMANYANE: Hare founela, ha ke founela Maureen ke re a ba founela ke hona ba ishawang (when I called, when I called Maureen to phone them it was only then that they issued the order) order TWF ya teng. Ke re fela (now) how do you explain?

MR SESOKO: Hey.

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MR KGAMANYANE: And you do blame TWF because you cannot really blame TWF.

MR SESOKO: *Eya*, because *ha se* problem *ya bona yeo* (Yes, because it is not their problem).

MR KGAMANYANE: Hi...

MR SESOKO: So...

MR KGAMANYANE: (Inaudible).

MR SESOKO: Ja, but what do I do about the other days?

MR KGAMANYANE: Which ones? Oh *tsele* (those).

10 MR SESOKO: *Re tlo di forfeita* (we will forfeit them).

MR KGAMANYANE: No, let us talk about, no, let us talk about them, *ka, ha re kopane* (on, let's meet) set it up Friday or *ka* (on) Monday.

MR SESOKO: Okay.

MR KGAMANYANE: Because I can just still put (inaudible) *ke utlwe nyana* league *re decline*.

MR SESOKO: Okay.

MR KGAMANYANE: (Inaudible) *be re ba tlotla e patela ka* (they say they will pay in) June.

MR SESOKO: All right.

20 MR KGAMANYANE: Ja.

MR SESOKO: It is fine. *Kana ke di* (is it the)15?

MR KGAMANYANE: Ja. (Inaudible) *kaosane* (Tomorrow).

MR SESOKO: (Inaudible).

MR KGAMANYANE: Okay.

MR SESOKO: *Ha ke itse hore o teng* Boitumelo *na ka hore ke utlwa*

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nyana hore, nee maan earlier ha ke founela ba re ngwana hae (I don't know whether Boitumelo is present, I only heard that, no earlier when I phoned I learnt that her child) (inaudible). But probably she would be back tomorrow. So (inaudible)... (intervenes)

MR KGAMANYANE: It is fine (inaudible).

MR SESOKO: And then (inaudible)... (intervenes)

MR KGAMANYANE: That is why *ke batla ho mitana le (I want to meet)*, we are still keeping company.

MR SESOKO: Ja, then we will go to the office *re kreye (and get)* that
10 other (inaudible) he had not done anything... (intervenes)

MR KGAMANYANE: All right.

MR SESOKO: (Inaudible) and then we can decide *hore (that)* (inaudible).

MR KGAMANYANE: Uhm. (Inaudible) *o suspendilwe (He is suspended)* already, you are not yet suspended. [Laughs].

MR SESOKO: [Laughs].

MR KGAMANYANE: *Ha o se o bolela ka (You talk as in)* in the future as if you are already out *hona yanong (presently)*.

MR SESOKO: *Mara (But)* Kgamanyane it is, (inaudible) be realistic
20 about the situation. (Inaudible) you need to prepare yourself *hore (that)* how do you ducks in a row in our absence, you know, because you know that is inevitable, you know.

MR KGAMANYANE: Uhm.

MR SESOKO: You know. So...

MR KGAMANYANE: This one (inaudible).

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MR SESOKO: It is... (intervenes)

MR KGAMANYANE: *Kea dibona tse dingwe ha ele (I see all the others but) this one yona (especially) hey.*

MR SESOKO: It is the reality of a situation we find ourselves in, you have to deal with it. So, once this thing is gone through its processes and...

MR KGAMANYANE: (Inaudible).

MR SESOKO: Uhm.

MR KGAMANYANE: Okay.

10 MR SESOKO: Uhm.

MR SESOKO: And fortunately this time it is (inaudible).

MR KGAMANYANE: (Inaudible).

MR SESOKO: So, we cannot say no, (inaudible).

MR KGAMANYANE: I will be following you. [Laughs].

MR SESOKO: You cannot say now, you must take instructions. Ja.
[Knock on the door].

MR KGAMANYANE: Come in.

FEMALE SPEAKER: (Inaudible).

20 MR SESOKO: Oh, hi, hi, morning (inaudible). So (inaudible). All right.

MR KGAMANYANE: (Inaudible).

FEMALE SPEAKER: (Inaudible) finished? Oh, oh okay, so everything is fine?

MR KGAMANYANE: Everything is fine, yes.

UNKNOWN FEMALE: All right. Do you want me to (inaudible).

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[End of Sound File].



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CERTIFICATE OF VERACITY

We, the undersigned, hereby certify that **as far as it is audible**, the foregoing is a true and correct translation/transcript of the digitally recorded meeting between

MR KGAMANYANE (IPID) Employer

and

MR SESOKO, MATTHEWS Employee

FORUM OF ORIGIN : Suspension Meeting
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TRANSCRIBER'S NOTE

PARTIES	Kgamanyane IPID v Sesoko, M
CASE NUMBER	Suspension Meeting
MR KGAMANYANE	Mr Kgamanyane
TRANSCRIBER	T Bapela

REASON FOR REPORT

Some words/phrases were inaudible due to the following reasons:

1. At times, the parties' words were mumbled and not enunciated fully.
2. The meeting was typed *verbatim*, therefore, incorrect tenses, verbs, pronoun usage and grammar as evidenced by the parties have not been corrected.
3. Unfamiliar words and names of which the spelling could not be confirmed have been typed phonetically.
4. The audio is inaudible as a result of background noise and parties seemingly speaking too soft.

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ANNEXURE “HIK 9”



HIK 9
"B"

DISCIPLINARY ENQUIRY

In the matter between

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Employer

and

INNOCENT KHUBA

First employee

MATTHEW SESOKO

Second employee

AGREEMENT BETWEEN THE EMPLOYER AND INNOCENT KHUBA

INTRODUCTION

1. The First Employee, Innocent Khuba ("Khuba"), was charged with dishonesty and defeating the ends of justice as more fully set out in the charge sheet attached hereto marked "A".
2. Pursuant to the institution of disciplinary action against Mr Khuba, the parties have reached agreement on 23 September 2015.
3. The Parties wish to record in writing the terms of the agreement, which terms they record below.

TERMS OF AGREEMENT

4. Mr Khuba being legally represented, freely and voluntarily pleads guilty to the charges proffered against him as set out in annexure A.
5. The Employer will impose a sanction of a final written warning valid for 6 months against Mr Khuba.
6. Mr Khuba suspension will be uplifted and he will report for duty on Monday, 28 September 2015.

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M. E. v
10/2/15

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Signature

INDRONT KHEB
Name of Signatory

EMPLOYEE
Designation of Signatory



[Handwritten mark]

[Handwritten mark]

[Handwritten mark]

ANNEXURE “HIK 10”



H1K10

Top cop turns on McBride over Dramat

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INVESTIGATIONS

Top cop turns on McBride over Dramat

27 September 2015 - 02:04

BY MZILIKAZI WA AFRICA, PIET RAMPEDI AND STEPHAN HOFSTATTER

Controversial police watchdog head Robert McBride has been named as having altered a damning report to exonerate former Hawks boss Anwa Dramat for his role in the Zimbabwean rendition scandal. In a plea bargain signed on Wednesday, the head of the Independent Police Investigative Directorate in Limpopo, Innocent Khuba, confessed to all charges against him, including editing the rendition report, and directly implicated McBride and Ipid head of investigations Matthews Sesoko. Khuba's guilty plea might complicate McBride's efforts to clear his name and get his job back. However, in a later development that at first appeared to muddy the waters further, Khuba allegedly signed an affidavit clearing McBride of direct involvement in the matter of the altered report. Khuba, represented by his attorney Moloko Phooko, pleaded guilty to charges of dishonesty and defeating the ends of justice at his disciplinary hearing at Ipid headquarters in Pretoria on Wednesday. Yesterday, McBride sent Sunday Times what he claimed was an affidavit signed by Khuba on Friday, in which he allegedly made a U-turn and exonerated the embattled Ipid chief. However, the validity of the affidavit was questioned by Khuba's lawyer, Phooko, who said "there was no such a thing". In the signed agreement, Khuba pleaded guilty to a charge that he, "Sesoko and McBride altered the report which had been handed over to the NPA [National Prosecuting Authority], and deleted information incriminating Lieutenant-General Anwa Dramat, the former National Head of DPCI [Directorate for Priority Crime Investigations, the Hawks] and/or Sibiya, the provincial head of DPCI Gauteng, from the report in order to reach a conclusion that Dramat and Sibiya had been exonerated by Ipid when you knew or ought to have known that the final Ipid report on January 2014 recommended that Dramat and Sibiya be criminally charged". Having implicated McBride and Sesoko, Khuba could now be called as a witness in their hearings. This brings into question whether McBride lied under oath in his high court bid to stop Police Minister Nathi Nhleko from suspending him, when he claimed in court papers that he never saw the initial report that recommended that Dramat and Sibiya be charged. Khuba was slapped with a final written warning valid for six months and his suspension lifted, effective tomorrow. "Mr Khuba's [candour] and openness about the offence, that he did not waste the employer's time in engaging in a protracted hearing, including his remorse, were considered to be sufficient mitigating factors against a sanction of a dismissal," read the ruling by hearing chairman Patrick Ngutshana. Nhleko's spokesman, Musa Zondi, said the ruling not only showed that "we are getting closer to the truth", it also vindicated the minister and the position he took on the matter. "And that position was that we cannot allow people in positions of influence to subvert the law in pursuance of a culture that is not in keeping with human rights in a democratic dispensation," he said. McBride was suspended in March and faces several charges of misconduct for allegedly altering a report on the illegal rendition of five Zimbabweans in 2010. This was after Werksmans Attorneys, commissioned by Nhleko, recommended that McBride, Sesoko and Khuba be charged criminally and departmentally for allegedly removing evidence from a previous Ipid report to exonerate Dramat and Sibiya. Yesterday, McBride declined to answer specific questions including his take on Khuba's guilty plea and suggestions that the ruling meant he could have lied under oath. The Sunday Times exposed the rendition scandal related to Dramat's team having arrested five Zimbabweans in 2010 and 2011 under the pretext that they were illegal immigrants implicated in the murder of a police officer in their country. The men were handed over to Zimbabwean police at the Beit Bridge border crossing without proper deportation papers. They were later tortured in their home country. Two of them were killed and a third disappeared. Dramat accepted a golden handshake when the scandal about the doctored report broke. Sibiya was fired after being found guilty at an internal disciplinary hearing in July. Advocate William Mokhari SC, the pro forma prosecutor in the matter, yesterday said Khuba's guilty plea could have consequences for McBride. Mokhari said Khuba, contrary to media reports, did not submit any affidavits during the hearing clearing McBride. "He [McBride] could not be exonerated by the hearing because it was not his hearing in the first place. And Khuba never mentioned him in the hearing," Mokhari said. Khuba, according to Mokhari, was not required to explain himself because he had pleaded guilty. "Unfortunately, in formal hearings that's not how it works. That becomes necessary if you want to exonerate yourself or you want to explain a particular point. But if you go there and say, look, I am guilty, all that has to be recorded is your guilt and findings." The other thing of how it happened may come out in the hearing of McBride and Sesoko because he [Khuba] will be asked," Mokhari said. He said the recorded proceedings "took something like five minutes". "He [Khuba] said: 'I understand the charge, and I plead guilty, freely and voluntarily.' And he signed the guilty plea. From there it was taken to the hearing. It was read out by the chairperson who asked him, also through his lawyer: 'Do you understand what it is you are pleading guilty to?' And he said: 'Yes.'" The chairperson then pronounced him guilty on the charge as it was. Then the proceedings ended," Mokhari said. Khuba yesterday declined to comment, saying: "I am not allowed to speak to the media." McBride and Nhleko have been embroiled in endless court battles since they fell out over the Ipid report that was tampered with. McBride has taken his boss to the Constitutional Court. investigations@sundaytimes.co.za

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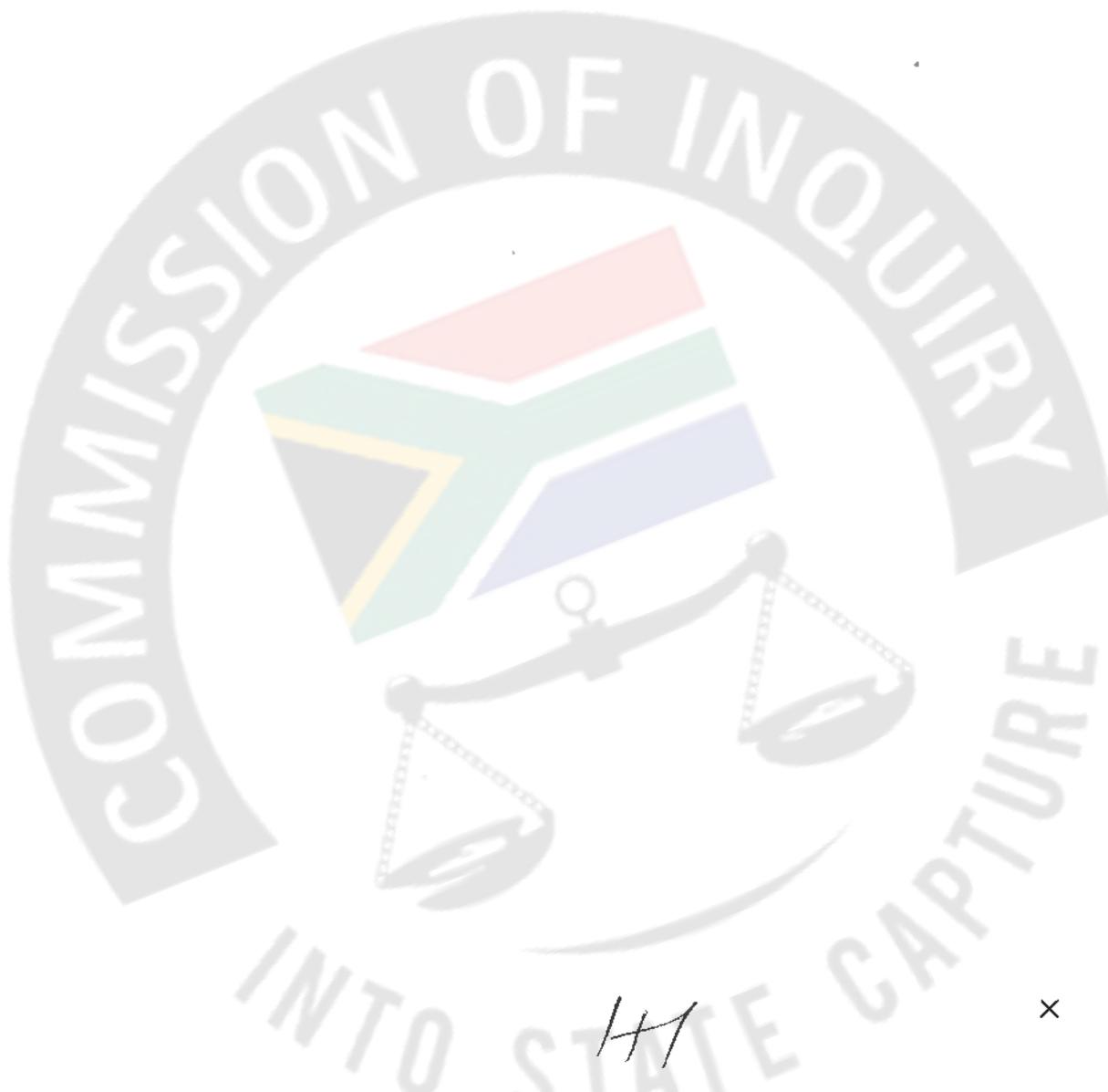
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ANNEXURE “HIK 11”



H1K11

Page 1 of 5

Hawks boss Dramat quits after reaching settlement - The Mail & Guardian

COVID-19 IN SA NEWS OPINION ARTS & CULTURE BUSINESS EDUCATION HEALTH WEBINARS
 PARTNER FEATURES MOTORING

Hawks boss Dramat quits after reaching settlement

Amabhungane 22 Apr 2015



Lieutenant General Anwa Dramat has officially resigned as head of the Hawks, police commissioner Riah Phiyega told Parliament.

Phiyega said Tuesday that Dramat and the police had reached a settlement, the culmination of a long-running legal battle following his suspension.

“Dramat has confirmed his request to leave the service and we are processing that agreement.”

The *Mail & Guardian* reported how Phiyega offered Dramat a R3-million severance payment, in addition to R60 000 per month until he turns 60, in return for his resignation.



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According to a source close to the process, Phiyega made the offer on behalf of Police Minister Nathi Nhleko.

Suspension

Police Minister Nathi Nhleko suspended Dramat in December last year for his alleged involvement with the rendition of Zimbabweans in 2010.

A day after his suspension, Dramat wrote in a letter to the minister claiming he was being targeted because he was investigating “dockets implicating influential people”.

He insinuated he feared for his life, and said he would be “willing” to accept early retirement – as provided for in Article 35 of the Police Act – on condition the minister lifted his suspension.

Well-placed police sources earlier told *Netwerk24* Dramat was being targeted because he refused to let go of the Nkandla investigation.

The North Gauteng High Court in Pretoria ruled in January Dramat’s suspension was unconstitutional and that he should be reinstated in his post.

Dramat had, however, never returned to office, and his legal representatives have been locked in negotiations with the minister’s legal team till now.

‘Absolute and complete contempt’

DA MP Dianne Kohler-Barnard reacted angrily when Phiyega announced Dramat’s resignation to the committee.

“You are ignoring the court order. It was called unlawful and set aside. You have treated the court with absolute and complete contempt,” she said.



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Phiyega responded that Dramat is no longer in his post “because of what he requested”.

Nhleko’s spokesperson Musa Zondi said Dramat did no longer wanted to stay in the police.

“The court never ruled that Dramat should be forced to work at SAPS. In his first letter to the minister in December, Dramat indicated his desire to leave. This is just the culmination of that request.”

Limbo

Dramat has been in limbo since December 2014 when Nhleko purported to “suspend” him over allegations that he was involved in the illegal deportation of Zimbabwean criminal suspects in 2010.

It is not clear how the attempt to cut a deal with Dramat aligns with Nhleko’s claims he has serious criminal allegations to answer.

Dramat has denied being involved in or authorising the illegal renditions.

In a letter to the minister, Dramat blamed the move against him on his attempts to investigate high-profile people.

He later told his lawyers he believed the trigger was his bid to have the Hawks take over the investigation of President Jacob Zuma’s Nkandla security upgrade. – News24.com

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Tags: Anwa Dramat, The Hawks



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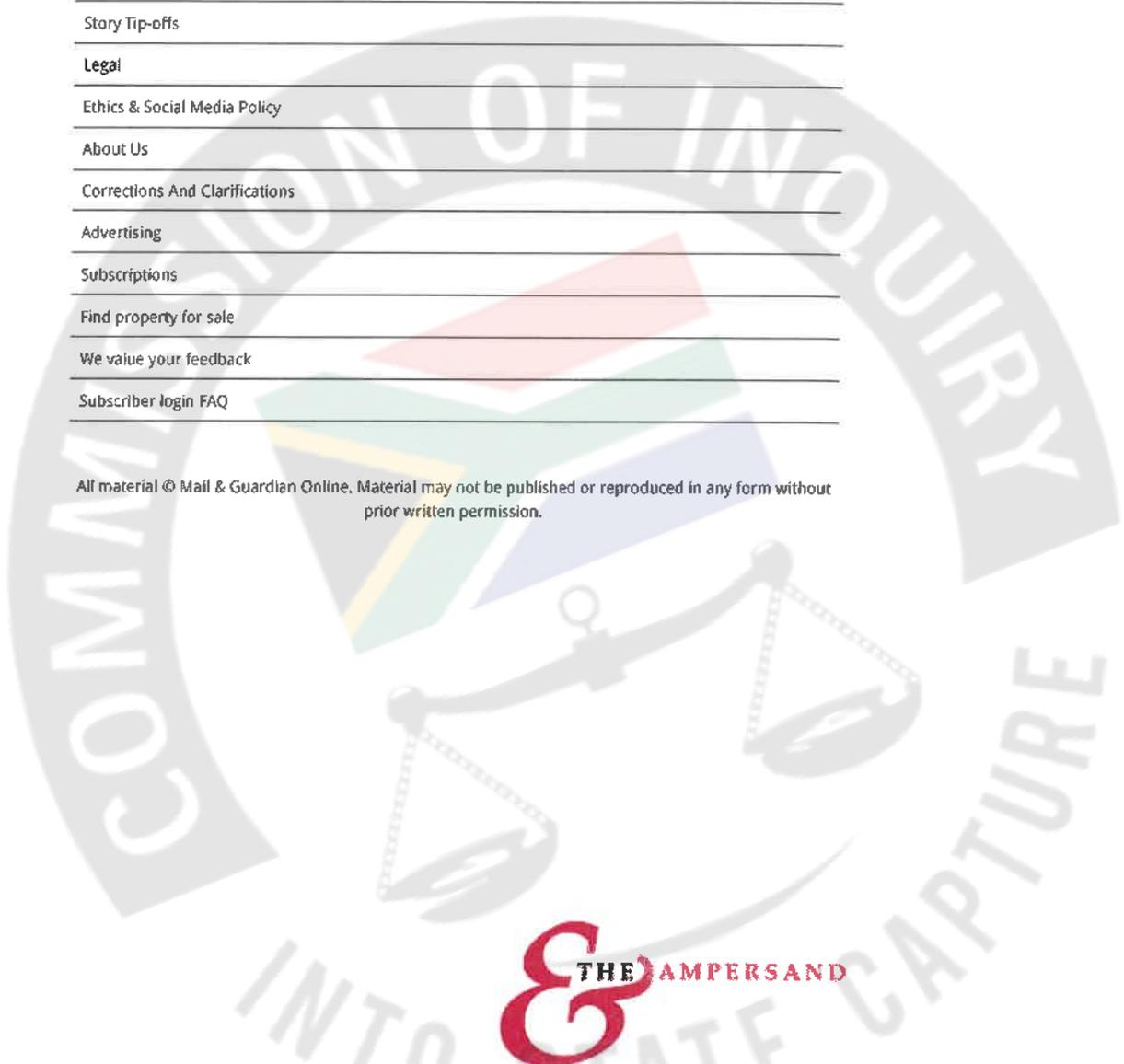
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ANNEXURE “HIK 12”



HIK 12

"D"

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Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X941, Pretoria, 0001, City Forum Building, 114 Madiba Street, Pretoria
Tel: (012) 399 0026 Fax: (012) 399 0140
Email: lkgamanyane@ipid.gov.za Web: www.ipid.gov.za

Mr Innocent Khuba
Provincial Head: Limpopo Province
14 David Mabilo Street
Faranani Estate
Polokwane
0700

BY HAND

29 September 2015

Dear Mr Khuba

RE: YOUR PLEA OF GUILTY AND SANCTION

1. On 06 July 2015, you and Mr Sesoko were charged together in a disciplinary enquiry with a count of dishonesty and defeating the ends of justice in terms of the charge sheet that I annex hereto for your benefit. On 23 September 2015, you attended a disciplinary enquiry in which you were represented by your attorney, Mr Phoko which was chaired by Advocate Patrick Ngutshana and Mr Sesoko did not attend due to ill-health. As a result of Mr Sesoko's non-attendance, your disciplinary enquiry was separated from that of Mr Sesoko.
2. Mr Sesoko's disciplinary enquiry was postponed by agreement to 01 December 2015. Your disciplinary enquiry was proceeded with in which you pleaded guilty to the charge of dishonesty and defeating the ends of justice, as framed in the charge sheet. As a result of your guilty plea, I had agreed that despite the seriousness of the offence that you have committed, and that it warranted a dismissal, I have taken into account that you were open in admitting your guilt, and decided to agree to a final written warning instead of a dismissal. A settlement agreement to that effect was concluded on that day and signed by yourself in the presence of your attorney. You pleaded guilty to the charge, freely and voluntarily.

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Confidential

3. The settlement agreement containing your guilty plea and the sanction was read out to the chairperson in the enquiry who then made a ruling in which he confirmed its contents and pronounced you guilty of the charge. The enquiry then terminated on that day, 23 September 2015. A copy of the settlement agreement and Annexure "A" (the charge sheet) is attached.
4. On Friday, 25 September 2015, in breach of your guilty plea and the agreement for a lenient sanction short of dismissal as contained in the settlement agreement, and without my knowledge or consent deposed to an affidavit in Polokwane, which contradicted the terms of your guilty plea as contained in the settlement agreement. I, as the Acting Executive Director learned about the existence of the affidavit in the media. On Monday, 28 September 2015, I phoned you at your office to verify whether the media reports that you have after the disciplinary enquiry was finalised on Wednesday, 23 September 2015, deposed to an affidavit on the same subject matter of the completed disciplinary enquiry.
5. You confirmed that indeed you have deposed to such an affidavit because Mr Sesoko asked you to do so.
6. I am of the view that your conduct as explained above was a perpetuation of the dishonest act and the defeating of the ends of justice which you have already pleaded guilty to, and a serious breach of the leniency of the sanction that I gave you of a final written warning. I am inviting you to provide me with the full explanation as to why you deposed to an affidavit in respect of a disciplinary matter which had been concluded, and in which you sought to contradict the terms of your guilty plea, and the terms of the settlement agreement. I require your full explanation on this matter because it is of grave concern to me, in order to enable myself, to take an appropriate decision, on whether I should revoke the final written warning and replace it with a sanction of dismissal.
7. In the light of your conduct aforesaid, I invite you to make written representations to me by no later than 09h00 am on Wednesday, 30 September 2015, why it is not appropriate that a final written warning be revoked and a summary dismissal be imposed.

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Yours faithfully



MR KI KGAMANYANE
ACTING IPID EXECUTIVE DIRECTOR
DATE 29/09/2015

ACKNOWLEDGED BY _____ ON _____ 2015

AT _____



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ANNEXURE “HIK 13”





ipid

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

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

Eng: IH Khuba
Date: 2015/09/30

**Mr Israel Kgamanyane
Acting Executive Director
114 Mediba Street
Pretoria
0001**

Dear Mr Kgamanyane

SUBJECT: MY GUILTY PLEA AND SANCTION

I have noted your letter dated 29/09/2015 which was hand-delivered by Mr. Mnisi on the same day. The content of your letter relate to a settlement agreement which was concluded on 23/09/2015. On 2015/09/29 while I was in the office I received your telephonic call in which you asked me whether I made a statement on 25/09/2015. After I confirmed that I made a statement, you asked me why I made such statement. Reason was given to you which is contrary to what you have cited in your letter.

The reasons for depositing an affidavit was to clarify Mr Sesoko that the settlement agreement was between me and the employer and that it was never meant to implicate or exonerate him as a second respondent in the case I was initially charged with. Depositing of a statement against or in favour of an employee does not require the permission of an Accounting Officer and therefore cannot be held against me as misconduct.

The Plea Agreement which was concluded on 23/09/2015 was proposed to my lawyer by the employer's representative (Mr Mkhari) on 22/09/2015. Such agreement could not be concluded on 22/09/2015 because we informed the employer that we would like to apply our minds to the offer and consider the implication of such agreement. After we considered that the case has been dragging for a long time which is torturous to my family, we decided to accept the offer presented by the employer.

The agreement does not have any condition or terms which require me to depose or not depose statement regarding this matter or testify in favour or against Mr Sesoko. Your paragraph four states that my conduct of depositing an affidavit after the settlement contradicted terms of the Guilty Plea. The Agreement does not have terms with regard to this issue. If the employer made an offer for a settlement agreement with ulterior motive, unfortunately I failed to read such during the acceptance of the offer. I concluded the agreement in good faith and putting the interest of my family first.

It is unfortunate that you learned about the existence of my affidavit from the media; however a trace of the email which I can also provide as proof shows that it was emailed to Mr. Sesoko's

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2015/09/30

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HIK 13
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My guilty plea and sanction

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lawyer on 25/09/2015. I do not know how it ended up with the media. It is as baffling to me as the same Plea Agreement which was quoted by Sunday Times of 27/09/2015 whereas the discussions took place behind closed doors.

Your paragraph 6 and 7 states that I should explain why you shouldn't revoke the final written warning and replace it with dismissal. The same Plea Agreement which was signed by the employer does not have clause that allow the imposition dismissal without a hearing on the so called new misconduct or any contravention if really there was such. This clearly shows that this agreement is used as an instrument of victimisation by the employer. With this threat of dismissal, I am convinced that the employer made such an offer in bad faith. It is clear that with this amount of victimisation, the so called six months in which the sanction would be active, is going to be a nightmare for me.

I have approached the PSA for an urgent High Court application to have the Agreement set aside based on number of reasons, to allow me to go through the process of a hearing.

If you decide to serve me with letter of dismissal, please use the same address that appears on your letter dated 29/09/2015. I have been booked off sick due to my ill-health and will only be back on 09/10/2015.

Kind Regards

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PROVINCIAL HEAD - LIMPOPO

Confidential

Page 2

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10/10/15
Sh. Tene
2015/09/30

ANNEXURE “HIK 14”





ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X941, Pretoria, 0001, City Forum Building, 114 Madiba Street, Pretoria
Tel: (012) 399 0026 Fax: (012) 399 0140
Email: ikgamanyane@ipid.gov.za Web: www.ipid.gov.za

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HIK 14
"E1"

Mr Innocent Khuba
Provincial Head: Limpopo Province
14 David Mabilo Street
Faranani Estate
Polokwane
0700

BY HAND

30 September 2015

Dear Mr Khuba

RE: YOUR DISMISSAL FROM EMPLOYMENT WITH IMMEDIATE EFFECT

1. On 29 September 2015, I addressed a letter to you affording you an opportunity to make written representations to me by no later than 09h00 on 30 September 2015, as to why the sanction imposed on you of a final written warning should not be altered to a summary dismissal in the light of your conduct on 25 September 2015, when you deposed to an affidavit without my knowledge and consent contradicting your plea of guilty and the terms of the settlement agreement you signed on 23 September 2015.
2. I have received your written representations at 08h45 on 30 September 2015, and I have taken them into account in making my decision herein. Nothing in your representations address the issues I have raised in my letter dated 29 September 2015, than a further confirmation of your perpetual dishonesty.
3. I find that your conduct on 25 September 2015 was the perpetuation of the dishonest conduct and defeating of the ends of justice which you had already pleaded guilty to. Due to the seriousness of this transgression and the seniority of the position you hold in IPID as the Provincial Head, I find that I am unable to trust you anymore, and as such, the trust relationship has been

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[Handwritten initials]

Confidential

irreparably broken down. The position that you occupy is one of trust and the person who occupies it must be a person with integrity. You have demonstrated through your dishonest conduct that you lack integrity and cannot be trusted by the employer.

- 4. I therefore dismiss you from your employment with immediate effect.
- 5. If you wish to challenge your dismissal, you are entitled to refer the dismissal dispute to the Bargaining Council within 30 days from the date of your dismissal.

Yours faithfully



**MR KI KGAMANYANE
ACTING IPID EXECUTIVE DIRECTOR**

20150930

cc. Employee Relations Officer



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20150930



ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X941, Pretoria, 0001. 114 Mediba Street (Vermeulen Street), City Forum Building, Pretoria

Eng: Mr VO Sibanyoni
Ref: SP/ Mr Khuba

MR IH KHUBA
PRIVATE BAG X9525
POLOKWANE
0700

Dear Mr Khuba

**APPOINTMENT TO THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE (IPID): CHIEF DIRECTOR:
INVESTIGATIONS, LIMPOPO OFFICE**

As a result of your successful candidature for the advertised post of Chief Director: Investigations, I am pleased to inform you that your appointment has been approved with effect from date of assumption of duty:

Rank	:	Chief Director: Investigations
Salary	:	R 988 152.00
Salary Level	:	14
Office	:	Limpopo Office

Your appointment is subjected to the provision of the Public Service Act, the collective agreements concluded in the Public Service Co-ordinating Bargaining Council (PSCBC), the Public Service Regulations and the Public Service Pension Fund. Furthermore, your appointment to the IPID is approved on condition that you pass the IPID security clearance, that you have no previous criminal and/or departmental convictions which were not disclosed during the interview and, that no such matter is pending against you. Your probation will be subject to a positive Security Clearance from MIA i.e. ITC, Criminal Records, Citizenship. Should your security clearance results be negative your appointment will be terminated.

In addition, kindly note that your appointment is subject to the positive verification of your qualification by the South African Qualification Authority. Should your qualifications not be positively verified, your appointment will be terminated.

Your permanent appointment is subject to the satisfactory performance during the probationary period of twelve months. Please note that as per the Department of Public Service and Administration (DPSA) Circular HRD 1 of 2012, the probation of an employee cannot be confirmed unless such an employee has completed at least Module 1 of the Compulsory Induction Programme.

Within 30 days of entering the post, you are also subjected to the following:

- ❖ Job description agreed and signed with your relevant Supervisor/ Manager.
- ❖ Performance Agreement signed with your relevant Supervisor/ Manager.
- ❖ Structuring of the New Inclusive Flexible Remuneration Package for employees in the Middle Management Services (MMS) (only applicable to employees appointed on salary 11 -12)
- ❖ Structuring of the New Inclusive Flexible Remuneration Package for employees in the Senior Management Services (SMS) (only applicable to employees appointed on salary 13 -16)

Chief Director: Investigations

Mr IH Khuba

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PAY DATE

Your salary will be paid on the last day of the month. Any overpayment on salaries due to an error or oversight will be recovered as soon as it is discovered. After completion of your probationary period, your salary for the month will be paid in the middle of the month.

GENERAL

Your conditions of service are in accordance with the Public Service Act, Public Service Regulations as amended and other Circulars and Resolutions which are negotiated from time to time. Departmental policies, including the Grievance procedure and Disciplinary Code, apply to all employees.

LEAVE

You will be entitled to 22 working days' vacation leave per annum for the first ten years' service and 30 working days per annum after completing ten years' service and if you are appointed during the year a pro-rate leave calculation will be done. Your unused vacation leave credits for the previous year will expire every year on the 30th June.

Sick leave is granted per three-year cycle of 36 days. Family responsibility leave is 10 working days per annum. A maximum of 5 days family responsibility leave is granted for a death and 5 days if the employee's spouse or life partner gives birth to a child or the employee's child, spouse or life partner is sick as stipulated in the Leave Directive. Female employees are entitled to 4 consecutive months paid Maternity Leave.

SERVICE BONUS

An annual service bonus will be paid to you on your birthday month. This amount is equal to 100% of your basic salary per month. If the employee has less than a year's service, a pro-rated portion is calculated and paid accordingly.

Note: Employees in Middle Management Services (MMS) (employees appointed on salary 11 -12), will only enjoy this benefit if they have structured for it within their Flexible Remuneration Package.

HOUSING ALLOWANCE

The Homeowner's Allowance is set by the Department of Public Service Administration and is calculated based on the prevailing interest rate. The allowance fluctuates in response to the interest rate. The amount to be paid on Housing Allowance will be based on individual circumstances, e.g. property or renting accommodation.

Note: Employees in Middle Management Services (MMS) (employees appointed on salary 11 -12), will only enjoy this benefit if they have structured for it within their Flexible Remuneration Package.

STATE GUARANTEE

State guarantees are issued with reference to the Public Service Regulations. Only applications from employees who have completed their probationary periods may be considered.

OFFICIAL HOURS OF ATTENDANCE

The official hours of attendance for the Department are as follows:
07H30 until 16H00 or 08H00 until 16H30 (with a 45 minutes lunch break from 12H45 until 13H30). Please consult your manager in this regard.

PAY PROGRESSION

The qualifying period for first time participants have been extended from 12 to 24 months. This amendment is effective from 01 July 2012. Upon completion of the 24 months period, an eligible first time participant will qualify for pay progression and 12 months thereafter.

Chief Director: Investigations

Mr H Khuba

VOLUNTARY RESIGNATION

The employee may resign from the Department at any time by giving the Department 30 days' notice in writing.

TERMINATION OF EMPLOYMENT

The Department shall be entitled, after following due processes, to terminate your employment, after following due processes, should you be found guilty of any conduct which will justify dismissal as contemplated in the Labour Relations Act of 1995, the Public Service Act and the Public Service Regulations. Upon termination of your employment for any reason whatsoever, you must undertake to return all property/assets belonging to the Department of the Independent Police Investigative Directorate immediately.

Should your contract display an end date, please be advised that the onus is on yourself and your immediate supervisor to be aware when your contract expires.

MEMBERSHIP OF PENSION FUND

It is a condition of service for you to contribute to the Government Employees Pension Fund at a rate of 7.5% and your employer will contribute an amount of 13%.

MEDICAL FUND MEMBERSHIP

You will have a choice to become a member of the Government Employees Medical Aid Scheme (GEMS). Please note that the Department ONLY pays two thirds (medical aid subsidy) of the total contribution to a maximum predetermined amount p.a. towards the Government Employees Medical Scheme. For you to enjoy the medical aid subsidy benefit, you will be required to join GEMS as a registered member.

Note: Employees in Middle Management Services (MMS) (employees appointed on salary 11-12), will only enjoy this benefit if they have structured for it within their Flexible Remuneration Package.

INTERACTION WITH THE MEDIA

This Department has a dedicated Communication Unit, any questions from the media must be referred to the Executive Director or delegated authority.

FALSE AFFIDAVIT

The Department is in the process of confirming the authenticity of your educational qualification(s), criminal record and your working experience with the relevant institution(s) and companies. Any false information given by you on your application form (Z83) and curriculum vitae (CV) or during your interview and any misrepresentation would lead to your immediate discharge.

COPYRIGHTS

The Department of the Independent Police Investigative Directorate retains copyright on all materials produced by yourself during the period and scope of your employment and such material must be returned to the department on termination of your employment.

REMUNERATIVE WORK OUTSIDE THE PUBLIC SERVICE AND RELATED ACTIVITIES

In terms of the Public Service Regulations 2001 as amended, you shall not engage in any other business, or form of employment, directly/indirectly without the prior written approval by the Executive Director.

CONFIDENTIALITY

You shall not divulge any information of a confidential nature by yourself during the period of employment with the Department, either during your employment or after termination of employment unless otherwise authorized by the Department of the Independent Police Investigative Directorate.

Chief Director: Investigations

Mr Hl Khuba

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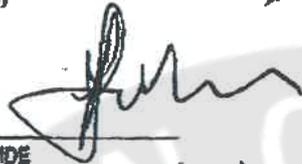
CHANGE IN BANKING DETAILS

Should you wish to change your banking account, it is advisable that you keep your existing account operational until your new account number comes into effect. Failing this, delays in payment of your salary will be experienced.

Please respond within 5 days to accept or decline the offer on receipt thereof. Failure to do so will result in the automatic lapse of the offer. You are most welcome to the service of this Department and I trust that you will be happy and make valuable contribution in your new working environment.

I await your response.

Yours sincerely



MR R.J. MCBRIDE
EXECUTIVE DIRECTOR
DATE:

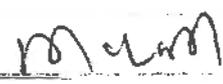
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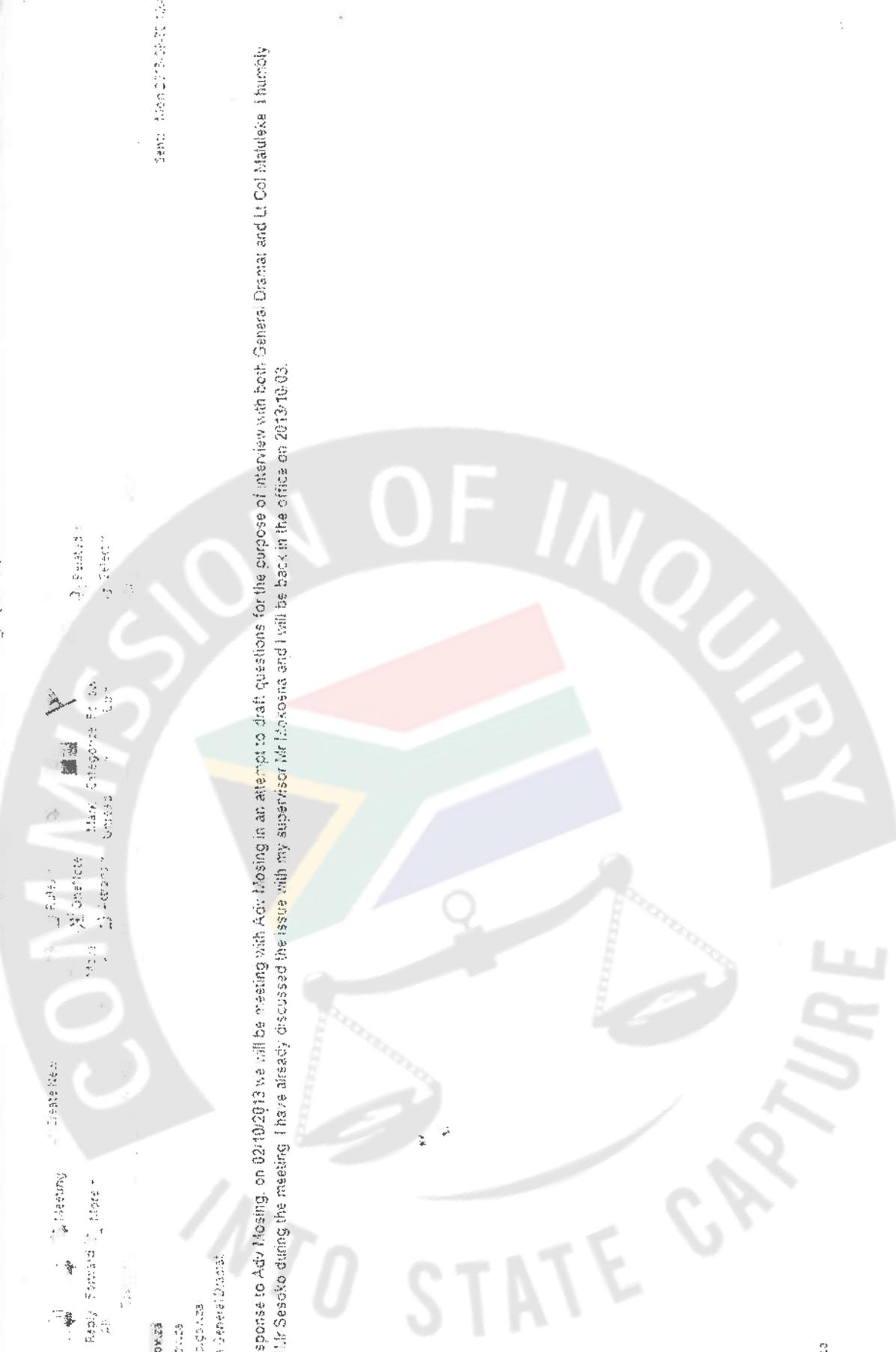
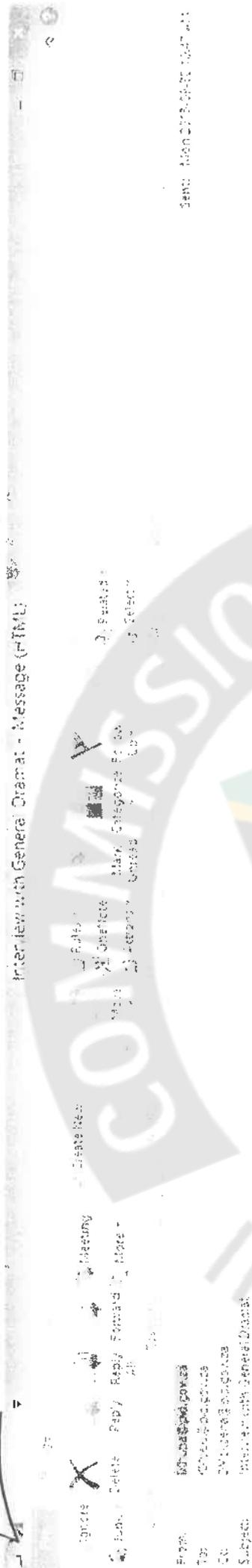
Chief Director: investigations

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Mr H Khete



ANNEXURE B.



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

Kind Regards

I H KHUSA

Khuse@sigidgenza

ANNEXURE “HIK 15”



HIK 15

TO **MR MASEKOAMENG**
STATE ATTORNEY, POLOKWANE

IN RE: **I H KHUBA / IPID**

OPINION

INTRODUCTION

1. Consultant is the Independent Police Investigative Directorate ("IPID"). Mr Innocent Khuba ("Khuba"), until his dismissal, was employed as the Provincial Head of IPID, Limpopo.

BACKGROUND

2. On the 23rd of September 2015, Khuba, who was legally represented, pleaded guilty to the charges that were preferred against him. A guilty plea was agreed upon with the consent and blessing of Mr K I Kgamanyane ("Kgamanyane"), the then acting IPID Executive Director, and consequently Khuba was found guilty, as agreed upon. For the purpose of this opinion, the relevant clauses of the plea agreement are set out below:



“5. The Employer will impose a sanction of a final written warning valid for 6 months against Mr Khuba.

...

7. Despite the seriousness of the offence the Employer is satisfied that Mr Khuba's candid and openness about the offence, the fact that he did not waste the Employer's time by engaging in a protracted disciplinary enquiry and his remorse to be a sufficient mitigation against a sanction of dismissal which ordinarily would have been appropriate.

GENERAL

8. This document contains the entire agreement between the parties.
9. Neither party shall have a claim arising from any undertaking, representation or warranty not included in this document.
10. No agreement to vary, add to or cancel this Agreement shall be valid unless reduced to writing and signed by or on behalf of both parties to the agreement. (my emphasis)

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3. On the 25th of September 2015 Khuba deposed to an affidavit, exonerating his colleagues from some alleged criminal activities. This led to the issuing of a letter by Kgamanyane on the 29th of September 2015, in terms of which he requested Khuba to make representations as to why Khuba should not be summarily dismissed from the employment of IPID. For the purpose of this opinion, the relevant paragraph reads as follows:

“6. I am of the view that your conduct as explained above was a perpetuation of the dishonest act and the defeating of the ends of justice which you have already pleaded guilty to, and a serious breach of the leniency of the sanction that I gave you of a final written warning. I am inviting you to provide me with the full explanation as to why you deposed to an affidavit in respect of a disciplinary matter which had been concluded, and in which you sought to contradict the terms of your guilty plea, and the terms of the settlement agreement. I require your full explanation on this matter because it is of grave concern to me, in order to enable myself, to take an appropriate decision, on whether I should revoke the final written warning and replace it with a sanction of dismissal.”

4. Khuba responded by means of a letter dated the 30th of September 2015. For the purpose of this opinion, the relevant portions read as follows:

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"The agreement does not have any condition or terms which require me to depose or not depose statement regarding this matter or testify in favour or against Mr Sesoko. Your paragraph four states that my conduct of deposing an affidavit after the settlement contradicted terms of the Guilty Plea. The Agreement does not have terms with regard to this issue. If the employer made an offer for a settlement agreement with ulterior motive, unfortunately I failed to read such during the acceptance of the offer. I concluded the agreement in good faith and putting the interest of my family first.

It is unfortunate that you learned about the existence of my affidavit from the media; however a trace of the email which I can also provide as proof shows that it was emailed to Mr Sesoko's lawyer on 25/09/2015. I do not know how it ended up with the media. It is as baffling to me as the same Plea Agreement which was quoted by Sunday Times of 27/09/2015 whereas the discussions took place behind closed doors.

Your paragraph 6 and 7 states that I should explain why you shouldn't revoke the final written warning and replace it with dismissal. The same Plea Agreement which was signed by the employer does not have clause that allow the imposition dismissal without a hearing on the so called new misconduct or any contravention if really there was such. This clearly

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shows that this agreement is used as an instrument of victimisation by the employer. With this threat of dismissal, I am convinced that the employer made such an offer in bad faith. It is clear that with this amount of victimisation, the so called six months in which the sanction would be active, is going to be a nightmare to me."

5. Kgamanyane, in a letter dated the 30th of September 2015, summarily dismissed Khuba from his employment with IPID. For the purpose of this opinion, the relevant portions of the letter read as follows:

"1. On 29 September 2015, I addressed a letter to you affording you an opportunity to make written representations to me by no later than 09h00 on 30 September 2015, as to why the sanction imposed on you of a final written warning should not be altered to a summary dismissal in the light of your conduct on 25 September 2015, when you deposed to an affidavit without my knowledge and consent contradicting your plea of guilty and the terms of the settlement agreement you signed on 23 September 2015.

...

3. *I find that your conduct on 25 September 2015 was the perpetuation of the dishonest conduct and defeating the ends of justice which you*

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had already pleaded guilty to. Due to the seriousness of this transgression and the seniority of the position you hold in IPID as the Provincial Head, I find that I am unable to trust you anymore, and as such, the trust relationship has been irreparably broken down. The position that you occupy is one of trust and the person who occupies it must be a person with integrity. You have demonstrated through your dishonest conduct that you lack integrity and cannot be trusted by the employer.

4. *I therefore dismiss you from your employment with immediate effect."*

6. Khuba referred an unfair labour dispute to the Bargaining Council. In the referral form the following is stated:

6.1. In the first part of the referral form at page 5:

"5.2 Summarise the facts of the dispute you are referring:-

The Respondent just provided the Applicant with a dismissal letter.

There was no hearing at all." (my emphasis)

6.2. In part B of the referral form at pages 8 to 9:

"2. **FAIRNESS/UNFAIRNESS OF DISMISSAL-**

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(a) *Procedural issues*

Do you think that the dismissal was procedurally unfair? (YES was marked)

(Were the internal procedures not followed)

If yes, why?

There was no hearing.

(b) *Substantive issues*

Do you feel the dismissal was substantially unfair? (YES was marked)

(Were the reasons for the dismissal unfair)

If yes, why?

No reason for the dismissal was given." (my emphasis)

7. The pre-arbitration minutes agreed upon between the parties details the following:

"The parties agree as follows:

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A. Common cause issue

1. *The applicant was charged for misconduct as appearing on the charge sheet.*
2. *The applicant pleaded guilty to the charge.*
3. *The applicant and employer concluded an agreement "B".*
4. *The applicant subsequently depose to an affidavit on behalf of Sesoko. Annexure "C"*
5. *The applicant was invited to make written representations as per letter dated 29 September 2015. Annexure "D"*
6. *The applicant responded as per letter dated 30 September 2015. Annexure "E"*
7. *The applicant was dismissed on 30 September 2015 as per annexure "E1".*

B. Issues for determination

1. *Whether the dismissal of the applicant was procedurally and substantively fair under the circumstances.*

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C. Other issues

1. *The parties agree that no oral evidence is necessary.*
 2. *The parties further agree that the arbitrator will determine the issue on documentation to be provided and written submissions.” (my emphasis)*
8. The Commissioner issued an award dated the 21st of April 2016. The relevant portions thereof read as follows:
- “AWARD**
27. *The case of Innocent Humbulani Khuba is herewith dismissed.*
 28. *Accordingly, I find that the dismissal of the applicant by the respondent was not unfair, and consequently he is not entitled to any remedy in law.*
 29. *There is no order as to costs.”*
9. On the 13th of June 2016, Khuba launched a review application in the Labour Court (“the Court”), held in Johannesburg, for the following relief:

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- “1. Reviewing and setting aside the arbitration award, dated 21 April 2016, and issued by the third respondent under Case Number GPSSBC and which was received by the applicant on 6 May 2016;*
 - 2. Substituting the arbitration award of the third respondent with one which the above honourable court deems fit.*
 - 3. Directing such respondents who oppose this application to pay costs thereof, jointly and severally, the one paying the other to be absolved; and*
 - 4. Granting the applicant further and/or alternative relief.”*
10. On the 28th of June 2016, the State Attorney: Pretoria, acting on behalf of IPID, served a Notice of Intention to Oppose the review application on Khuba’s attorney.
 11. On the 4th of August 2016, Khuba’s attorney served on the State Attorney a Notice in terms of Rule 7A(8)(b), which clearly indicated that Khuba stands by his Notice of Motion and Founding Affidavit. IPID was called upon to serve their opposing papers, if any, within 10 days from service of the notice.
 12. On the 11th of August 2016, a Notice in terms of Rule 7A(6) was served on the State Attorney.

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13. On the 13th of September 2016, Mr Sitelo ("Sitelo"), who is in the employment of the Pretoria State Attorney, acting on behalf of IPID, wrote a letter to Khuba's attorney. The relevant portions read as follows:

"3. Upon conversation with MR Phooko yesterday, where I enquired about the records, he stated that there were no records, hence they were not served at our offices. Furthermore I requested that he give me time to communicate this to our counsel so that we can decide on a way forward.

4. Please take note that this is a review application to file a notice in terms of Rule 7A(8) to the effect that the applicant does not wish to supplement his papers and that he stands by his notice of motion, upon which we will within 10 days of receipt of his notice file our answering affidavit.

5. We have not received either the records or the notice, therefore we ask for a way forward from you." (my emphasis)

14. On the 14th of September 2016, the Registrar of the Labour Court issued a directive in terms of which the parties were directed to file their respective heads of argument within the time period as set out in the directive so that the matter could be set down for hearing on the opposed roll.

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15. On the 19th of September 2016, Khuba's heads of argument was served on the State Attorney and filed with the Registrar on the 24th of September 2016.

LEGISLATIVE AND PRESCRIPTS FRAMEWORK

16. The taking of disciplinary steps against employees of IPID on the level of Khuba is regulated by the Constitution of the Republic of South Africa, Act 108 of 1996 ("the Constitution"), the Labour Relations Act, Act 66 of 1995 ("the LRA"), the SMS Handbook, in particular Chapter 7 and the PSCBC Disciplinary Code. The relevant sections and provisions are set out below.

17. Section 23 of the Constitution provides:

"Labour relations

23.

(1) *Everyone has the right to fair labour practices."*

18. The preamble of the LRA provides:

*"To change the law governing labour relations and, for that purpose –
to give effect to section 27 of the Constitution;*

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to regulate the organisational rights of trade unions;

to promote and facilitate collective bargaining at the workplace and at sectoral level;

to regulate the right to strike and the recourse to lock-out in conformity with the Constitution;

to promote employee participation in decision-making through the establishment of workplace forums;

to provide simple procedures for the resolution of labour disputes through statutory conciliation, mediation and arbitration (for which purpose the Commission for Conciliation, Mediation and Arbitration is established), and through independent alternative dispute resolution services accredited for that purpose;

to establish the Labour Court and Labour Appeal Court as superior courts, with exclusive jurisdiction to decide matters arising from the Act;

to provide for a simplified procedure for the registration of trade unions and employers' organisations, and to provide for their regulation to ensure democratic practices and proper financial control;

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to give effect to the public international law obligations of the Republic relating to labour relations;

to amend and repeal certain laws relating to labour relations; and

to provide for incidental matters.”

19. Section 1(a), (b) and (d) of the LRA provides:

“1. Purpose of this Act

The purpose of this Act is to advance economic development, social justice, labour peace and the democratisation of the workplace by fulfilling the primary objects of this Act, which are-

(b) to give effect to obligations incurred by the Republic as a member state of the International Labour Organisation;”

20. Section 23 of the LRA provides:

“23. Legal effect of collective agreement

(1) A collective agreement binds-

(a) the parties to the collective agreement;

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- (b) *each party to the collective agreement and the members of every other party to the collective agreement, in so far as the provisions are applicable between them;*
- (c) *the members of a registered trade union and the employers who are members of a registered employers' organisation that are party to the collective agreement if the collective agreement regulates-*
- (i) *terms and conditions of employment; or*
 - (ii) *the conduct of the employers in relation to their employees or the conduct of the employees in relation to their employers;*
- (d) *employees who are not members of the registered trade union or trade unions party to the agreement if-*
- (i) *the employees are identified in the agreement;*
 - (ii) *the agreement expressly binds the employees;*
and

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- (iii) *that trade union or those trade unions have as their members the majority of employees employed by the employer in the workplace.*
- (2) *A collective agreement binds for the whole period of the collective agreement every person bound in terms of subsection (1)(c) who was a member at the time it became binding, or who becomes a member after it became binding, whether or not that person continues to be a member of the registered trade union or registered employers' organisation for the duration of the collective agreement.*
- (3) *Where applicable, a collective agreement varies any contract of employment between an employee and employer who are both bound by the collective agreement.*
- (4) *Unless the collective agreement provides otherwise, any party to a collective agreement that is concluded for an indefinite period may terminate the agreement by giving reasonable notice to the other parties."*

21. The SMS Handbook, in particular Chapter 7, provides as follows:

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“2. DISCIPLINARY CODE AND PROCEDURES FOR MEMBERS

“2.1 Purpose and scope

(1) *The purpose of this Code and Procedure is to –*

- (a) *support constructive labour relations in the public service;*
- (b) *promote mutual respect between members and between members and the employer;*
- (c) *ensure that supervisors and members share a common understanding of misconduct and discipline;*
- (d) *promote acceptable conduct;*
- (e) *provide members and the employer with a quick and easy reference for the application of discipline;*
- (f) *avert and correct unacceptable conduct; and*

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- (g) *prevent arbitrary or discriminatory actions by supervisors towards members.*

2.2 Principles

- (1) *The following principles inform the Code and Procedure and must inform any decision to discipline a member:*

(a) *Discipline is a corrective measure and not a punitive one.*

(b) *Discipline must be applied in a prompt, fair, consistent and progressive manner.*

(c) *Discipline is a management function.*

(d) *A disciplinary code is necessary for the efficient delivery of service and the fair treatment of members, and ensures that members –*

- *have a fair hearing in a formal or informal setting;*

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- *are timeously informed of allegations of misconduct made against them; and*
- *receive written reasons for a decision taken.”*

2.6 Serious misconduct

- (1) *If the alleged misconduct justifies a more serious form of disciplinary action than provided in paragraph 2.5, the employer may initiate a disciplinary enquiry. The employer must appoint a person, from within or from outside the public service, as its representative to initiate the enquiry.*

2.7 Disciplinary enquiry

(1) **Notice of enquiry**

- (a) *The member must be given notice at least five working days before the date of the hearing.*
- (b) *The member must sign receipt of the notice. If the member refuses to sign receipt of the notice,*

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it must be given to the member of the presence of a fellow member/employee who shall sign in confirmation that the notice was conveyed to the member.

(c) *The written notice of the disciplinary meeting may be given in the form of Annexure D of this chapter and provide –*

- *a description of the allegations of misconduct and the main evidence on which the employer will rely;*
- *details of the time, place and venue of the hearing; and*
- *information on the rights of the member to representation by a fellow member/employee or a recognised trade union, and to bring witnesses to the hearing.”*

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22. The prosecution of review applications in the Court is regulated by Rule 7A. For the purpose of this opinion, the relevant Rule of the Court provides as follows:

"7A Reviews

- (8) *The applicant must within 10 days after the registrar has made the record available either –*
- (a) *by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of the notice of motion and supplement the supporting affidavit; or*
 - (b) *deliver a notice that the applicant stands by its notice of motion.*
- (9) *Any person wishing to oppose the granting of the order prayed in the notice of motion must, within 10 days after receipt of the notice of amendment or notice that the applicant stands by its notice of motion, deliver an affidavit in answer to the allegations made by the applicant."*

23. In the event that a party did not comply with any of the provisions of the Rules of the Court ("the Rules"), an application for condoning such non-compliance can be made in terms of Rule 12, which provides as follows:

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“12. Extension of time limits and condonation

- (1) *The court may extent or abridge any period prescribed by these rules on application, and on good cause shown, unless the court is precluded from doing so by an Act.*
- (2) *If a party fails to comply with any notice or direction given in terms of these rules, any interested party may apply on notice for an order that the notice or direction be complied with within a period that may be specified, and that failing compliance with the order, the party in default will not be entitled to any relief in the proceedings.”*
- (3) *The court may, on good cause shown, condone non-compliance with any period prescribed by these rules.”*

REVIEW APPLICATION: PROSPECTS OF SUCCESS ON MERITS AND CONDONATION

24. In this portion of the opinion, I deal with the summary dismissal of Khuba, rationality, soundness and reasonableness of the award made by the Commissioner, and non-compliance with the applicable Rules and the practice directive issued by the Registrar of the Court (“the practice directive”).

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Unilateral changing of sanction and Summary dismissal

25. With regard to the conduct of Kgamanyane, the two issues that requires consideration are the following:
- 25.1. Whether Kgamanyane is legally permitted to unilaterally change an agreed sanction imposed by a duly appointed chairperson, and substitute such a sanction with a sanction of summary dismissal without the holding of a disciplinary hearing; and
- 25.2. Whether Kgamanyane is legally permitted to summarily dismiss Khuba without the holding of the prescribed disciplinary hearing.
26. It has already been demonstrated, as set out in a letter dated the 30th of September 2015, that the written warning imposed on Khuba was unilaterally altered to a summary dismissal by Kgamanyane.
27. The institution of a disciplinary hearing against Khuba is regulated by Section 23 of the Constitution, Sections 1 and 23 of the LRA, the SMS Handbook and Ministerial Directive: Disciplinary Code and Procedure for Members of the Senior Management Service dated 03/09/2003. Any disciplinary hearing or dismissal that does not comply with the legislation, directive and SMS Handbook referred to above, is unlawful.

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28. Kgamanyane, as more fully set out in the letters dated 29th and 30th of September 2015, viewed the conduct of Khuba in deposing to an affidavit as a very serious misconduct, to an extent that the trust relationship has irretrievably broken down. Similarly the Commissioner held the same view as found in the arbitration award. In view of such an attitude, a disciplinary hearing should have been instituted, as required by Clause 2.6 of the SMS Handbook, and the process set out in Clause 2.7 should have been followed.
29. The provisions of the directive and the SMS Handbook do not permit Kgamanyane to unilaterally change the agreed sanction imposed by the chairperson of the disciplinary hearing, and replace it with a summary dismissal of Khuba.
30. It is clear from the objective facts that none of the process and procedures set out in the legislation, directive and SMS Handbook set out above, had been followed prior to the dismissal of Khuba.
31. In determining the legality or otherwise of the conduct of Kgamanyane complained of, the reasons advanced for such conduct are critical.
32. In the matter of **Harding v Petzetakis Africa (Pty) Ltd**¹ the Court held:

¹ (2012) 33 ILJ 876 (LC) page 893

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[67] It is also important in evaluating the employer's defence to bear in mind that the reasons for dismissal which fall to be scrutinized as the reasons which the employer relied on at the dismissal:

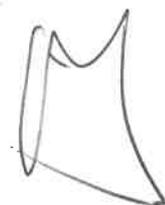
'It is an elementary principle of not only our labour law in the country, but also of labour law in many other countries that the fairness of otherwise of the dismissal of an employee must be determined on the basis of the reasons for dismissal which the employer gave at the time of the dismissal. The exception to this general rule is where, at the time of the dismissal, the employer gave a particular reason as the reason for dismissal in order to hide the true reason such as union membership. In such a case, the court or tribunal dealing with the matter can decide the fairness or validity of the dismissal not on the basis of the reason that the employer gave for the dismissal but on the basis of the true reason for dismissal.'

33. In the matter of **South African Revenue Services v Commission for Conciliation, Mediation and Arbitration and Others**.² The following was held:

[28] The wording of the collective agreement does not only make it abundantly clear that the chairperson's pronouncement on

² (DA7/11) [2013] ZALAC 26 (17 October 2013) page 7-8

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penalty is a final sanction, but, in my view, it also leaves no room for interpretation in favour of the parties having intended to provide in the collective agreement a term granting a right to SARS to substitute a sanction imposed by its chairperson for its own. Whilst it is trite that the duty of trust and confidence on the part of an employee is a term implied by law in an employment contract, I do not think that such implied term extends to include the right of an employer to substitute its own sanction for that of the chairperson, particularly in a situation such as the present where the parties in a collective in a collective agreement elected expressly to confer on the disciplinary chairperson the sole power to impose the final sanction.

[31] *In Country Fair Foods (Pty) Ltd v The Commission for Conciliation, Mediation and Arbitration and Others this Court noted:*

'The evidence place before the second respondent was that Kemp was appointed by the appellant to chair the disciplinary enquiry. No evidence was presented by the appellant to contradict the conclusion reached by the

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second respondent that Kemp was clearly mandated by the company to make a final determination regarding the outcome of Alexander's disciplinary enquiry'. Second respondent found further that the company's disciplinary code and practice does not make provision for intervention or for the overruling of this sanction by a more senior manager than the one appointed to chair the disciplinary enquiry.'

And, the Court concluded as follows:

'In the present case appellant acted without recourse with the express provision of its disciplinary code and on the basis of no precedent. Second respondent decided that the evidence put up by the appellant did not justify interference with the Kemp enquiry. In my view, there is no basis for concluding that the decision of second respondent was unjustifiable, in terms of the evidence which was presented at the arbitration hearing. Accordingly the appeal must fail.'

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[34] *In any event, it was utterly wrong and unacceptable both from the legal and constitutional perspective, that SARS simply unilaterally changed the sanction without even affording Chatrooghoon or his representative trade union an opportunity to be heard on the matter. This was in gross violation of the natural justice principle of audi alteram partem rule and the rule of law. The fact that SARS may have similarly conducted themselves in the past without any objection from any of the trade unions involved in the collective agreement, did not render such patently unfair and unjust conduct, on the part of SARS, fair and just. I agree with the remarks of the learned Judge a quo that "[w]hen the applicant [SARS] interfered with the sanction imposed by Mr Owen, it literally threw the principles of natural justice [out] through the window in a clear spirit of the end justifies the means. Indeed, the conduct further contravenes one of the main objectives of the disciplinary code, namely, 'to ensure that all the principles of natural justice are applied before an employee is disciplined'"*

34. It is trite law that before a decision that prejudicially affects a person's rights or interests, are taken, the principle of *audi alteram partem* rule should be observed. *In casu* such principle was not observed. The manner in which the dismissal

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complained of occurred, was a serious violation of the constitutional rights of Khuba and the principle of natural justice.

35. Not only was Kgamanyane expected to follow the process set out above, but is bound by the terms and conditions of the guilty plea agreement concluded with Khuba, in particular, clauses 8 and 10, set out above. Kgamanyane intentionally, and deliberately so, did not specifically refer to the alleged contravened conditions. Such a failure is due to the fact that there is nothing in the guilty plea agreement to support his unfounded allegations.
36. The conduct of Kgamanyane in summarily dismissing Khuba, is contrary to the plea agreement concluded between Khuba and IPID. In his submission, Khuba, and correctly so, contends 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 a contravention of the Public Finance Management Act, Act 1 of 1999 ("the PFMA"). The situation becomes grave when such unbecoming 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.

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37. The conduct of Kgamanyane referred to above occurred in violation of the constitutional rights of Khuba.

Award

38. The approach to be adopted in determining whether an unfair labour practice occurred, as contemplated in the LRA, is set out in the case set out below.
39. In the matter of **Joseph Dube & 76 Others v Nasionale Sweisware (Pty) Ltd**³, 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 to 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 view of the employer and from the point of view of the employee (Vetsak (supra) at p. 589 C – D.”

³ 1998 (3) SA 956 (SCA) at (2) and (4)

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40. In the matter of **Media Workers Association of SA v Press Corporation of SA Ltd**⁴ the Court held:

“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.”

41. In the matter of **NUM v Free State Consolidated Gold Mines Ltd**⁵ the Court held:

⁴ 1992 (4) SA 791 (AD) at 798 H to 799 A

⁵ 1996 (1) SA 422 (AD) at 446 H

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"Ultimately the task of the court is to pass a moral or value judgment."

42. In the matter of **National Union of Metalworkers of South Africa v Vetsak Co-Operative Ltd**⁶ 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."

43. In the matter of **Sidumo and another v Rustenburg Platinum Mines and others**⁷ 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

⁶ 1996 (4) SA 577 (AD) at 589 C – D

⁷ (2007) 28 ILJ 2405 (CC)

Herholdt v Nedbank Ltd (Cosatu as Amicus Curiae) 2013 (6) SA 224 (SCA) at 232 [18]

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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.”

44. 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**⁸ and **Herholdt** (*supra*).
45. 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.

⁸ (2014) 35 ILJ 943 (LAC)

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46. It is my considered view, 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.

47. In the matter of **Southern Sun Hotel Interests (Pty) Ltd v Commissioner for Conciliation, Mediation and Arbitration and others**⁹ 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.”

48. In the matter of **Herholdt** (supra)¹⁰ the Court held:

⁹ (2010) 31 ILJ 452 (LC) at [17]
¹⁰ At 231 [16]

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“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.”

49. I 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.
50. In the award at paragraph 14, the Commissioner, and correctly so, cites a quotation from the **Sidumo** case, which reads as follows:

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"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."
(my emphasis)

51. 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."

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52. 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.

53. The finding that *"the sanction of dismissal hearing was appropriate"* is unreasonable *in casu*, as already demonstrated above.

54. 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."

55. 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.

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56. In the matter of **Gosisephuthabatho Gustuv Lekabe v The Minister Department of Justice & Another, Case No. J1092/2008**, the Court held that: -

"[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

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disciplinary code, were substantially fair, reasonable and equitable.”

See also SA Tourism Board v CCMA And Others [2004] 3 BLLR 272 (LC)”.

57. In the matter of **Francois Wilhelm Riekert v The Commissioner for Conciliation, Mediation, and Arbitration & 2 Others, Case No. JR686/03**¹¹, the Labour Court held that: -

“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 “.....

¹¹ [2006] 4 BLLR 353 (LC)
Changula vs Bell Equipment (1992) 13 ILJ 101 (LAC)
SA Clothing and Textiles Workers Union & Another vs Martin Johnson (Pty) Ltd (1993) 14 ILJ 1033 (LAC)).

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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."

58. 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**¹² and **Avril Elizabeth Home for the Mentally Handicapped v CCMA and Others**¹³, 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.
59. 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."

¹² (1998) 1 ILJ 635 (LC)

¹³ [2006] 2 BLLR 118 (LAC)

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60. 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."

61. The above is a demonstration that it is not 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.
62. The Commissioner finds that 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*.
63. The Commissioner, without making any reference, merely finds that:

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"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."

64. 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.
65. Applying the principles set out above, to the objective facts of this matter, it is my considered view that IPID will not make out a case on the merits, to resist the relief sought in the review application launched by Khuba.

CONDONATION

66. It is my considered view that there was a flagrant disregard of both the Rules and the Practice Directive regarding the non-filing of IPID's heads of argument.
67. The issue that require consideration in this regard is whether a case will be made out on the merits and for such non-compliance. The aspect relating to IPID's case

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on the merits has already been dealt with above and it is not necessary to repeat same.

68. The contents of the letter written by Sitelo dated 13 September 2016, demonstrated a misplacement on his part regarding the alleged non-compliance with Rule 7A(6) and (8). The filing of both notices is dealt with above.
69. Further in the aforesaid letter, there was an undertaking that upon receipt of the Rule 7A(8), the answering affidavit of IPID would be filed within 10 days, as stipulated in the Rules. However, such undertaking was not kept.
70. At best for IPID, the answering affidavit, if any, should have been filed on the 25th of August 2016, taking into account that the Rule 7A(6) notice was served on the State Attorney on the 11th of August 2016. To date, after the lapse of a period of approximately five months after the service of the Rule 7A(6) notice, IPID's answering affidavit have not been served and filed.
71. It is my considered view that an unreasonable period has lapsed for the serving and filing of IPID's answering affidavit. For IPID to succeed at this late stage in serving and filing its answering affidavit and heads of argument, it is required that a substantive condonation application for such non-compliance will have to be launched.

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72. The first difficulty relates to the misplacement of IPID's attorney relating to the aspect of non-compliance with Rules 7A(6) and (8). The necessary documentation were served and filed more than a month before the letter was written to Khuba's attorneys.
73. There is also no indication as to what steps, if any, the official in the employment of IPID who was then in charge of this matter, took in ensuring that there was compliance with the Rules and the practice directive.
74. The serving of Khuba's heads of argument, as directed by the Labour Court, and the serving of other documents, should have served as a warning to both the attorney and IPID's official that Khuba was serious in pursuing the review application to finality.
75. There is a legal duty on the part of both legal practitioners and their clients to ensure that there is compliance with the Rules and the practice directive. It is not in all instances that a litigant will escape the wrath of the Court due to the fact that his attorney did not comply with the Rules and the practice directive. A litigant will have to demonstrate what steps he or she took to ensure that there is compliance with the Rules and the practice directive. *In casu* there is no indication at all that the then responsible official at IPID took any steps to ensure that there is compliance with the Rules and the practice directive.

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76. Below I deal with the principles relating to non-compliance with the Rules.
77. It is trite law that the primary objective of the LRA is to ensure that disputes are effectively and expeditiously resolved,¹⁴ particularly those involving individual dismissals such as the present case. This objective is not only in the interest of the dismissed employee but also in the interest of the employer. Just like the employee, the employer is entitled to have finality in the dispute. Either party is always likely to suffer prejudice if the finalisation of the dispute is unduly and unjustifiably delayed.
78. In the matter of **Shaikh v South African Post Office Ltd and others**¹⁵ the Court held:

"[20] Indeed, an application for condonation of non-compliance with the rules is not just a formality or merely something for the taking. A full and detailed account of the causes of the delay and the effect thereof must be furnished by an applicant. The more serious the consequences of non-compliance, the more difficult it will be for the party seeking condonation to have his or her application granted.

¹⁴ **Queenstown Fuel Distributors CC v Labuschagne N.O. and others** [2000] 1 BLLR 45 (LAC) at [25]
¹⁵ DA 4/09 [2013] ZALAC 18 (19 July 2013)

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[21] Therefore, a party seeking condonation must, firstly, tender an explanation for the delay in order for the Court to understand fully how the non-compliance occurred; and secondly, show that the explanation so tendered is bona fide and not unfounded.⁹ However, more importantly, when the failure to comply with the rules has been flagrant and gross, condonation will not be granted, regardless of the prospects of success on the merits of the case of the party seeking condonation."

79. The duties, obligations and necessity of attorneys to comply with the Rules of Court, are dealt with in the undermentioned cases.

See: **Sennet & Wessels (Pietersburg) BK v Prins** (1998) 19 ILJ 1134 (LAC) 1139 17

"Dit is die plig van 'n regsverteenwoordiger om vas te stel welke regsreëls en prosedure van toepassing is op 'n aangeleentheid wat hy of sy namens 'n kliënt hanteer. Die applikant se prokureur het dit nie gedoen nie. Hy bied geen verduideliking daarvoor aan nie. Erger nog is dat sy aandag vroeg in

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September 1997 op die korrekte toepaslike reëls gevestig is. Dit is weer in November 1997 en Januarie 1998 gedoen. Eers ongeveer vyf na ses maande nadat sy aandag vir die eerste keer uitdruklik op die toepaslikheid en inhoud van die betrokke reëls gevestig is, beweer hy dat hy tot die besef gekom het van die implikasies daarvan. Dit is 'n bewering wat moeilik is om te aanvaar. 'n Redelike afleiding uit die applikant se prokureur se deurlopende versuim om ag te slaan op die bestaan en inhoud van hofreëls, 'n hofbevel, en die vestiging van sy aandag op die reëls, is dat dit 'n doelbewuste verontagsaming en minagting van hofprosedure aan sy kant was. Ten beste vir hom is dit optrede van 'n grof nalatige en roekelose aard".

See: **Zululand Anthracite Colliery v Commission for Conciliation, Mediation and Arbitration & Another** (2001) 22 ILJ 1213 (LC) the following has been held:

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"I would like, however, to stress the significance of compliance with the rules of court and the danger accompanying non-compliance therewith. It is a common experience that litigants' legal representatives frequently fail to comply with requirements prescribed in the rules, resulting in courts being inundated with applications for condonations. In this very instance, the applicant's path to the ultimate application for condonation of its late filing of its application for review is riddled with many instances of non-compliance or inadequate compliance with the rules or other procedural requirements. I have no intention of listing such instances. One such example is having Struwig's affidavit in support of the application for condonation of the late filing of heads of argument "attested" by a senior security officer who was an employee of the applicant's. The affidavit was signed and 'attested' on 9 March 2000 and had to be re-attested on 16 March 2000. The Supreme Court, the High Court, the Labour Court and the Labour Appeal Court have frequently

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expressed themselves on the importance of complying with the rules”.

See: **NUMSA and Another v Hillside Aluminium** (2005) 6 BLLR 601 (LC) at 607 para 25

“In the final result, the Second Applicant may not have been as well served by her representatives as she might have hoped. Still, any lack of diligence on the part of her representative of itself does not justify the granting of her condonation. There is a limit beyond which a litigant cannot escape the result of her representatives lack of diligence or the inconsistency of the explanation tendered”.

See: **Niemann Brothers v Gylard NO and Others** (1998) 19 ILJ 150 (LC) at p157A

“The attorney, after all, is the representative whom the litigant has chosen for himself, and there is a little reason why, in regard to condonation of a failure to

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comply with a rule of court, the litigant should be absolved from the normal consequences of such a relationship, no matter what the circumstances of the failure are which would have precluded the granting of the judgment and which would have induced the judge, if he had been aware of it not to grant the judgment”.

See: **CIBA-GEIGY (Pty) Ltd v Lishuf Farms (Pty) Ltd en ‘n andere** 2002 (2) SA 447 at p476

“ [84] Hierdie Hof het praktisyns reeds by herhaalde geleenthede, veral gedurende die onlangse tyd, gewaarsku dat hy op ‘n strikte nakoming van die reëls aandring, sy onsteltenis waarvan ‘n spesiale kostebevel teen hulle gemaak kan word. Die onderhawig saak bied ‘n treffende voorbeeld van vergryp aan die kant van regspraktisyns wat ‘n spesiale koste bevel van die aard regverdig. Die hele kwessie is gedurende betoog gedebateer en geen gegronde redes is deur die appellatant geopper

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waarom 'n spesiale bevel hiervoor nie gemaak moet word nie. Na ons mening is dit 'n geval waar die prokureur van die appellant opdraggewende en plaaslik, een derde van die geld waarop hulle andersins vir die nagaan van stukke geregtig sou wees, moet verweer”.

80. In the matter of **Finbro Furnishers (Pty) Ltd v Registrar of Deeds, Bloemfontein and others**¹⁶ Hoexter JA held:

“the oft-repeated judicial warning that there is a limit beyond which a litigant cannot escape the results of his attorney’s lack of diligence or the insufficiency of the explanation tendered.”

81. It is trite law that in certain instances, even where the prospects of success have merit, but where the non-observance of the Rules has been flagrant and gross, the Court will not grant condonation.¹⁷

82. In the matter of **Molala v Minister of Law and Order and Another**¹⁸ Flemming DJP held that:

¹⁶ 1985 (4) SA 773 (A) at 787 G – H

¹⁷ **P E Bosman Transport Works Committee and Others v Plet Bosman Transport (Pty) Ltd** 1980 (4) SA 794 (A) at 799

Rennie v Kamby Farms (Pty) Ltd (*supra* at 131 I – J)

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“The fact that a plaintiff had permitted an unreasonable time to elapse before taking the next procedural step in an action, was not in itself conclusive. Nor was it conclusive that such delay had cause prejudice to the defendant. The question was ‘whether there is behaviour which oversteps the threshold of legitimacy’. (At 677 C – D)

It appears to me that the proper approach is for the Court to weigh up the period of the delay and the reasons therefore, on the one hand and the prejudice, if any, caused to the defendant, on the other. Thus, there may be cases in which the delay is relatively slight but serious prejudice has been caused to the defendant. This will often be so where the plaintiff's cause of action arises from an assault or a motor vehicle collision (to mention but two examples) where the events giving rise to the claim occurred in the space of a few seconds and much depends upon the testimony of eye-witnesses, whose memories may become blurred in the course of time.”

83. Where the attitude of a litigant is proved to be negative regarding compliance with the Rules, condonation will be refused.

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84. In the matter of **SADU & Others v Head of the Northern Province Department of Education**¹⁹ the following was held:

"[15] The Department has not given an acceptable and/or satisfactory explanation for its delay. The said explanation, in my view displays a blatant disregard for the decision of the arbitrator. There is no doubt that the Applicants have suffered and continue to suffer prejudice as a result of the failure to implement the award. In the circumstances, I am not satisfied at all that good cause has been shown for this Court to excuse the Department's delay. Accordingly and without any need to enquire into the merits, I consider it appropriate, as I hereby do, to refuse condonation."

85. It is trite law that the overriding discretion in applications for condonation rests in the judicial discretion of the Court, to be exercised with regard to all the circumstances of the case.
86. In the matter of **Van Wyk v Unitas Hospitals (Open Democratic Advice Centre as Amicus Curiae)**²⁰, the Court held:

¹⁹ [2000] 7 BLLR 829 (LC) page 834
²⁰ 2008 SA 472 (CC) at 477 A-B

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"It is well settled that, in considering applications for condonation, the Court has a discretion to be exercised judicially upon a consideration of all the facts; and that in essence it is a question of fairness to both sides. In this enquiry, relevant considerations may include the degree of non-compliance with the rules, the explanation therefore, the prospects of success on appeal, the importance of the case, the Respondent's interest in the finality of this judgment, the convenience of the Court, and the avoidance of unnecessary delay in the administration of justice. This list is not exhaustive. These factors are not individually decisive but are interrelated and must be weighed one against the other, thus a slight delay and a good explanation may help to compensate for prospects of success which are not strong.

*Further in *Unitas Hospital the Constitutional Court held that an Applicant for condonation must give a full explanation for the delay which must not only cover the entire period of the delay but must also be reasonable.**

A full Court directed that High Courts should in future require that the entire period of the delay be thoroughly explained, regardless of the length of the delay."²¹

87. In the matter of **Cape Cobra (Pty) Ltd v Landman**²² the following was said:

²¹ **Unitrans Fuel and Chemical (Pty) Ltd v Dove-Co CC** 2010 (5) 240 (GSJ) at 344F-G and 345A-B

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[3] *This Court is required to exercise its discretion to grant or refuse condonation for non-compliance with its rules. Dealing with a similar problem in Melane v Santam Insurance Co Ltd 1962 94) SA 531 (A) the Appellate Division (as it then was) at 532 C – D stated (per Holmes JA) as follows:*

"In deciding whether sufficient cause has been shown, the basic principle is that the court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefor, the prospects of success, and the importance of the case.

Ordinarily these facts are interrelated: they are not individually decisive, for that would be a piecemeal approach incompatible with a true discretion, save of course that if there are no prospects of success there would be no point in granting condonation. Any attempt to formulate a rule of thumb would only serve to harden the arteries of what should be a flexible discretion."

The learned Judge of Appeal added that:

“What is needed is an objective conspectus of all the facts. Thus a slight delay and a good explanation may help to compensate for prospects of success which are not strong. Or the importance of the issue and strong prospects of success may tend to compensate for a long delay” (532D-E).”

88. As already demonstrated, prejudice is one of the factors that play a critical role in the determination of whether or not condonation should be granted. It is common cause that Khuba has been without a salary for a considerable period of time as a result of the procedurally and substantively unfair dismissal. This definitely has a disastrous effect and consequences on Khuba and his family.
89. Applying the principles set out above to the objective facts of this matter, it is my considered view that IPID will not succeed in making out a case for condonation.

LEGAL EFFECT OF ARBITRATION AWARD

90. Section 143 of the LRA provides that:

“143. Effect of arbitration awards

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(1) An arbitration award issued by a commissioner is final and binding and may be made an order of the Labour Court in terms of section 158(1)(c), unless it is an advisory arbitration award."

91. The award is binding on the parties until set aside on review. The existence of the award precludes the re-instatement of Khuba into the employment of IPID. Were such to happen in the face of the existing and binding award, such conduct would be unlawful.

CONCLUSION

92. I have already demonstrated that IPID does not have prospects of successfully opposing the review application launched by Khuba and IPID cannot justify the non-compliance with the Rules and the practice directive.
93. It is clear that both the State Attorney and the official who handled this matter at that stage did not comply with the Rules and practice directive, for which no justification can be provided.
94. The conduct of Kgamanyane in summarily dismissing Khuba without due process, is a contravention of the legislation, the directive and the SMS Handbook referred to above, and unlawful, and cannot be factually and legally be justified.

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95. The officials of IPID should not perpetuate the injustice caused by Kgamanyane by further delaying the finalisation of the review application, thereby further prejudicing Khuba by unnecessarily opposing the undefendable.
96. I have already demonstrated above the many respects in which the award is defective and why the award cannot be legally justified. Applying the principles set out above in the various cases cited, the findings of the Commissioner *in casu* are not rationally related to the evidence that was placed before him and is unreasonable.
97. Officials of IPID are urged to seriously consider withdrawing the opposition that was served and filed, and allowing Khuba to obtain the relief as set out in the Notice of Motion in the review application.
98. It is also critical to note that costs are only sought in the event of opposition to the review application.
99. The instructing attorney and/or IPID's officials are at liberty to contact me should they have any enquiries regarding this opinion.

T F MATHIBEDI SC

Chambers

Sandton

13 January 2017

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ANNEXURE “HIK 16”



HIK 16 ANNEXURE A

ANNEXURE "A"**Case no: A16/212 /2016**

THE STATE VERSUS

- 1. HUMBULANI INNOCENT KHUBA**
- 2. MATTHEWS SESOKO**
- 3. ROBERT McBRIDE**

(Hereinafter referred to as accused 1 – 3 respectively)

Count No. 1**FRAUD**

Whereas Accused 1 had received instructions from the former Acting Executive Director of the Independent Police Investigative Directorate (IPID) around October 2012 to conduct an investigation into the rendition of Zimbabwean nationals by members of the Directorate for Priority Crimes Investigations (DPCI) to Zimbabwe;

AND

Whereas Accused 1 had conducted an in-depth investigation into the said rendition of Zimbabwean nationals by members of the DPCI with the assistance and or co-operation of other institutions such as the National Prosecution Authority (NPA), who were providing guidance to the investigation;

AND

Whereas Accused 1 having finalised the said investigation into the illegal rendition of the Zimbabwean nationals, compiled a report (herein referred to as the First Report) and submitted it to the National Prosecution Authority (NPA) on 22 January 2014. The First Report recommended to the National Prosecution Authority in accordance with Regulation 5(1) issued under the IPID Act 1 of 2011 that:-

- Lt General Dramat
- Major General Sibiya
- Lt Colonel Maluleke
- Constable Radebe
- Captain Nkosi and
- Warrant Officer Makoe

be charged criminally for the following offences:-

- Kidnapping and
- Defeating the ends of Justice;

There was a further recommendation that Lt Colonel Maluleke, Warrant Officer Makoe, Captain Nkosi and Constable Radebe be charged for assault and theft;

AND

Whereas Accused 3 subsequent to his appointment as Executive Director of the IPID on 3 March 2014 requested an update on all high profile matters handled by the IPID including the rendition matter, Accused 1 and a witness were directed and or instructed by Accused 3 to retrieve the rendition docket from the South Gauteng NPA office on 7 March 2014,

Therefore the accused are guilty of the crime of fraud

IN THAT on or about the **5th day of March 2014 to 8 April 2014** and at or near IPID National Head Office, in Pretoria in the Regional Division of Gauteng, the Accused, unlawfully altered the First Report by amongst others:-

- removing information linking Lt General Dramat and Major General Sibiya from Pages 9, 16, 20, 21, 28 and 30 of the First Report;
- adding certain new paragraphs on Pages 23, 24, 25, 26, 29 and 30;
- changing the recommendation from the one mentioned above to recommending that "no charges should be brought against Lt General Dramat and Major General Sibiya. The investigation established that there is no prima facie case against them".

AND

- continued to make assertions and averments in other judicial processes that Lt General Dramat and Major General Sibiya were exonerated from any liability in the rendition of Zimbabwean nationals' matter,

Whereas Accused 3 knew when he made the assertions and averments in other judicial processes that he had no legal authority to exonerate anybody from any liability,

with the intention to falsely present to the National Prosecution Authority that the said Lt General Dramat and Major General Sibiya are not implicated in the rendition of the Zimbabwean nationals when in fact the accused knew when they made such false representations that there was evidence in the docket and the First Report, which implicated Lt General Dramat and Major General Sibiya in the said rendition of the Zimbabwean nationals,

thereby produced the Second Report which was completed on 8 April 2014 and submitted to a different NPA office and to the potential prejudice of the National Prosecution Authority in particular and or the administration of justice in general.



ANNEXURE "B"

Case no: A16/212 /2016

THE STATE VERSUS

1. **HUMBULANI INNOCENT KHUBA**
2. **MATTHEWS SESOKO**
3. **ROBERT McBRIDE**

(Hereinafter referred to as accused 1 – 3 respectively)

COUNT 2**DEFEATING OR OBSTRUCTING THE ADMINISTRATION OF JUSTICE**

THAT the accused are guilty of the crime of Defeating or Obstructing the administration of justice

IN THAT upon or about the date and place mentioned in Count 1 within the Regional Division of Gauteng the accused did unlawfully and with intention to obstruct or defeat the administration of justice commit the following act to wit,

- removed information linking Lt General Dramat and Major General Sibiya from Pages 9, 16, 20, 21, 28 and 30 of the First Report;
- added certain new paragraphs on Pages 23, 24, 25, 26, 29 and 30;

- changed the recommendation from the one mentioned above to recommending that "no charges should be brought against Lt General Dramat and Major General Sibiya. The investigation established that there is no prima facie case against them".

AND

- continued to make assertions and averments in other judicial processes that Lt General Dramat and Major General Sibiya were exonerated from any liability in the rendition of Zimbabwean nationals' matter,

Whereas Accused 3 knew when he made the assertions and averments in other judicial processes that he had no legal authority to exonerate anybody from any liability,

which conduct defeated or obstructed the administration of justice.

PRETORIA DISTRICT COURT NO 16

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FIRST APPEARANCE

DATE: 16/03/2016 CASE NO: A 16/217/16

PRESIDING OFFICER: Ms M Naidoo

PUBLIC PROSECUTOR: Adu GS Maema

INTERPRETER: Mrs M Mhlabane

DEFENCE: Mr SS Madiba obo Acc 1

Mr T Mathibe obo Acc 2

Mr A Venter obo Acc 3 (Adams Adams Attorneys)

1. Nature of charge(s) explained and understood.
2. Minimum sentence of _____ years explained and understood.
3. Rights in respect of bail explained and understood.
4. Rights in respect of legal representation explained and understood.

Accused elects to:

- Conduct own defence
- Instruct own legal representative
- Apply for legal aid

Proceeding mechanically crossed all accused names

Adams Adams Advocate on first appearance of Agreement between state + defence + Amt of bail as well as bail conditions

N/A schedule 6/5

All parties agree sum of R 1,500 - 00. Accused lodged in respective prisons before 18/3/16. Accused 3

All parties 15/4/16 for disclosure copies of charge sheet

N/A cancelled.

Ms Mhlabane: confirm bail conditions received
Mr Madiba: A copy confirms
Mr Venter: confirm agreed

Remains current + pending

ACC 2: no p/c no penalty cases

ACC 1: no p/c warrant pending premises

ACC 3: no p/c cases nor any premises

2nd - character

2nd under hand signed 11/03

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ANNEXURE “HIK 17”



HIK 17



ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Title: Independent Police Investigative Directorate Standard Operating Procedures	IPID Policy Number: 001-POL-PR2
	Effective Date: 01 April 2013



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This SOP repeals all the previous SOPs and shall be read and implemented in conjunction with the Memorandum of Understanding (MoU) with the SAPS and MPS, Firearm Control SOP, Registers and the Case Flow Chart.

1. PURPOSE

The purpose of this Standard Operating Procedure is to establish policy and methods by which cases should be received, registered, processed and disposed of, while being cognizant of the provisions of the Constitution of the Republic of South Africa Act, 1996; the Independent Police Investigative Directorate Act 1 of 2011; the South African Police Service Act 68 of 1995, as amended; the Criminal Procedure Act 51 of 1977, as amended, the Regulations promulgated under both the South African Police Service Act and the Independent Police Investigative Directorate Act and other relevant legislation.

2. POLICY

It is the policy of the IPID to:

- 2.1. Ensure that investigative assignments to IPID staff are made in a clear and unambiguous manner;
- 2.2. Ensure quality investigations and that investigations are conducted with integrity without fear or favour;
- 2.3. Require investigative staff to provide regular reports regarding investigations to supervisors;
- 2.4. Ensure that supervisors actively manage the investigative activities of their subordinates;
- 2.5. Ensure that investigations are carried out in a coherent and standard method within the IPID;
- 2.6. To comply with the turnaround time agreed to in respect of the investigation of different classes of cases; and
- 2.7. Ensure compliance with established accountability mechanisms.

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3. DEFINITIONS

For the purpose of this SOP the following words/ expressions shall mean:

Act – means the Independent Police Investigative Directorate Act, Act 1 of 2011;

Acquitted (Criminal) – means a member was found not guilty of a criminal offence and discharged;

Acquitted (Departmental) - means a member was found not guilty of departmental misconduct;

Assistant Director Investigations (ASDI) - means a person appointed at a level lower than the Deputy Director Investigations;

Annual Brought Forward (ABF) – means a case carried over from the previous financial year, not older than 12 months;

Backlog – means cases carried over from previous financial years older than 12 months;

Brought Forward (B/F) – means a date by which a file must be submitted to a supervisor for evaluation of compliance with the directives, as per “E” clip on the case file;

Case Classification – Refers to the manner in which cases are classified in terms of legislation in terms of Sec 28 of the IPID Act;

28. (1) The Directorate must investigate:

- (a) any deaths in police custody;
- (b) deaths as a result of police actions;
- (c) any complaint relating to the discharge of an official firearm by any police officer;
- (d) rape by a police officer, whether the police officer is on or off duty;
- (e) rape of any person while that person is in police custody;
- (f) any complaint of torture or assault against a police officer in the execution of his or her duties;
- (g) corruption matters within the police initiated by the Executive Director on his or her own, or after the receipt of a complaint from a member of the public, or referred to the Directorate by the Minister, an MEC or the Secretary, as the case may be; and
- (h) any other matter referred to it as a result of a decision by the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case may be, in the prescribed manner.

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(2) The Directorate may investigate matters relating to systemic corruption involving the police.

Case Investigative Journal (CIJ) - refers to a journal used to record all directives and activities undertaken, on the IPID file, IPID docket and CMS, which journal must always be filed in the "C" clip of both the docket and the file;

Case Investigative Report (CIR) - refers to investigative reports that include the Interim Case Investigative Report, Final Case Investigative Report as well as the Closure Report;

Case Worker – means any official who handles cases and includes a Data Capturer / CMS Clerk, Investigator, Senior Investigator, Principal Investigator, Assistant Director Investigation, Deputy Director Investigations and Director Investigation;

Closed as Referred – means the manner in which cases that fall outside the mandate (Section 28 of the IPID Act) are closed as per ED guidelines;

Closure of a case – means the final disposal of a case where investigation, court processes and disciplinary processes have been concluded and the ED/PH is able to conclude that the file can be closed as Acquitted (Departmental/Criminal), Convicted (Departmental/Criminal), Declined, Dismissed, Closed as Referred, Unsubstantiated and Withdrawn by the Complainant/victim/referral authority or the Prosecutor; after which the file is ready for archiving;

Closure Report – means the Report of a case where the investigation, court processes and disciplinary processes have been concluded and the ED/PH/DI is able to conclude that the file can be closed as Acquitted, Convicted, Declined, Discharged, Dismissed, Referred, Unsubstantiated and Withdrawn, after which the file is ready for archiving;

Case Management System – means an IPID database used for the electronic recording and processing of cases;

Case Control Number (CCN) - means a unique computer generated number upon registration and recording of a case in the CMS. The number is relevant for use in all future correspondence by and between IPID and its stakeholders;

Cases Intake Committee (CIC) - refers to a committee that is constituted by no less than three persons, (DI, DDI, ASDI and any available Case Worker). In case of unavailability of personnel, the sitting by the DI or DDI or ASDI or PI will constitute a valid sitting. (As a last resort the PH may assist and if no other staff is available, the PH alone will constitute a valid sitting)

Completed investigation – means an investigation which involves a comprehensive effort to interview the complainant, the victim, witnesses and suspect SAPS/MPS member, the identification, location and acquiring of relevant physical evidence and upon which the conclusion is based on the evidence obtained, excluding technical reports;

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Convicted (Criminal) – means a member has been found guilty of a criminal offence;

Convicted (Departmental) – means a member has been found guilty of Departmental misconduct;

CPA - means the Criminal Procedure Act 51 of 1977;

Death in custody – means death whether natural or unnatural, which occurred while the deceased was in the custody of the SAPS or MPS;

Death as a Result - means the death of any person, including a member of SAPS/MPS or the action of SAPS/MPS, that was caused, or is reasonably believed to have been caused, by a member of the SAPS/MPS while acting in his or her capacity as a member of the SAPS/MPS, and shall include a death that occur in connection with -

- (i) an attempt to effect an arrest or to prevent an escape;
- (ii) a SAPS/MPS member's actions taken in private defence in the execution of his/her duties;
- (iii) a motor vehicle accident involving one or more SAPS/MPS vehicles (marked or unmarked) during the execution of their duties.;
- (iv) mass action where the SAPS/MPS is present;
- (v) any action or inaction by a SAPS/MPS member which amounts to a criminal offence or misconduct; and
- (vi) any action that caused death where a SAPS/MPS state asset was involved.

Declined – means a decision taken by the DPP, SAPS or MPS not to institute criminal or disciplinary proceedings against the member;

Deputy Director Investigations (DDI) – means a person appointed at a level lower than Director Investigations;

Directive(s) – Instructions/guidelines issued to the Case Worker by the Supervisor;

Director Investigations (DI) – means a person appointed as a Head of Investigations at provincial level;

Dismissed – means a case cannot be investigated because of lack of co-operation by the complainant/victim/referral authority; the complainant/victim cannot be traced or the case was investigated by the IPID before and there is no new evidence or facts; or the suspect is deceased;

DPP – refers to the Director of Public Prosecutions;

Exhibit – refers to any item of evidential value collected or obtained during the course of investigation;

Final Case Investigative Report – means an investigative report which documents the entire investigation and contains the conclusion, summary of affidavits and technical

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reports, written recommendations to SAPS/DPP with regard to the actions of the SAPS/MPS member concerned;

Full investigation – refers to where a Case Worker takes over a docket/copies of the docket from the SAPS, conducts an independent enquiry and assessment and proceed with any other search/enquiry for further evidence to enable him/her to make a finding;

High profile cases – refers to an incident which involves a high ranking member and/or a person with a high standing in the community and a matter which draws public interest or high media coverage;

IPID – means the Independent Police Investigative Directorate;

IPID Case Form – refers to an official form for the registration of Cases;

IPID File – Refers to a file (Z20) that contains all evidential documents, correspondence, investigative journal and QCF, which consists of A-E clips;

IPID Docket – Refers to a docket that contains all evidential documents, correspondence and the investigative journal. It consists of A-E clips. This docket is used to refer the IPID investigation to the DPP, SPP and to Court;

IPID 7-2 – refers to an official form, used by a case worker on standby for the recording of crime scene information on all section 28 cases of the Act;

Immediately – means at once, without hesitation or delay or as soon as it is practicable to act;

Interim Case Investigative Report – means a case investigative report where the investigation has been completed but where a recommendation cannot be made to the DPP due to outstanding technical reports; however recommendations may be made to the SAPS;

Manual registration number – means a temporary number allocated to a case while the CMS is off-line and which will be updated immediately when the CMS is on-line;

Member – means an official appointed in terms of the South African Police Service Act 68 of 1995, as amended, and includes a member of the MPS;

Misconduct – Includes any act or omission by a member which constitutes a violation of rules, regulations, and standing orders, code of conduct and national orders;

MPS – means a Municipal Police Service established under section 64A of the South African Police Service Act 68 of 1995;

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NPS – refers to the National Prosecuting Service which is a body within the National Prosecuting Authority and includes the Director for Public Prosecutions (DPP) and the Senior Public Prosecutor (SPP);

Offence – includes any violation of common or statutory law;

Official hours – means normal business hours as contemplated in the Public Service Act, 1994 (promulgated under Proclamation No. 103 of 1994), (PSA) and includes hours stipulated by the IPID Flexi Time policy;

Outside Mandate Case – means a case:

- Which does not involve a member of the SAPS/MPS;
- Which occurred prior to 1 April 1997;
- Which is older than 12 months;
- That was adjudicated upon by a court of law; and
- That relates to a service delivery complaint where the complainant/victim has not exhausted internal SAPS case mechanisms up to the office of the Provincial Commissioner and are not referred to the IPID by the Minister or the Member of the Executive Council;
- Any matter not within the scope of Section 28 of the IPID Act;

PAJA - refers to the Promotion of Administrative Justice Act 3 of 2000 which may be used by a victim of domestic violence where IPID deals with an application for exemption by SAPS;

Police action – refers to an act or omission by a member of the SAPS/MPS which is alleged to lead to a person's death;

Post Investigative Monitoring (PIM) – The continuous evaluation and monitoring of cases where the status of the case is "Completed" but the case is not yet ready for closure (Cases where DPP and SAPS/MPS feedback is awaited or cases on the Court Roll or Pending disciplinary outcomes; Cases completed with Interim report while awaiting technical reports)

Preliminary investigation – refers to an enquiry of limited scope undertaken to verify whether or not an allegation merits full investigation;

Programme Manager (PM) - means any person who has been appointed as the Head of the Programme;

Provincial Head (PH) – means an IPID Official appointed to head a Provincial Office;

Recommendation (Negative) – Recommendation is made that disciplinary/criminal prosecution should be instituted;

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Recommendation (Positive) – Recommendation is made that no disciplinary/criminal prosecution should be instituted including inquest recommendations and a feedback letter should be sent to the SAPS/MPS;

Referred – means a case that is referred to the most appropriate organisation or institution by the ED/PH;

Referral Authority – refers to the Minister, MEC, Executive Director, Secretariat for Police;

SAPS – refers to the South African Police Service as contemplated in the South African Police Service Act 68 of 1995;

SAPS Docket – refers to a docket that is obtained from SAPS by a Case Worker and contains all evidential documents, correspondence and investigation diary. It consists of A-D clips. This docket is used to refer SAPS investigations to the DPP, SPP and to Court;

Service Delivery Complaint - refers to a complaint which alleges that a member of the SAPS or MPS failed to perform his/her duties or performed his or her duties in an improper manner, and where the complainant/victim has exhausted all internal SAPS complaints mechanisms, up to the level of Provincial Commissioner;

Supervisor – means any person who supervises a Case Worker (of any level);

Systemic corruption - Systemic corruption is an institutionalised endemic manipulation of a system by individuals or networks or organisations, taking advantage of weakness in the process and systems for illicit gains, where there are leadership deficiencies, collusion and abuse of power

SOP - means the Standard Operating Procedure;

Technical Reports – refers to reports of an evidential value that are generated by experts required to reach an investigative conclusion, including but not limited to, FSL reports (Forensic Science Laboratory) post mortem reports, LCRC reports, pathology reports, medical reports, reports in terms of sections 212 and 215 of the CPA and a report in terms of section 34(3) (a) of the Prevention and Combating of Corrupt Activities Act 12 of 2004;

Standby Notification Reference Number – means a reference number issued immediately upon notification, by the Case Worker on standby to SAPS/MPS member, consisting of the Provincial Office abbreviation, date (yymmdd) and time (24 hour clock) of notification, e.g. GP1204012250;

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Torture – means any act by which severe pain or suffering, whether physical or mental, is *intentionally* inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act that he, she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, whether such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising from, inherent or incidental to lawful sanctions;

Unsubstantiated – means there is no evidence to support the allegations contained in the case and IPID cannot make a recommendation of wrongdoing against any member;

Withdrawn by complainant/victim/referral authority – means the complainant/victim/referral authority indicated that he or she is no longer interested in proceeding with the case; and

Withdrawn by Prosecutor – means the Prosecutor has decided not to continue criminal proceedings.

4 APPLICATION

This SOP applies to all notifications and/or cases lodged with the IPID or initiated by the IPID against members of the SAPS/MPS by any person or organisation, alleging that a member committed an act or an omission which constitutes an offence and/or misconduct.

5 DUTIES AND RESPONSIBILITIES

The duties and responsibilities assigned to various officials and Committees:

5.1 The Executive Director (ED)

The Executive Director, in addition to the duties and responsibilities as contained in section 7 of the IPID Act 1 of 2011 and such other duties as may be imposed in the Regulations promulgated under that Act, must:

- 5.1.1 Ensure that there are systems in place for the lodging, receiving, processing, recording and disposal of cases against members;
- 5.1.2 Provide for the development and enforcement of policies to enable an environment that is conducive to lodge a case and receive cases reported;
- 5.1.3 Ensure compliance with the provisions of the IPID Firearm Control Standard Operating Procedure.

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5.2 Programme Manager (PM)

The Programme Manager must, in addition to any duties imposed under section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act:

- 5.2.1 Maintain an up-to-date SOP;
- 5.2.2 Determine investigation standards;
- 5.2.3 Identify priority areas to be attended during a financial year;
- 5.2.4 Conduct audits annually to ensure compliance with the SOP;
- 5.2.5 Monitor programme performance monthly, quarterly and annually;
- 5.2.6 Provide feedback on the programme performance;
- 5.2.7 Provide systems for the registration and processing of cases;
- 5.2.8 Maintain data integrity;
- 5.2.9 Ensure that the monthly reports and the data base are quality assured;
- 5.2.10 Ensure and comply with the provisions the IPID Firearm Control Standard Operating Procedure;
- 5.2.11 Coordinate and supervise interprovincial task team investigations and draft terms of reference for relevant task team.

5.3 Provincial Head (PH)

The Provincial Head, in addition to the duties and responsibilities as contained in section 21 of the IPID Act 1 of 2011 and such other duties as may be imposed in the Regulations promulgated under that Act, must:

- 5.3.1 Ensure that there are systems in place for the lodging, receiving, processing, recording and disposal of cases against the members;
- 5.3.2 Ensure compliance with the provisions of this SOP, the IPID Firearm Control Standard Operating Procedure and the ED guidelines;
- 5.3.4 Ensure that the relevant province conduct workload verification on a monthly basis and compile a Monthly Report;
- 5.3.5 Ensure data integrity, which is consistent with the CMS monthly, quarterly and annually;
- 5.3.6 Complete/Close cases on the Case Management System (CMS).

5.4 Director Investigations (DI)

The Director Investigations must, in addition to any duties imposed under section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act, must:

- 5.4.1 Supervise an investigation conducted by the Deputy Director Investigations;

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- 5.4.2 Ensure that the Case Intake Committee (CIC) meets daily to evaluate cases;
- 5.4.3 Ensure that cases are registered and updated on the CMS in terms of the strategic objectives;
- 5.4.4 Ensure that cases are investigated and completed in terms of the strategic objectives;
- 5.4.5 Ensure data integrity, which is consistent with the CMS monthly, quarterly and annually;
- 5.4.6 Review investigation reports, assess its quality, raise queries, if any, endorse recommendations to the SAPS and DPP and sign off on the recommendations;
- 5.4.7 Evaluate the decision by the SAPS/DPP and decide on further action to be taken;
- 5.4.8 Approve/disapprove completion of an investigation;
- 5.4.9 Approve/disapprove closure of the file for archiving;
- 5.4.10 Whoever is acting as the DI, must attach a copy of the Acting letter when closing or completing an investigation except where the investigation was done by the person acting;
- 5.4.11 Ensure that he/she has filled in the quality control form (QCF);
- 5.4.12 Co-ordinate the submission of a quality assured monthly report;
- 5.4.13 Determine and record B/F dates, directives and investigate targets and ensure that the information is captured on the CMS, in the event where the DDI is investigating the case;
- 5.4.14 Immediately upon being notified by the Case Worker, notify the PH, the National Spokesperson, the PM Investigation and the ED in writing of a high profile case, conviction and arrest;
- 5.4.15 Ensure that the province conduct workload verification on a monthly basis and compile a Monthly Report;
- 5.4.16 Ensure compliance with the provisions of the IPID Firearm Control Standard Operating Procedure;
- 5.4.17 Complete/Close cases CMS.
- 5.4.18 Ensure that the province conduct file audits on a quarterly basis and compile a Report which is separate from the Monthly Report;

5.5 Deputy Director Investigations (DDI)

The Deputy Director Investigations must, in addition to any duties imposed under section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act, must:

- 5.5.1 Ensure that cases are captured and allocated in line with the strategic objectives;
- 5.5.2 Convene and preside over the CIC;
- 5.5.3 Determine and record B/F dates, directives and investigative targets and ensure that the information is captured on the CMS;

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- 5.5.4 Ensure that prescribed registers are in place and kept up to date;
- 5.5.5 Lead and/or undertake investigations on high profile cases;
- 5.5.6 Review case reports pertaining to investigations where case worker providing report is directly reporting to DDI;
- 5.5.7 Co-ordinate the submission of a quality assured monthly report to the DI;
- 5.5.8 Ensure proper investigation of service delivery complaints lodged against the IPID;
- 5.5.9 Ensure that he/she has filled in the quality control form;
- 5.5.10 Ensure, before the DI can close the file that the case worker has complied with the information as contained on the quality control form (QCF) that guides the investigation process. The QCF must be attached on the "D" clip of the file;
- 5.5.11 Ensure that QCF is completed by the Supervisors and Case Workers;
- 5.5.12 Ensure that the Supervisors and the Case Workers comply with the provisions of 7.8 below;
- 5.5.13 Ensure that every activity undertaken by the Supervisor and Case Worker in the IPID file and docket is entered in the case investigative journal (CIJ);
- 5.5.14 Ensure that a Referral Register (RR4) containing all cases referred to the SAPS is sent to the Provincial Commissioner's office and IPID National Office monthly;
- 5.5.16 Conduct workload verification on a monthly basis and report in monthly report;
- 5.5.17 Conduct quality control before the file is archived;
- 5.5.18 Ensure compliance with the provisions of the IPID Firearm Control Standard Operating Procedure;
- 5.5.19 Complete/Close cases while acting as DI, notwithstanding the fact that a person might be closing/completing a case that he/she supervised;
- 5.5.20 Ensure that a case that was investigated by the person's supervisor, while he/she is acting as DI, is not completed/closed;
- 5.5.21 Whomever is acting as the DDI must ensure that an acting letter is attached in the files that were attended to by the acting DDI;
- 5.5.22 Send a Recommendation Register (RDCAR9/19/22/28/29), subject to the approval of the PH, containing all cases referred to SAPS to the Provincial Commissioner's office and IPID National Office monthly. Hardcopies of the recommendations sent to SAPS (and proof that they were forwarded) are to be forwarded to the National Office on a monthly basis;
- 5.5.23 Ensure that a Referral Register (RR4), subject to the approval of the PH, containing all cases referred to the SAPS is sent to the Provincial Commissioner's office and IPID National Office on a monthly basis.
- 5.5.24 Conduct community outreach programme and cell inspections for the Provincial Office.
- 5.5.25 Meet with Provincial SAPS and Secretariat monthly to discuss progress on recommendations made to SAPS by IPID.

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5.6 Case Workers

The Case Worker must, in addition to any duties imposed under section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act:

- 5.6.1 Receive and screen a case;
- 5.6.2 Consult with the complainant/victim/referral authority (only walk-in, written, emailed or faxed cases will be registered. Telephone cases will be accepted as a last resort);
- 5.6.3 Complete an IPID registration form, and ensure that the complainant/victim confirms the correctness of the information and appends his/her signature/mark or thumb print;
- 5.6.4 Register the case manually on a prescribed Case Control Register (CCR) as well as on the CMS and upload the notification received from SAPS/MPS or a signed IPID registration form, fax or email;
- 5.6.5 Acknowledge receipt of a case and issue an acknowledgement letter/SMS/e-mail to complainant/victim/referral authority;
- 5.6.6 Acknowledge receipt of a case and issue an acknowledgement letter/SMS/e-mail to next of kin (if information available);
- 5.6.7 Receive a file allocated for further investigations from the supervisor or CIC;
- 5.6.8 Update the CMS; generate letters to the complainant/victim/next of kin/referral authority and relevant stakeholders, indicating that he/she had been assigned to investigate the case;
- 5.6.9 Conduct investigations and submit file/docket for inspection as directed in writing in the CIJ;
- 5.6.10 Comply with brought forward dates as determined by the supervisor/CIC;
- 5.6.11 Initiate completion of investigation, by submitting a file/docket with recommendations to the supervisor for a decision;
- 5.6.12 Submit the file/docket to SAPS/DPP for a decision on prosecution of a member;
- 5.6.13 Follow-up on the recommendation forwarded to the DPP/SAPS, on a monthly basis, and attach proof of correspondence on the CMS;
- 5.6.14 Update CMS and generate progress letters to the complainant/victim/referral authority and relevant stakeholders; such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report should never contain the merits or demerits of the case;
- 5.6.15 Feedback on active cases should be done at least every 30 days and feedback on completed cases should be done at least every 90 days or when the status of the case change, including but not limited to, when feedback is received pertaining to the criminal case or DC process;
- 5.6.16 After closure of the case a final correspondence must be sent to the stakeholder detailing the outcome of the case within 30 days, failure to comply with this, must be recorded in the CIJ and CMS;

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- 5.6.17 Ensure CMS is updated and initiate closure of case file/docket;
- 5.6.18 Report feedback to stakeholders/complainant/next of kin;
- 5.6.19 Complete the quality control form where appropriate;
- 5.6.20 Enter every activity undertaken in the IPID file and docket in the CIJ (manual entry in file and updates on CMS);
- 5.6.21 Immediately report to the PH any high profile case;
- 5.6.22 Comply with the provisions of the IPID Firearm Control Standard Operating Procedure;
- 5.6.23 Ensure that prescribed registers are in place and kept up to date;
- 5.6.24 Any failure to complete cases within the period as per the regulation, reasons must be noted as per the applicable regulation in the CIJ and CMS.

5.7 Supervisor

The Supervisor must, in addition to any duties imposed under section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act:

- 5.7.1 Have the supervisory role over all responsibilities as outlined in the Case Worker section above;
- 5.7.2 Allocate files and give directives to the Case Worker;
- 5.7.3 Conduct file inspections prior to completion of the monthly report;
- 5.7.4 Determine and record B/F dates and ensure that B/F is adhered to;
- 5.7.5 Ensure that he/she has filled in the quality control form;
- 5.7.6 In case of the possibility of arrest a Case Worker should preferably obtain a warrant of arrest, in the event of an arrest without a warrant, the Case Worker should consult with the DI or PH as well as Legal Services before effecting the arrest. In high profile cases the ED and PH should always be consulted prior to the arrest;
- 5.7.7 The EH of MPS, the Station Commander as well as the Provincial Commissioner of SAPS is to be informed of any intention to arrest a Member prior to effecting the arrest;
- 5.7.8 Ensure that every activity undertaken by the Case Worker in the IPID file and docket is entered in the CIJ (manual entry in file and updates on CMS);
- 5.7.9 Establish manual registers for obtaining and returning SAPS dockets to Police Stations for each cluster in the Province and ensure the safe keeping of such registers. The register must be the same as **Docket Register (DR10)**;
- 5.7.10 Ensure that the Case Workers comply with the provisions of 7.8 below;
- 5.7.11 Immediately report to the DI any high profile case, conviction and arrest as well as any death of a suspect of a high profile case;
- 5.7.12 Check the reports and recommendations by the Case Worker before submitting to the DI;
- 5.7.13 Ensure compliance with the provisions of the IPID Firearm Control Standard Operating Procedure;
- 5.7.14 Conduct workload verification on a monthly basis and compile a Monthly Report;

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- 5.7.15 Complete/Close cases while acting as DI, notwithstanding the fact that a person might be closing/completing a case that he/she supervised;
- 5.7.16 Ensure that a case that was investigated by the person's supervisor, while he/she is acting as DI, is not completed/closed;
- 5.7.17 Compile individual monthly report inputs and complete and sign a verification certificate in terms thereof;
- 5.7.18 Ensure that QCF is completed by the Supervisors and Case Workers;
- 5.7.19 Ensure that prescribed registers are in place and kept up to date.

5.8 Case Intake Committee (CIC)

The Case Intake Committee must, in addition to any duties imposed under section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act:

- 5.8.1 Receive new cases from Case Workers;
- 5.8.2 Discuss new cases to ensure that they are properly classified;
- 5.8.3 Give directives on what preliminary investigation must be conducted;
- 5.8.4 The chairperson must note the directives in the case investigative journal and the CMS;
- 5.8.5 Allocate the file to a Case Worker;
- 5.8.6 Should ensure that the file is allocated within the time specified and if not a reason must be recorded in both the CIJ of the physical file as well as the CMS;
- 5.8.7 Be constituted by no less than three persons, (DI, DDI, ASDI and any available Case Worker). In case of unavailability of personnel, the sitting by the DI or DDI or ASDI or PI will constitute a valid sitting. (As a last resort the PH may assist and if no other staff is available, the PH alone will constitute a valid sitting);
- 5.8.8 In the event a sitting constituted out of one person, that person cannot assign the files to themselves;
- 5.8.9 No minutes will be kept of the sitting.

6. CASE INTAKE AND INVESTIGATION PROCESS

6.1 Registration Sub-Process

The case registration process (Case flow diagram) must be used as a guide and note must be taken of the following:

- The left column indicates all role-players in the case registration process;
- The registration process follows as outlined in the case handling process;
- The computer icons represent the steps where information must be captured on the CMS;
- The drums represent the server where captured information is stored;

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- On step "1" the Complainant/victim/referral authority lodges the case or the IPID receives notification;
- On step "2": **Consultation Register (CR2)** must be utilised to capture consultations conducted;
- On step "3", a **Case Control Register (CCR3/8/9)** must be utilised to capture the case;
- On step "4" **Referral Register (RR4)** must be utilised to capture all cases referred to other institutions or organisations which do not fall within the mandate of the IPID;
- On step "5" the complainant/victim/referral authority receives acknowledgment of receipt of the case;
- On step "6", The CIC reviews, allocates and gives broad directives, an **Allocation and Brought Forward Register (ABFR6)** must be utilised, CMS journal to be updated;
- In case there is an internal transfer of a file from one case worker to another because of either a long leave, transfer, promotion, resignation and/or death of the case worker, the **Internal Transfer Register (ITR6)** must be utilised;
- On step "7" referral to Case Worker must be done;
- The left column indicates all role-players in the case registration process;
- The registration process follow as outlined in the case handling process;
- The computer icons represent the steps where information must be captured on the CMS;
- The drums represent the server where captured information is stored.

6.2 Investigation Sub-Process for Section 28(1)(a) and (b)

The Investigation sub-process (Case flow diagram) must be used as a guide and note must be taken of the following:

- The left column indicates all role-players in the case registration process;
- The registration process follow as outlined in the case handling process;
- The computer icons represent the steps where information must be captured on the CMS;
- The drums represents the server where captured information is stored;
- On step "8", the SAPS notify the IPID of a death in police custody and a docket is opened. The DDI/Case Worker/Supervisor receives a factual report/IPID7. A file is opened and the information is captured on the **Case Control Register (CCR3/8/9)**;
- On step "9" the Case Worker receives telephone notification and furnish the SAPS member with a Standby Notification Reference Number (SNRN) and record the number on the IPID 7-2 form; a case/notification must be registered on the **Case Control Register (CCR3/8/9)**;
- On step "10" the Case Worker attends the crime scene and interviews witnesses, identifies the deceased, notifies next of kin, obtains other details and takes over the docket. The **Scene Register (SR10)** is utilised, for exhibits the **Exhibit Register (ER10)** is utilised. The Case Worker takes over the docket and utilises the **Docket Register (DR10)**. The Case Worker must comply with the provisions of 7.8 below;

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- On step "11" the Case Worker receives the file and complies with the directives utilizing **Allocation and Brought Forward Register (ABFR6)**; and updates the CMS;
- On step "12" the Case Worker attends the Post Mortem and utilises the **Post Mortem Register (PMR12)**;
- On step "13" a Report is prepared and the Supervisor reviews the report and then sends it to the DI/PH; If it's an Interim Case Investigative Report continue to step 14, If a Final case Investigative Report continue to step 17;
- On step "14" the DI/PH reviews the Interim Case Investigative Report and endorses recommendations or raises queries. If the recommendations are endorsed, the **Completion Register (COMR9/14/32/34)** must be utilised and the CMS be updated;
- On step "15" the Case Worker obtains the outstanding reports and attends to queries if any;
- On step "16" the Case Worker prepares the Final Case investigative Report to the DPP/SAPS and forwards the report to his/her immediate supervisor, the **Completion Register (COMR9/14/32/34)** is updated;
- On step "17" the Supervisor reviews the report for quality assurance, the DI/PH reviews/ approves the DPP/SAPS report and utilises the **Recommendation, Decision, Conviction and Acquittal Register (RDCAR9/19/22/28/29)**;
- On step "18" the SAPS/DPP receives the reports;
- On step "19" the SAPS/DPP decisions registered making use of the **Recommendation, Decision, Conviction and Acquittal Register (RDCAR9/19/22/28/29)** and any feedback on disciplinary and/or criminal cases is updated on the CMS and give relevant feedback to any stakeholder;
- On step "20" the Case Worker attends to Court/DC queries if any and updates the **Court Register (CAR20)**;
- On step "21" closure of the file/docket is initiated with closure report, the DI approves closure and makes use of **Close Case Register (CC22/32/36)**, after capturing the feedback pertaining to the court case or the DC outcome;
- On step "22" the DDI conducts quality control and utilises the **Archive Register (AR23/36)**. If there are exhibits the **Exhibit Register (ER10)** is updated. Exhibits are disposed of.

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6.3 Investigation Sub-Process for Section 28(1)(c)–(h) cases (Investigation of Criminal and Misconduct matters), including Section 28(2) systemic corruption matters

The Investigation sub-process (Case flow diagram) must be used as a guide and note must be taken of the following:

- On step "23", the DDI/ASDI/Case Worker utilises the **Allocation and Brought Forward Register (ABFR6)**, the directives and investigative targets are given;
- On step "24", Case Worker receives file and requests docket from the SAPS if necessary;
- On step "25", the SAPS provides the docket or copy of the docket to the IPID, the Case Worker takes over the docket/copy of the docket and conducts the investigation and provides feedback based on the agreed due dates. Utilisation of **Docket Register (DR10)** is made, the Case Worker must comply with the provisions of 7.8 below;
- On step "26", a letter is written to the complainant/victim/referral authority informing him/her about the progress, such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report should never contain the merits or demerits of the case;
- On step "27", the complainant/victim/referral authority receives the status details about the case he/she has lodged with the IPID;
- On step "28" the Case Worker prepares a report, the Supervisor reviews the report and the DI approves/disapproves the recommendations and utilises the **Recommendation, Decision, Conviction and Acquittal Register (RDCAR9/19/22/28/29)**. If approved the file/docket goes to the SAPS/DPP, and the **Completion Register (COMR9/14/32/34)** and CMS is updated.
- On step "29", the Prosecution declines to prosecute or raise queries, the **Recommendation, Decision, Conviction and Acquittal Register (RDCAR9/19/22/28/29)** is updated;
- On step "30", the status/decision is captured on the system;
- On step "31" if there is a change in the status of the matter the complainant/victim/referral authority is notified with respect to the recommendations made, the **Recommendation, Decision, Conviction and Acquittal Register (RDCAR9/19/22/28/29)** is updated;
- On step "32", the complainant/victim/referral authority receives a letter from the IPID about the status of the matter. The process as contained on step 23 is followed and thereafter the **Closed Case Registers (CC22/32/36)** is utilised, thereafter the DDI conducts quality control and utilise the **Archive Register (AR23/36)**.

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7. PROCEDURES

7.1 Procedure for filing documents in an IPID file and docket

NO	PROCEDURE
1.	All evidential documents e.g. statements, technical reports etc. must be filed in the "A" clip of the IPID file (including docket);
2.	All correspondence (internal and external) e.g. Progress Reports, Recommendations to DPP and SAPS, CIR and Acting letters, must be filed in the "B" clip of the file and docket;
3.	Investigative journals must be filed in the "C" clip of the file and docket;
4.	The QCF form must be filed in the "D" clip of the file;
5.	The Brought Forward Control Sheet must be filed in the "E" clip of the file;
6.	All documents must be numbered and filed in numerical order;
7.	All documents must be uploaded on the CMS.

7.2 Procedure for the registration of cases

NO	PROCEDURE
1.	A Case Worker must immediately upon receipt of a case, whether in person, by fax, by telephone or by e-mail screen the case to determine whether or not it falls within the mandate of the IPID (Reg 3(1));
2.	If a case falls outside the mandate of the IPID, the Case Worker must record it in the CMS as an Outside mandate case as well as in the Consultation Register (CR2) and Case Control Register (CCR3/8/9) refer it to a relevant institution or organisation – a Referral Register (RR4) must be utilised to capture all cases referred to other institutions or organisations which does not fall within the mandate of the IPID. If it is a service delivery case and the case worker is in doubt if the case should be recorded as a referred case, then he/she must consult with the supervisor before registering such a case. After registering the case the Case Worker must print the IPID registration form and ensure that the complainant/victim/referral authority append his or her signature, then upload the IPID registration form, letter, fax or e-mail onto the CMS;
3.	If the case falls within the mandate of the IPID, the Case Worker must record the case as a Section 28(a)-(g) in the CMS as well as in the Consultation Register (CR2). After registering the case the Case Worker must print the IPID registration form and ensure that the complainant/victim/referral authority append his or her signature (where

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	applicable), then upload the IPID registration form, letter, fax or email onto the CMS;
4.	Then, the Case Worker must print the acknowledgement letter and hand/send it to the complainant/victim/referral authority via the requested method;
5.	Open a file and file the IPID registration form, QCF form as well as the copy of the acknowledgement letter/SMS and refer the file to the CIC immediately, and
6.	The allocation is done by the CIC; the CIC must complete the Allocation and Brought Forward Register (ABFR6) and also update the allocation details in the CMS .

- 7.3. Procedure for the investigation of a case fit o Section 28(1)(a) or (b) (Deaths in custody or as a result of police action) of Act read with Regulation 4 and 8

Telephonic/Faxed notifications

1.	A case worker on standby/call (being automatically authorised to attend crime scenes) must immediately upon receiving a telephonic notification of a death, notify the PH/DI and attend the crime scene as soon as it is practicably possible to do so. In the event that a crime scene cannot be attended, permission for the non-attendance of the crime scene must be obtained from the PH or DI and reason must be noted in the CIJ file as well as the on CMS;
2.	Obtain and record all relevant information regarding the location of the crime scene, the time that the notification was made, the time of death, the SAPS/MPS member reporting the incident on IPID Form 7-2.

Arrival at the crime scene and cooperation with SAPS/MPS member in charge of crime scene

3.	Advise the SAPS/MPS member in charge, to preserve the crime scene and to keep it intact until the IPID case worker on standby/call, arrives at the crime scene;
4.	Introduce himself/herself by production of a valid IPID appointment certificate to the SAPS/MPS member in charge of the crime scene and take over the scene;
5.	Receive a briefing on what transpired on the crime scene;
6.	Inspect any wounds or bruises on the body of the deceased and make note of each and exact location (if any) on IPID Form 7-2;
7.	Identify the deceased and record his/her name, surname, age, gender;
8.	Ensure that all vital clues and forensic evidence have been marked and photographed on their original position by the Local Criminal Record Centre (LCRC);

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9.	Collect or ensure the collection of exhibits from the crime scene for processing by the Forensic Science Laboratory (FSL); ensure that the exhibits are booked in with the SAP 13 at the Police Station within that jurisdiction;
10.	Identify all witnesses to the crime and obtain their particulars for interview as soon as it is practically possible;
11.	Obtain particulars of the members involved for future interview.

Post scene investigation

12.	Ensure that the exhibits (obtained by IPID case worker) are sent to the Forensic Science Laboratory (FSL) within 48 hours;
13.	Upon receiving exhibits back from the FSL, the exhibits need to be returned to the Police Station for it to be booked back into the SAP13;
14.	Visit all the identified witnesses to conduct interviews and obtain statements;
15.	Establish the identity of the person who allegedly caused the death of the victim and obtain a warning statement in the case of Section 28(1)(b) cases;
16.	Visit the next of kin to notify them of the incident and your role as an IPID investigator; and interview them to obtain any information that may assist in the investigation;
17.	Ensure that the IPID Form 7-2 is fully completed with all the required crime scene information (this includes obtaining the signature of the SAPS members at the scene);
18.	Transmit the IPID Form 7-2 to the Case Worker responsible for registration of cases and ensure that a file is opened. The IPID Form 7-2 must be transmitted to the Case Worker responsible for registration on the morning of the first working day following the attendance of the crime scene. After registering the case the Case Worker must upload the IPID Form 7-2 onto the CMS;
19.	Upon the closure of a case and the return of a docket to the Police Station a disposal order should be issued to the SAPS.

Post Mortem

20.	Attend post mortem on the date, time and place identified for purposes of observing the conducting of the post mortem; in the event the post mortem cannot be attended an entry must be made on the CIJ manual file and the CMS as to why the PM could not be attended;
21.	Advise the pathologist of any investigations you would like to concentrate on;
22.	Ensure the LCRC is present at the Post Mortem and that photos of the Post Mortem is taken (if required);
23.	Ensure that all vital clues and forensic evidence have been marked and photographed on their original position by the LCRC;

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24.	Inform the Pathologist of observations made at the crime scene, in the event of any inconsistencies with his findings or, where there is disagreement with the Pathologist report, this to the Supervisor;
25.	Document and file detailed notes on the observations made during the Post Mortem.

Further investigation

26.	Upon receipt of the File, assess evidence contained in the file, conduct outstanding investigations as per directives and make a finding on the outcome of the investigation;
27.	Where resources are utilised from multiple offices, the jurisdiction will remain within the province where the matter arose, but custodianship and supervision will reside with the CD: Investigation and Information Management who will establish task teams and terms of reference;
28.	Update the CMS and generate a progress letter to the next of kin and relevant stakeholders; Progress letters should be forwarded monthly on the status of the case until the case is completed, thereafter quarterly or when there is a change in the status of the case; such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report should <i>never</i> contain the merits or demerits of the case;
29.	Compile an interim CIR and compile a Recommendation Report to the SAPS; if a final CIR is created first, then compile a Recommendation Report to the SAPS/DPP or recommend closure;
30.	Refer to Supervisor for review and recommendation of completion or closure;
31.	Refer to the DI/PH for completion and/ or closure. (If case completed/closed by DI – PH should still be informed as per Regulation 4 (3)(i));
32.	Upon receipt of the outcome of the Recommendation, update the CMS and refer the case to the DI/PH for closure.
33.	All investigations contemplated in terms of these Sections should be completed within 90 days and if not reason should be provided and noted in the CIJ and CMS and approved by supervisor and DI/PH as per Regulation 4(6).

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7.4 Procedure for the investigation of a case into Section 28(1)(c) of Act read with Regulation 6

1.	Over and above any directive and investigation, comply with the provisions of Regulation 6;
2.	Upon receipt of the file, conduct outstanding investigations as per directives by CIC/Supervisor;
3.	Where no docket is opened, ensure that the case docket is opened at any stage during the process of investigation;
4.	Conduct a preliminary investigation to establish if full investigation will be warranted (preliminary investigation may not exceed 30 days as per Regulation 6 (3));
5.	If full investigation is warranted: Visit all the identified witnesses to conduct interviews and obtain statements;
6.	Ensure the collection of exhibits, by forensic experts, for processing by the Forensic Science Laboratory (FSL); ensure the proper registration, handling, transportation and disposal of exhibits;
7.	Compile CIR and compile a recommendation to the SAPS/DPP. If completion of case was done with interim report, recommendations may be made to SAPS. If completion of the case was done with a final report, recommendations may be made to SAPS/DPP;
8.	Where no misconduct/criminal activities can be proven, the case should be closed as unsubstantiated and forwarded to Supervisor and DI/PH for approval;
9.	Update the CMS and generate a progress letter to all relevant stakeholders. Progress letters should be forwarded monthly on the status of the case until the case is completed, thereafter quarterly or when there is a change in the status of the case; such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report should <u>never</u> contain the merits or demerits of the case;
10.	Refer to Supervisor for review and recommendation of completion or closure;
11.	Refer to the DI/PH for completion and/or closure; (If case completed/closed by DI – PH should still be informed as per Regulation 6 (4)(e));
12.	Upon receipt of the outcome of the disciplinary and/or criminal process, refer for closure;
13.	In the event that the CIC decides that a case should rather be referred to

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	the SAPS for investigation, these cases should be closed as Referred;
14.	All investigations contemplated in terms of these Sections should be completed within 90 days as per Regulation 6(5) and if not reason should be provided and noted in the CIJ and CMS and approved by supervisor and DI/PH.

7.5 Procedure for the investigation of a case into Section 28(1)(d)-(g) of Act read with Regulation 5 and 8

1.	Over and above any directive and investigation, comply with the provisions of Regulation 5;
2.	Upon receipt of the file, conduct outstanding investigations as per directives by CIC/Supervisor;
3.	Where no docket is opened, ensure that the case docket is opened within 24 hours after designation; (Regulation 5(3))
4.	In addition to the standard investigation of criminal cases the following should be noted:
5.	Investigations into Section 28(1)(d) and (e): Ensure, if not yet done, Victim is examined by a medical practitioner;
6.	A sexual assault kit is obtained, properly sealed and submitted to the Forensic Science Laboratory (FSL);
7.	Provisions of Sexual Offences and Related matters Amendment Act and any SAPS National instruction relating to rape are complied with;
8.	Ensure the collection of exhibits, by forensic experts, for processing by the Forensic Science Laboratory (FSL); ensure the proper registration, handling, transportation and disposal of exhibits;
9.	Investigations into Section 28(1)(f): Advise the SAPS/MPS member in charge, to preserve the crime scene and to keep it intact until the IPID case worker on standby/call, arrives at the crime scene;
10.	Introduce himself/herself by production of a valid IPID appointment certificate to the SAPS/MPS member in charge of the crime scene and take over the scene;
11.	Ensure, if not yet done, Victim is examined by a medical practitioner;
12.	Ensure the collection of exhibits, by forensic experts, for processing by the Forensic Science Laboratory (FSL); ensure the proper registration, handling, transportation and disposal of exhibits;
13.	Investigations into Section 28(1)(g): Where the amount in question is above R 100 000 ensure that the provisions as per Section 34(1) and 34(3)(a) of the Prevention and Combating of Corrupt Activities Act are complied with;
14.	Where resources are utilised from multiple offices, the jurisdiction will remain within the province where the matter arose, but custodianship and supervision will reside with the CD: Investigation and Information Management who will establish task teams and terms of reference;

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15.	Visit all the identified witnesses to conduct interviews and obtain statements;
16.	Compile CIR and compile a recommendation to the SAPS/DPP. If completion of case was done with interim report, recommendations may be made to SAPS. If completion of the case was done with a final report, recommendations may be made to SAPS/DPP;
17.	Where no misconduct/criminal activities can be proven, the case should be closed as unsubstantiated and forwarded to Supervisor and DI/PH for approval;
18.	Update the CMS and generate a progress letter to all relevant stakeholders. Progress letters should be forwarded monthly on the status of the case until the case is completed, thereafter quarterly or when there is a change in the status of the case; such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report should <u>never</u> contain the merits or demerits of the case;
19.	Refer to Supervisor for review and recommendation of completion or closure;
20.	Refer to the DI/PH for completion and/or closure; (if case completed/ closed by DI/PH should still be informed as per Regulation 5 (3)(1));
21.	Upon receipt of the outcome of the disciplinary and/or criminal process, refer for closure;
22.	In the event that the CIC decides that a case should rather be referred to the SAPS for investigation, these cases should be closed as Referred;
23.	All investigations contemplated in terms of these Sections should be completed within 90 days as per Regulation 5(4) and if not reason should be provided and noted in the CIJ and CMS and approved by supervisor and DI/PH.

7.6 Procedure for the investigation of a cases i t o. Section 28(1)(h) of Act read with Regulation 7, other criminal matters

1.	Upon receipt of a complaint of a criminal nature not falling within the scope of cases as indicated in Section 28 (1)(a) to (g), a request must be forwarded to Provincial Head or the Executive Director, requesting approval for the registration of the case in terms of Section 28 (1)(h);
2.	In the event that approval is not granted the case must be registered as "Outside Mandate" and referred to relevant stakeholder as directed by National Office;
3.	In the event that approval is granted upon receipt of the file, conduct outstanding investigations as directed by National Office;
4.	Over and above the directives above, comply with the provision of Regulation 7;

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7.	Update the CMS and generate a progress letter to all relevant stakeholders. Progress letters should be forwarded monthly on the status of the case until the case is completed, thereafter quarterly or when there is a change in the status of the case; such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report should <i>never</i> contain the merits or demerits of the case;
8.	Refer to Supervisor for review and recommendation of completion or closure;
9.	Refer to the DI/PH for completion and/or closure;
10.	Upon receipt of the outcome of the disciplinary process, refer for closure.

7.8 Procedure for the investigation of Section 28(2) cases

1.	Upon identification of a case of possible Systemic Corruption, do preliminary investigation and forward a report to National Office (For the attention of the Executive Director and the Program Manager: Investigations) for approval for registration of a Systemic Corruption Case;
2.	If approval is granted register the case accordingly;
3.	If approval is not granted register the case as directed by National Office;
4.	Where no docket is opened, ensure that the case docket is opened if applicable;
5.	Where resources are utilised from multiple offices, the jurisdiction will remain within the province where the matter arose, but custodianship and supervision will reside with the CD: Investigation and Information Management who will establish task teams and terms of reference;
6.	Update the CMS and generate a progress report which should be forwarded to National Office monthly on the status of the case until the case is completed, thereafter quarterly or when there is a change in the status of the case; such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report to National Office should be detailed and include timelines, project plans and expenditures ;
7.	Refer to Supervisor for review and recommendation of completion or closure; a report with findings should however always be submitted for approval by Supervisor, DI/PH;
8.	Refer to the DI/PH for completion and/or closure;
9.	Upon receipt of the outcome of the disciplinary and/or criminal process, refer for closure;
10.	Where no disciplinary and/or criminal recommendations are made but only a report with findings the case can be closed without capturing any feedback on report.

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7.9 Procedure for the investigation of a case i.t.o. Section 33 of Act read with Section 29 of Act

1.	Upon establishing a failure on the part of any SAPS member to comply with their obligation to report matters referred to in Section 28 (1) in terms of Section 29 the following should occur:
2.	A docket should be opened against member(s) i.t.o. Section 33;
3.	Where no docket is opened, ensure that the case docket is opened at any stage during the process of investigation;
4.	This file should be investigated separately of the main offence;
5.	Upon receipt of the file, conduct outstanding investigations as per directives by CIC/Supervisor;
6.	Visit all the identified witnesses to conduct interviews and obtain statements;
7.	Compile CIR and compile a recommendation to the SAPS/DPP. If completion of case was done with interim report, recommendations may be made to SAPS. If completion of the case was done with a final report, recommendations may be made to SAPS/DPP;
8.	Where no misconduct/criminal activities can be proven, the case should be closed as unsubstantiated and forwarded to the Supervisor and DI/PH for approval;
9.	Update the CMS and generate a progress letter to all relevant stakeholders. Progress letters should be forwarded monthly on the status of the case until the case is completed, thereafter quarterly or when there is a change in the status of the case; such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report should <u>never</u> contain the merits or demerits of the case;
10.	Refer to Supervisor for review and recommendation of completion or closure;
11.	Refer to the DI/PH for completion and/or closure;
12.	Upon receipt of the outcome of the disciplinary and/or criminal process, refer for closure.

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7.10 Procedure for completion and closing of files and dockets

NO.	PROCEDURE
	Completion of File
1.	The Case Worker initiates completion of a file through the Supervisor after completing a case investigation report;
2.	The Supervisor reviews and quality assures directives and reports and recommends completion to the DI/PH;
3.	The DI/PH approves/disapproves completion and the Completion Register is utilised (COMR9/14/32/34) ;
4.	No Case Worker acting as DI/PH will approve the completion of a file investigated by himself/herself;
5.	All Section 28(1)(a)-(g) cases must be referred for decision to the SPP/DPP, before closure;
	Closing of Files
6.	The Case Worker initiates closure of a file through the Supervisor after completing a closure report, which will include the outcome of the criminal case/DC process;
7.	The Supervisor reviews and quality assures directives and reports and recommends closure to the DI/PH;
8.	The DI/PH approves/disapproves closure and the Closed Case Register is utilised (CC22/32/36) ;
9.	No Case Worker acting as DI/PH will approve the closure of a file investigated by him/her;
10.	Where a file is closed as Withdrawn, the complainant/victim/referral authority's withdrawal statement must be filed, or an affidavit by the Case Worker in the event that the complainant/victim/referral authority's withdrawal statement could not be obtained.

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7.11 Procedure for archiving of files and dockets

PROCEDURE FOR ARCHIVING OF FILES AND DOCKETS	
Archiving of Case Dockets	
1.	The DI/PH approves the closure of the investigation of the case and completes the Closed Case Register (CC22/32/36) , and thereafter the process of archiving comes into effect through completion of the Archive Register (AR23/36) ;
2.	The Case Worker must return the SAPS docket to the Station concerned in accordance with procedure 7.8;
Archiving of Files	
3.	The DI/PH approves the closure of the investigation of the case and completes the Closed Case Register (CC22/32/36) , and thereafter the process of archiving comes into effect through completion of the Archive Register (AR23/36) ;
4.	The DDI conducts quality control before the file is archived;
5.	The Case Worker archives the file in the IPID Archiving facility in line with the Archive Register;
6.	Closed files must be archived within 60 days after closure.

7.12 Procedure for obtaining and returning SAPS dockets

PROCEDURE FOR OBTAINING SAPS DOCKETS	
1.	Request docket from the Provincial/ Station/ Branch Commander;
2.	Ensure that the Provincial/ Station/ Branch Commander transfers the docket on the CAS system and records on the register in accordance with the provision of the SAPS Standing Operating Procedure (SOP) dated 20/11/2007;
3.	Make an OB Entry to confirm receipt of docket from the station and member concerned;
4.	Record the transaction on the IPID manual docket register;
5.	On arrival at the office ensure that the information on the manual register is updated on the Docket Register (DR10) , as well as on the CMS;
PROCEDURE FOR RETURNING SAPS DOCKETS	
5.	When returning the docket ensure that the Provincial/ Station/ Branch Commander transfers the docket on the CAS system and records in the register in accordance with the provisions of the SAPS Standing Operating Procedure (SOP) dated 20/11/2007;
7.	Make an OB Entry to confirm return of the docket to the station and member concerned; or when the docket is returned to SAPS (other than at the station), written proof should be obtained;
8.	Record the transaction on the IPID manual docket register;
9.	On arrival at the office ensure that the information on the manual register is updated on the Docket Register (DR10) , as well as on the CMS.

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7.13 Procedure for referral of cases

1.	Upon registration of the case, the Case Worker will prepare a referral letter immediately and close the case where the complaint falls outside IPID mandate;
2.	In the situation where a discretion needs to be exercised, whether a case must be investigated or not, a Case Worker will refer the case to CIC;
3.	The CIC will analyse the case and advise the PH whether to refer a case in terms of Section 7(9);
4.	The PH will decide whether the case is to be investigated or referred.

7.14 Scenes

1.	All scenes relating to investigation of Section 28 matters should be investigated where necessary;
2.	Over and above the directive above, comply with the provisions of Regulation 8;
3.	Where a scene needs to be reconstructed, permission should be obtained as to justify the costs.

8 REGULATIONS

This SOP should be read together with the Regulations promulgated under section 34(1) of the Independent Police Investigative Directorate Act 1 of 2011, especially in relation to the following aspects:

- (a) investigation of death in police custody or as a result of police action (Reg 4);
- (b) the rape of a person, whether in police custody or by a member; torture or assault by a member; and involvement in corruption (Reg 5);
- (c) the discharge of an official firearm (Reg 6);
- (d) investigation of matters referred to the IPID (Reg 7);
- (e) securing of a crime scene (Reg 8); and
- (f) identification parades, taking of affidavits and giving evidence (Reg 9).

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9. DELEGATION

- 9.1 The Executive Director delegates authority to the Provincial Head to refer matters that fall outside section 28(1)(a) to (g) to the relevant Provincial Commissioner, if it is not a high profile matter or a serious offence or misconduct that has potential to attract public interest.
- 9.2 Provincial Heads and Director Investigations should under no circumstances delegate their functions, in terms of this SOP, on a permanent basis to another member of his/her staff.

10. PENAL PROVISION

Failure to comply with any provision of this SOP amounts to misconduct and shall be dealt with in terms of the disciplinary code of conduct of the Public Service.

11. REVISION

This SOP shall be revised as and when a need arises.
Approved by the Executive Director.


MS K MBEKI
ACTING EXECUTIVE DIRECTOR
DATE: 01/04/2013

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ANNEXURE “HIK 18”



HIK 18



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REPUBLIEK VAN SUID-AFRIKA

Regulation Gazette

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PROCLAMATION

by the

President of the Republic of South Africa

No. R. 3, 2012

COMMENCEMENT OF THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE ACT, 2011 (ACT NO. 1 OF 2011)

Under section 37 of the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011), I hereby fix 1 April 2012 as the date on which the said Act shall come into operation.

Given under my Hand and the Seal of the Republic of South Africa at Durban
this 28th day of December, two thousand and eleven.



PRESIDENT

By order of the President in Cabinet.



MINISTER OF THE CABINET



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ISAZISO ESIVELA**KUMONGAMELI WERIPHABLIKHI YASENINGIZIMU AFRIKA**

No. R. 3, 2012

UKUQALA UKUSEBENZA KOMTHETHO WOPHIKO OLUZIMELE OLUPHENYA AMAPHOYISA, 2011 (UMTHETHO WOKU-1 WE - 2011)

Ngaphansi kweSahluko sama-37 seMthetho Wophiko Oluzimele Oluphenya AmaPhoyisa we-2011 (uMthetho woku-1 we-2011), mina ngatesaziso, ngibeka usuku tomhla zi-1 Aprili 2012 njangosuku lapho uMthetho oshlwo usaqala ukusebenza.

Usayindwe ngesandla samu kanye nesitumbu sombuso saRephabliki YaseNingizimu Afrika e-
Ethekwini

Ngablu saku tomhla zi- 28 ku uZibandela wonyaka
wenzinkulungwane ezimbili nesitumi nambili.



KUMONGAMELI

Ngomoya kaMongameli okukhabinethi



UNGOONGOQOSHE WOKHABINETHI

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GOVERNMENT NOTICE

DEPARTMENT OF POLICE

No. R. 98

10 February 2012

**INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE ACT, 2011
REGULATIONS FOR THE OPERATION OF THE INDEPENDENT POLICE
INVESTIGATIVE DIRECTORATE**

The Minister of Police has, under section 34(1) of the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011), made the regulations set out in the Schedule hereto.

SCHEDULE**Definitions and interpretation**

1. In these regulations, any word or expression to which a meaning has been assigned in the Act has the meaning so assigned and unless the context indicates otherwise—

“**complainant**” means a person who has submitted or lodged a written report or a complaint, as the case may be, with the Directorate in terms of regulation 2;

“**complaint**” includes a written report contemplated in regulation 2(1);

“**member of the Directorate**” means a person appointed to the Directorate on a full-time or contractual basis, either in the national office or in any provincial office;

“**Public Service Disciplinary Code**” means the Disciplinary Code and Procedures for the Public Service as contained in Public Service Co-ordinating Bargaining Council (PSCBC) Resolution 2 of 1999, as amended;

“**Station Commander**” means a member of the South African Police Service in charge of a police station; and

“the Act” means the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011).

Reporting of matters to be investigated to Directorate

2. (1) A Station Commander or any member of the South African Police Service or the Municipal Police Services must, within the period referred to in section 29(1)(b) of the Act, submit a written report to the Directorate regarding any matter listed in section 28(1)(a) to (f) of the Act in a format substantially similar to **Form 1**.

(2) The report contemplated in sub-regulation (1) must be submitted to a provincial office by fax or electronic mail, and the relevant provincial head must ensure that the Executive Director is notified of such report.

(3) A person contemplated in sub-regulation (1) must, after the submission of the report referred to in sub-regulation (2), keep or retain proof of the submission, including the method of transmission.

(4) (a) The provisions of this regulation do not preclude a member of the public from lodging a complaint, in a format substantially similar to **Form 2**, with the person contemplated in sub-regulation (1) or the Directorate, either at the national or provincial office, regarding any matter listed in section 28(1)(a) to (g) of the Act.

(b) A person who lodges a complaint in terms of this sub-regulation must do so in writing, by fax or electronic mail and the provisions of sub-regulation (3) apply with such changes as may be required by the context.

(c) A complaint lodged in terms of this sub-regulation may not be rejected merely as a result of the complainant's inability to furnish all of the information required in terms of **Form 2**.

(5) A complaint lodged with the Directorate at the national office in terms of sub-regulation (4) may be referred by the Executive Director to a relevant provincial office for investigation.

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Receiving, registering, processing, referral and disposing of complaints

3. (1) A member of the Directorate designated for such purpose must, upon receipt of a complaint contemplated in regulation 2, determine whether or not the complaint falls within the ambit of the provisions of section 28(1)(a) to (g) of the Act.

(2) (a) A complaint which falls outside the ambit of the said provisions must, within seven days of receipt or referral, as the case may be, be referred, in writing, to an appropriate authority or institution that is capable of dealing with such complaint.

(b) The complainant must, within seven days, be informed in writing and, if practicable, telephonically, of such referral.

(3) A complaint which falls within the ambit of the said provisions must, within seven days of the receipt or referral, be registered in a computer-based register designed for this purpose and the complainant must, within the same period, be informed in writing and, if practicable, telephonically, that his or her complaint has been received and that his or her complaint is being investigated by an identified investigator, including the name and contact details of such investigator.

(4) A complaint which has been registered in terms of sub-regulation (3) must be disposed of within the time periods contemplated in regulations 4(6), 5(4) or 6(3) and (5), whichever is applicable in the circumstances.

Investigation of deaths in police custody or as result of police action

4. (1) The investigation of the death of a person in police custody or the death of a person as a result of police action or omission or both must be done in accordance with this regulation.

(2) The Executive Director or the relevant provincial head, as the case may be, must designate an investigator to investigate the death of a person—

- (a) in police custody, irrespective of whether or not such death has occurred as a result of the alleged involvement of a member of the South African Police Service or the Municipal Police Services; or
- (b) who has died as a result of any action or omission or both on the part of a member of the South African Police Service or the Municipal Police Services.

(3) An investigator designated in terms of sub-regulation (2) must, as soon as is practicable, but within 24 hours of designation—

- (a) attend the scene where the death occurred, ensure that the scene is secured in terms of regulation 8, oversee the scene and conduct a preliminary investigation;
- (b) record the details of the deceased, including his or her name and surname, age and gender;
- (c) identify and record particulars of all potential witnesses for purposes of interviewing them, and in the case of a death in police custody, record the particulars of the persons who had been on duty in the facility at the time when the death occurred;
- (d) authorise the removal of the corpse, in consultation with a pathologist if a pathologist is available;
- (e) collect, or ensure the collection, by forensic experts, of exhibits for processing by the Forensic Science Laboratory and ensure the proper registration, handling, transportation and disposal of exhibits;
- (f) visit the deceased's next-of-kin to inform them of the death and to obtain statements that may assist in the investigation;
- (g) visit all identified witnesses for purposes of obtaining statements that may assist in the investigation;

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- (h) attend the *post mortem* and advise the person conducting the *post mortem* of observations made at the scene of death as well as areas that should be concentrated on; and
- (i) after collecting all evidence, statements and technical or expert reports, if applicable, submit a report on the investigation of the death 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 Services or criminal prosecution of such member, to the Executive Director or the relevant provincial head, as the case may be.

(4) In the event of a death in police custody that has occurred as a result of the alleged involvement of a member or members of the South African Police Service or the Municipal Police Services, as the case may be, or a death which is the result of the action or omission or both of such member or members, the investigator, when visiting the scene of death, must, in consultation with the Executive Director or the relevant provincial head, as the case may be, make a determination as to whether such member or members must be arrested.

(5) When effecting an arrest, the investigator must have due regard to the constitutional rights of the person who is arrested and the provisions of sections 39 to 53 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) relating to the arrest of persons.

(6) An investigation into the death of a person in police custody and the investigation of the death of a person who has died as a result of police action or omission or both must be finalised within a reasonable period, which period may not exceed 90 days after designation, failing which the investigator must give reasons for failure to comply with this period in the report contemplated in sub-regulation (3)(i).

(7) An investigator designated to investigate a death in terms of this regulation must inform the complainant, and the next-of-kin, if the complainant is not a member of the deceased's next-of-kin, in writing of the progress made with the investigation at least once per calendar month.

(8) In the event of a late notification of a death in police custody or as a result of police action or omission or both, the investigator must, within a reasonable period, which period may not exceed 30 days of designation—

- (a) conduct a preliminary investigation or proceed with a full investigation;
- (b) attend the *post mortem* if it has not yet been conducted;
- (c) interview witnesses and obtain statements that may assist in the investigation;
- (d) consider the desirability of reconstructing the scene of death; and
- (e) submit a report on the investigation containing recommendations to the Executive Director or relevant provincial head.

(9) For purposes of sub-regulation (8), the investigator must—

- (a) peruse the police docket;
- (b) take the police docket over for further investigation;
- (c) finalise and submit the police docket to the relevant Director of Public Prosecutions together with recommendations relating to further actions by the National Prosecuting Authority; and
- (d) submit a report on the investigation containing recommendations to the Executive Director or relevant provincial head.

Investigation of criminal matters

5. (1) An investigation of a matter contemplated in sub-regulation (2) must be done in accordance with this regulation.

(2) The Executive Director or the relevant provincial head, as the case may be, must designate an investigator to investigate a complaint that—

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- (a) a person has been raped while that person was in police custody;
 - (b) a member of the South African Police Service or the Municipal Police Services has raped a person, irrespective of whether such member had been on official duty at the time of the alleged rape or not;
 - (c) a member of the South African Police Service or the Municipal Police Services has in the execution of his or her duties tortured or assaulted a person; or
 - (d) a member of the South African Police Service or the Municipal Police Services is involved in corruption.
- (3) An investigator designated in terms of sub-regulation (2) must, as soon as is practicable, but within 24 hours of designation—
- (a) if a police docket has been opened, take over the docket and conduct all outstanding investigations, and if such docket has not been opened, ensure that it is opened for purposes of the investigation;
 - (b) interview and record the details of the victim of the offence concerned, including his or her name and surname, age and gender, if this had not yet been done;
 - (c) identify and record particulars of all potential witnesses for purposes of interviewing them, and in the case of an offence contemplated in paragraph (a) of sub-regulation (2), record the particulars of the persons who had been on duty in the facility at the time when the offence had been committed, if this had not yet been done;
 - (d) collect, or ensure the collection, by forensic experts, of exhibits for processing by the Forensic Science Laboratory or other appropriate institution and ensure the proper registration, handling,

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transportation and disposal of exhibits, if this had not yet been done;

- (e) in the case of an office contemplated in paragraph (a) or (b) of sub-regulation 2, ensure, if this had not yet been done, that—
- (i) the victim is examined by a medical practitioner without delay;
 - (ii) a sexual assault crime kit is obtained, properly sealed and submitted to the Forensic Science Laboratory; and
 - (iii) the provisions of sections 28(3), 31(5), 32(1) and (5), 33(1), 34, 36 and 37 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), and any South African Police Service National Instructions relating to the crime of rape are complied with;
- (f) in the case of an offence contemplated in sub-regulation (2)(d) or any offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), involving an amount of R100 000 or more, ensure that a report contemplated in section 34(1) of that Act has been taken down in the manner contemplated in section 34(3)(a) of the said Act;
- (g) in the case of an offence contemplated in paragraph (c) of sub-regulation (2), if this had not yet been done—
- (i) attend and secure the scene where the alleged torture occurred in terms of regulation 8; and
 - (ii) ensure that the victim is taken to a medical practitioner for examination, including the taking of bodily specimens relating to torture;

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- (h) visit all identified witnesses for purposes of obtaining statements that may assist in the investigation; and
- (i) 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.

(4) An investigation contemplated in this regulation must be finalised within a reasonable period, which period may not exceed 90 days after designation, failing which the investigator must include reasons for failure to comply with this period in the report contemplated in paragraph (i) of sub-regulation (3).

(5) An investigator designated to investigate an offence in terms of this regulation must inform the complainant, and if the complainant is not the victim of the offence, the victim, in writing of the progress made with the investigation at least once per calendar month.

(6) Regulation 4(4) and (5) applies with such changes as may be required by the context to the arrest of a person in terms of this regulation.

Investigation of discharge of official firearm

6. (1) The discharge of an official firearm by a member of the South African Police Service or the Municipal Police Services, as the case may be, must be investigated in accordance with this regulation.

(2) The Executive Director or the relevant provincial head, as the case may be, must designate an investigator to investigate a complaint that a member of the South African Police Service or the Municipal Police Services has discharged an official firearm, irrespective of whether such member had been on or off duty and whether any injury has been sustained as a result of such discharge or not.

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(3) An investigator designated in terms of sub-regulation (2) must conduct a preliminary investigation, to be finalised within a reasonable period, which period may not exceed 30 days after designation, into the discharge of an official firearm to enable the Executive Director or the relevant provincial head, as the case may be, to determine whether a full investigation is warranted or not.

(4) If the Executive Director or relevant provincial head, as the case may be, determines that a full investigation is warranted, the investigator must as soon as is practicable, but within 24 hours after determination—

- (a) if a police docket has been opened, take over the docket and conduct all outstanding investigations, and if such docket has not been opened, ensure that it is opened during any stage of the investigation;
- (b) identify and record particulars of all potential witnesses for purposes of interviewing them;
- (c) collect or ensure the collection, by forensic experts, of exhibits for processing by the Forensic Science Laboratory or other appropriate institution and ensure the proper registration, handling, transportation and disposal of exhibits, if this had not yet been done;
- (d) visit all identified witnesses for purposes of obtaining statements that may assist in the investigation; and
- (e) after collecting all evidence, statements, technical and expert reports, if applicable, submit a final report on the investigation 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 Services or criminal prosecution of such member.

(5) A full investigation contemplated in this regulation must be finalised within a reasonable period, which period may not exceed 90 days after designation, failing

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which the investigator must include reasons for failure to comply with this period in the report contemplated in paragraph (e) of sub-regulation (4).

(6) An investigator designated to do an investigation in terms of this regulation must inform the complainant in writing of the progress made with the investigation at least once per calendar month.

(7) Regulation 4(4) and (5) applies with such changes as may be required by the context to the arrest of a person in terms of this regulation.

Investigation of referred matters

7. (1) The investigation of matters referred to the Directorate as contemplated in section 28(1)(h) of the Act must be done in accordance with this regulation.

(2) The Executive Director or the relevant provincial head, as the case may be, must designate an investigator to investigate a matter contemplated in section 28(1)(h) of the Act which had been referred to the Directorate for investigation.

(3) An investigator designated in terms of sub-regulation (2) must, as soon as is practicable, determine whether the referred matter relates to--

- (a) a matter contemplated in regulation 4, in which case the provisions of that regulation apply with such changes as may be required by the context;
- (b) a criminal matter, in which case the provisions of regulation 5 apply with such changes as may be required by the context, notwithstanding the fact that the criminal matter to be investigated may not be listed in sub-regulation (2) of that regulation; or
- (c) a matter not dealt with in regulation 4 or 5, in which case the Executive Director or relevant provincial head, as the case may be, must give directions regarding the investigation, the period within which the investigation must be completed and the manner of disposal of the referred matter.

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(4) An investigator designated to do an investigation in terms of this regulation must inform the person who referred the matter for investigation in writing of the progress made with the investigation at least once per calendar month.

Securing of crime scene

8. An investigator designated to investigate a criminal matter must secure the scene of the crime, if still intact, or take over the securing of such scene from a member or members of the South African Police Service who may already be present at such scene, by—

- (a) establishing an inner cordon around the perimeter of the crime scene, as well as an outer cordon around the inner cordon to enable persons to perform their tasks within the inner cordon;
- (b) protecting obvious exhibits from contamination and the elements;
- (c) making a note of each exhibit to protect its integrity and location if it has to be moved;
- (d) regarding a corpse as a source of evidence and handling it as such;
- (e) identifying other scenes that might have a direct connection with the primary crime scene, and also protecting such scenes;
- (f) exercising control over the persons who may gain access to the crime scene and co-ordinating all investigation support resources;
- (g) requesting potential witnesses to wait at a designated area outside the outer cordon for the obtaining of statements, ensuring their safety and encouraging witnesses not to discuss the incident amongst themselves;
- (h) protecting the routes of access and departure by the person or persons suspected of having committed the crime, if known;
- (i) determining access and departure routes for use by emergency services and other persons authorised to enter the crime scene;

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- (j) controlling any representatives of the media who may be in the vicinity of the crime scene; and
- (k) refraining from releasing information about the crime or the crime scene to any unauthorised person, including representatives of the media.

Procedures relating to identification parades, taking of affidavits, giving of evidence, production of documents and submission of information and co-operation by Police

9. (1) The procedures relating to—
- (a) the arrangement and holding of identification parades, as contemplated in section 29(2)(a) of the Act;
 - (b) the taking of affidavits or affirmed declarations or the giving of evidence or the production of documents in the possession or under the control of a member of the South African Police Service or the Municipal Police Services which have a bearing on the matter to be investigated, as contemplated in section 29(2)(b) of the Act; and
 - (c) the submission of any other information or documentation required for investigation purposes, contemplated in section 29(2)(c) of the Act,

must be conducted in accordance with the relevant procedures applicable to members of the South African Police Service.

(2) A member of the Directorate may require written reasons for failure by a member of the South African Service or the Municipal Police Service to comply with a request for co-operation regarding any matter contemplated in sub-regulation (1), and may make recommendations to the Executive Director or relevant provincial head, as the case may be, regarding disciplinary measures to be taken against such member.

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Access and control of confidential information and records

10. (1) All information, whether verbal or in writing, and all documentation acquired during the course of an investigation conducted in terms of the Act and all records pertaining to any such investigation are to be treated as confidential and may not be divulged to any person outside of the Directorate unless authorised to be divulged, in the interests of justice, by –

- (a) the Executive Director or relevant provincial head, as the case may be, in writing; or
- (b) an Act of Parliament.

(2) All information, documentation and records pertaining to an investigation must be secured at all times in a manner that would effectively prevent access to such information, documentation and records by an unauthorised person.

(3) A member of the Directorate may insist on, and must be granted, access to such confidential information, documentation and records as are reasonably necessary to enable such member to conduct an investigation in terms of the Act, excluding confidential information, documentation and records protected under professional privilege.

(4) Subject to the provisions of section 33(2) of the Act, a member of the Directorate who divulges information, documentation or records or causes such information, documentation or records to be divulged in contravention of sub-regulation (1) or (2) is guilty of misconduct and is subject to the disciplinary measures contemplated in regulation 13.

Integrity testing and confidentiality of information relating to integrity testing

11. (1) The Executive Director may conduct, or authorise any member of the Directorate or any other person to conduct, a procedure to test the integrity of any particular member of the Directorate.

- (2) The procedure referred to in sub-regulation (1) may involve–

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- (a) the employment of an act or omission, by the person who conducts the procedure, which offers the member of the Directorate whose integrity is being tested the opportunity to engage in behaviour in contravention of any law, any code of conduct which is binding on such member or any disciplinary regulations;
- (b) the testing of a member of the Directorate for the abuse of alcohol or drugs; or
- (c) the use of a polygraph or any similar instrument.
- (3) A procedure involving a measure contemplated in paragraph (a) of sub-regulation (2) may only be performed—
- (a) after approval by the Director of Public Prosecutions having jurisdiction in the area in which the integrity testing will take place, or by his or her delegate; and
- (b) in consonance with such instructions or guidelines as may be laid down by the National Director of Public Prosecutions or by the Director of Public Prosecutions having jurisdiction in the area in which the integrity testing will take place, or by his or her delegate, in accordance with section 252A(2)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (4) A procedure involving measures contemplated in paragraphs (b) and (c) of sub-regulation (2) may only be performed with the written approval of the Executive Director, in which case the member of the Directorate whose integrity is being tested must submit to such measures.
- (5) A member of the Directorate may not, at any time when reporting for duty, while on duty or while on call for duty, have any evidence of—
- (a) alcohol; or
- (b) a drug as defined in section 1 of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992) which may not lawfully be taken or has been taken in a manner which is contrary to the prescription of

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a registered medical practitioner or the recommendation of the manufacturer of the substance,

in his or her breath, blood or urine, as the case may be.

(6) Despite paragraph (b) of sub-regulation (5), a member of the Directorate who lawfully takes or has taken a drug prescribed by a registered medical practitioner may not perform duties involving operational capacity if the substance may impair such member's capacity to perform the duties without danger to himself or herself or any other person.

(7) In the event of an alcohol test—

- (a) the member of the Directorate whose integrity is being tested must provide a specimen of breath or blood, if requested to do so, and if such member fails or refuses to provide such specimen, he or she may be charged with disobeying a lawful order, command or instruction under regulation 13; and
- (b) the test, in the case of a specimen of breath, must be performed by using equipment prescribed in regulation 332 of the regulations made under the National Road Traffic Act, 1996 (Act No. 93 of 1996).

(8) In the event of a drugs test —

- (a) the member of the Directorate whose integrity is being tested must provide a specimen of blood or urine to a registered medical practitioner or registered nurse at a place and time specified by the Executive Director, if requested to do so, and if such member fails, unless failure is attributable to a medical condition, or refuses to provide such specimen, he or she may be charged with disobeying a lawful order, command or instruction under regulation 13; and
- (b) the registered medical practitioner or registered nurse may give such directions as may be reasonably necessary to the member of

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the Directorate whose integrity is being tested regarding the manner in which the specimen is to be provided.

(9) If a member of the Directorate refuses to submit to a polygraph examination or other similar test, when requested to do so, or if the polygraph or similar test indicates possible deception, the Executive Director may instruct such member to subject himself or herself to a security screening in accordance with section 2A of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), failing which he or she may be charged with disobeying a lawful order, command or instruction under regulation 13.

(10) The Executive Director, in the event of a result that impacts adversely on the integrity of a member of the Directorate after employment of a measure contemplated in paragraph (a) of sub-regulation (2), may—

- (a) require such member to undergo such counselling, rehabilitation or retraining as directed by the Executive Director or relevant provincial head;
- (b) require such member to subject himself or herself to a security screening in accordance with section 2A of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994); or
- (b) if appropriate in the circumstances, take disciplinary or other action against such member under regulation 13.

(11) The Executive Director, in the event of a finding that a member of the Directorate has evidence of alcohol or drugs in his or her breath, blood or urine respectively, may—

- (a) suspend such member from duty until he or she is free from such evidence;
- (b) require such member to undergo such counselling or rehabilitation as directed by the Executive Director;

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- (c) refer such member to an identified registered medical practitioner for a medical examination and report of the member's fitness to proceed with his or her duties;
- (d) after considering a report referred to in paragraph (c), instruct such member to perform other duties for such time as the Executive Director considers necessary; or
- (e) if appropriate in the circumstances, take disciplinary or other action against such member under regulation 13.

(12) The measures contemplated in this regulation must be applied with due regard to decency and the right of a member of the Directorate to dignity and privacy.

(13) No person may disclose any information which he or she has obtained in the application of the measures contemplated in sub-regulation (2), unless such information is—

- (a) required by a person who of necessity needs the information for the performance of his or her functions in terms of these regulations;
- (b) supplied in the performance of functions in terms of these regulations; or
- (c) required in terms of any law or as evidence in any court of law or formal disciplinary process.

(14) Any contravention of sub-regulation (13) is to be regarded as serious misconduct for purposes of regulation 13.

Disciplinary referrals

12. (1) A complaint of a disciplinary nature or recommendations by the Directorate involving the discipline of a member or members of the South African Police Service or the Municipal Police Services must be contained in a report substantially similar to **Form 3**.

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(2) The Executive Director or relevant provincial head must, in accordance with section 7(6) of the Act, read with sections 9(m) and 21(1)(f), ensure that the form contemplated in sub-regulation (1) is correctly completed and submitted to the National Commissioner or relevant Provincial Commissioner of Police, as the case may be.

(3) The Executive Director or relevant provincial head must interact and liaise with the National Commissioner or Provincial Commissioner of Police regarding progress relating to disciplinary proceedings initiated by the National Commissioner or Provincial Commissioner of Police, as the case may be, in accordance with section 30 of the Act.

(4) The duty imposed upon the Executive Director or the relevant provincial head in terms of sub-regulation (2) or (3) may be delegated, in writing, by the Executive Director or relevant provincial head, as the case may be, to a suitable member of the Directorate.

Disciplinary measures in relation to members of the Directorate

13. The Public Service Disciplinary Code applies in the case of disciplinary proceedings initiated against a member of the Directorate as a result of the alleged misconduct of such member or failure to comply with a lawful command, order or instruction.

Security screening investigations

14. The security screening investigation of a member of the Directorate or investigator contemplated in sections 8(3) and 22(3) of the Act, respectively, must be done in accordance with the provisions of section 2A of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994).

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Reporting

15. (1) In addition to the provisions of section 32 of the Act, the Executive Director must submit an annual report to the Minister and Parliament in accordance with section 9(j) of the Act.

(2) The report contemplated in sub-regulation (1) must include an overview of—

- (a) the administration of the Directorate relating to its overall management and organisation;
- (b) the processing, monitoring and investigation of complaints lodged with the Directorate in terms of section 28(1) of the Act;
- (c) the management of information and research conducted during the financial year under review; and
- (d) statistics of cases dealt with by the Directorate on both national and provincial level, including information on the number and nature of cases carried over to the next financial year,

and may include recommendations relating to the manner in which deficiencies in practices employed by members of the South African Police Service or Municipal Police Services could be addressed.

(3) Despite sub-regulation (1), the Executive Director must, in accordance with section 7(12) of the Act, at any time when requested to do so by the Minister and Parliament, report on the activities of the Directorate.

General

16. These Regulations may be supplemented by—

- (a) the guidelines issued by the Executive Director in terms of section 7(3)(e) of the Act; and

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- (b) any protocol on co-operation entered into by and between the Directorate, the South African Police Service and the Municipal Police Service pursuant to section 29(2) of the Act.

Short title and commencement

17. These regulations are called as the Independent Police Investigative Directorate Regulations, 2012, and come into effect on 1 April 2012.



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ANNEXURE**FORMS**

- Form 1: Reporting of matter by Station Commander, Member of the South African Police Service or the Municipal Police Services
- Form 2: Complaint reporting form by member of public
- Form 3: Disciplinary referrals to National Commissioner or Provincial Commissioner



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FORM 1
REPORTING OF MATTER BY STATION COMMANDER, MEMBER OF THE SOUTH
AFRICAN POLICE SERVICE OR MUNICIPAL POLICE SERVICES
(Regulation 2(f))

Complaint Details			
CAS/CR No/Inquest No		Province	
Date of Incident		Time of Incident	
Reported to SAPS	<input type="checkbox"/> Yes <input type="checkbox"/> No	Date Reported to SAPS	
Incident relates to :			
<input type="checkbox"/> Death in police custody			
<input type="checkbox"/> Death as a result of police action			
<input type="checkbox"/> Discharge of firearm by police officer			
<input type="checkbox"/> Rape by police officer			
On Duty <input type="checkbox"/> Off Duty <input type="checkbox"/>			
<input type="checkbox"/> Rape of person in police custody			
<input type="checkbox"/> Torture/assault by police officer			
Complaint Description (Use additional folios if necessary)			

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Complainant Details			
Role in the case	<input type="checkbox"/> Complainant <input type="checkbox"/> Third party		
ID Number		Passport Number	
Title		First Name	
Middle Name		Surname	
Landline		Mobile	
Fax		Email	
Nationality		Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female
Disabled status	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Address (if complainant is willing to disclose this)			
Country		City	
Suburb		Postal Code	
Preferred contact Method (e.g. Email, SMS, Fax)			

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Police Details (Reporting Station/Unit/MPS)			
Policing Unit		Policing Entity (E.g. SAPS, MPS)	
Police Station			
Investigating Officer First Name		Investigating Officer Middle Name	
Investigating Officer Surname		Investigating Officer Rank	
ID Parade Held	<input type="checkbox"/> Yes <input type="checkbox"/> No		
IPID Telephonically Informed	<input type="checkbox"/> Yes <input type="checkbox"/> No		
IPID Official incident reported to		Date of Call	
		Time of Call	
Title of Person Reporting Incident			
First Name of Person Reporting Incident		Middle Name of Person Reporting Incident	
Surname of Person Reporting Incident			
District Surgeon Notified <input type="checkbox"/> Yes <input type="checkbox"/> No			
District Surgeon First Name		District Surgeon Middle Name	
District Surgeon Surname		District Surgeon Tel	
Victim Details			
Nationality		ID Number	
Passport Number			
First Name		Middle Name	
Surname			
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female		Race
Age			
Next of Kin Notified	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Location of Body			
Responsible Person for death / injury	<input type="checkbox"/> Himself/Herself <input type="checkbox"/> SAPS/MPS Member(s) <input type="checkbox"/> Inmates <input type="checkbox"/> Vigilantes / Members of the public <input type="checkbox"/> Other		
Responsible Person (Other)			
Cause of Death	<input type="checkbox"/> Suicide <input type="checkbox"/> During Apprehension <input type="checkbox"/> In transit with SAPS vehicle <input type="checkbox"/> Natural Causes <input type="checkbox"/> Self-defense <input type="checkbox"/> During escape <input type="checkbox"/> Due to motor vehicle accident <input type="checkbox"/> Unknown <input type="checkbox"/> Other		

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Classify Deceased	<input type="checkbox"/> Suspect <input type="checkbox"/> Sentenced <input type="checkbox"/> Witness Protection <input type="checkbox"/> Awaiting trial <input type="checkbox"/> Mental patient	
Detainee	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Reason for Detention		
Place where Death Occurred		
Instrument / Object Causing Death		
Service Member's Details		
Identified	<input type="checkbox"/> Yes <input type="checkbox"/> No	Rank
Persal Number		ID Number
Initials		
First Name		Middle Name
Surname		
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female	Race
Duty Station		Duty Station Unit
On Duty	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Identified	<input type="checkbox"/> Yes <input type="checkbox"/> No	Rank
Persal Number		ID Number
Initials		
First Name		Middle Name
Surname		
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female	Race
Duty Station		Duty Station Unit
On Duty	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Identified	<input type="checkbox"/> Yes <input type="checkbox"/> No	Rank
Persal Number		ID Number
Initials		
First Name		Middle Name
Surname		
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female	Race
Duty Station		Duty Station Unit
On Duty	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Contact Number		
Vehicle Registration Number		
Description of vehicle:		

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Station Commissioner's Rank:
Station Commissioner's Full names:
Station Commissioner's Signature:



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A handwritten signature or set of initials, possibly 'M', written in black ink.

FORM 2

COMPLAINT REPORTING FORM BY MEMBER OF PUBLIC
(Regulation 2(4))

Complaint Details			
CAS/CR No/ Inquest No		Province	
Date of Incident		Time of Incident	
Reported to SAPS?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Date Reported to SAPS	
Name of SAPS station			
Protection Order issued?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Protection Order type	interim <input type="checkbox"/> Final <input type="checkbox"/>
Date Issued			
Incident relates to : <input type="checkbox"/> Death in police custody <input type="checkbox"/> Death as a result of police action <input type="checkbox"/> Discharge of firearm by police officer <input type="checkbox"/> Rape by police officer On Duty <input type="checkbox"/> Off Duty <input type="checkbox"/> <input type="checkbox"/> Rape of person in police custody <input type="checkbox"/> Torture/assault by police officer <input type="checkbox"/> Corruption within the police Complaint description (use additional folios if necessary):			

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Complainant Details (Includes third party complaints)			
Role in the case	<input type="checkbox"/> Complainant <input type="checkbox"/> Third Party		
ID Number		Passport Number	
Title		First Name	
Middle Name		Surname	
Landline		Mobile	
Fax		Email	
Nationality		Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female
Disabled status			
Address			
Country		City	
Suburb		Postal Code	
Preferred contact Method (E.g. E-mail, SMS, Post)			
Victim Details			
Passport Number			
First Name		Middle Name	
Surname			
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female	Race	
Age			
Service Member's Details			
Identified	<input type="checkbox"/> Yes <input type="checkbox"/> No	Rank	
Persal Number		ID Number	
Initials			
First Name		Middle Name	
Surname			
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female	Race	
Duty Station		Duty Station Unit	
Identified	<input type="checkbox"/> Yes <input type="checkbox"/> No	Rank	
Persal Number		ID Number	
Initials			
First Name		Middle Name	
Surname			
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female	Race	
Duty Station		Duty Station Unit	
Identified	<input type="checkbox"/> Yes <input type="checkbox"/> No	Rank	
Persal Number		ID Number	

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Initials			
First Name		Middle Name	
Surname			
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female	Race	
Duty Station		Duty Station Unit	
Contact Number			
On Duty	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Vehicle Registration Number			
Details of Witnesses to Incident			
Title		First Name	
Middle Name		Surname	
Landline		Mobile	
Title		First Name	
Middle Name		Last Name	
Landline		Mobile	
Title		First Name	
Middle Name		Surname	
Landline		Mobile	
Title		First Name	
Middle Name		Surname	
Landline		Mobile	

COMPLAINANT'S FULL NAMES:

COMPLAINANT'S SIGNATURE:

DATE:

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MISSION OF INVESTIGATION INTO STATE CAPTURE

**FORM 3
DISCIPLINARY REFFERALS TO NATIONAL COMMISSIONER / PROVINCIAL
COMMISSIONER
(Regulation 12(1))
CASE INVESTIGATIVE REPORT**

Complaint Details			
CCN		Incident description code	
Type of report		Report date	
Date of last report		Complaint class	
Complainant		Date of complaint	
SAPS CR/CAS number		Suspect identification	
Investigator		Assignment	
Reporting staff member			
Source of complaint			
Summary of complaint			
Evidence giving rise to disciplinary recommendations			
Analysis and findings			

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Recommendations regarding disciplinary action to be taken in terms of applicable disciplinary regulations or code

Signature of Investigator: _____

Recommended / not recommended

Full names of supervisor: _____

Signature of supervisor: _____

Full names of IPID Provincial head: _____

Signature of IPID Provincial head: _____

Full names of IPID Executive Director / member acting in terms of regulation 12(4):

Signature of IPID Executive Director / member acting in terms of regulation 12(4):

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ANNEXURE “HIK 19”



HIK19

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 551

Cape Town

16 May 2011

No. 34298

THE PRESIDENCY

No. 425

16 May 2011

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 1 of 2011: Independent Police Investigative Directorate Act, 2011.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to 12 May 2011)

ACT

To make provision for the establishment of an Independent Police Investigative Directorate and to regulate the functions of the Directorate, to provide for the establishment of a Management Committee and Consultative Forum and their respective functions; to provide for the appointment and powers of investigators; to provide for reporting obligations and cooperation by members of the South African Police Service and Municipal Police Services; to provide for transitional arrangements; to provide for the repeal and amendment of certain laws; and to provide for matters connected therewith.

PREAMBLE

WHEREAS section 206(6) of the Constitution provides that, on receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police service in the province;

AND WHEREAS there is a need to ensure effective independent oversight of the South African Police Service and Municipal Police Services;

AND WHEREAS Chapter 2 of the Constitution provides for the upholding and safeguarding of fundamental rights of every person,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

ARRANGEMENT OF SECTIONS**CHAPTER 1****DEFINITIONS, OBJECTS OF ACT, ESTABLISHMENT, INDEPENDENCE AND IMPARTIALITY 5**

1. Definitions
2. Objects of Act

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3. Establishment
4. Independence and impartiality

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34. Regulations
35. Transitional arrangements
36. Amendment and repeal of laws
37. Short title and commencement
Schedule 1
Schedule 2

15

CHAPTER 1**DEFINITIONS, OBJECTS OF ACT, ESTABLISHMENT, INDEPENDENCE AND IMPARTIALITY****Definitions**

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1. In this Act, unless the context indicates otherwise—

- “**Committee**” means the Management Committee established under section 11;
“**Constitution**” means the Constitution of the Republic of South Africa, 1996;
“**Directorate**” means the Independent Police Investigative Directorate established in terms of section 3;
“**Executive Director**” means the Executive Director appointed in terms of section 6(1);
“**financial year**” means the period from 1 April in any year to 31 March in the ensuing year;
“**fixed date**” means the date of commencement of this Act;
“**forum**” means the Consultative Forum established under section 15;
“**investigator**” means a person appointed under section 22;
“**MEC**” means the Member of the Executive Council of a province who is responsible for policing in that province;
“**Minister**” means the Minister of Police;
“**municipal police service**” means a municipal police service established under section 64A of the South African Police Service Act;
“**organ of state**” means an organ of state as defined in section 239 of the Constitution;
“**provincial head**” means a person appointed under section 20;
“**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
“**Public Service Act**” means the Public Service Act, 1994 (Proclamation No. 103 of 1994);

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“**Secretariat**” means the Civilian Secretariat for Police Service established in terms of section 4(1) of the Civilian Secretariat for Police Service Act, 2011;
 “**Secretary**” means the Secretary for the Police Service appointed in terms of section 7(1) of the Civilian Secretariat for Police Service Act, 2011;
 “**security clearance certificate**” means an official document issued by the Executive Director indicating the degree of security competence of a person;
 “**South African Police Service Act**” means the South African Police Service Act, 1995 (Act No. 68 of 1995); and
 “**this Act**” includes the Schedule and regulations.

Objects of Act

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2. The objects of this Act are—

- (a) to give effect to the provision of section 206(6) of the Constitution establishing and assigning functions to the Directorate on national and provincial level;
- (b) to ensure independent oversight of the South African Police Service and Municipal Police Services;
- (c) to align provincial strategic objectives with that of the national office to enhance the functioning of the Directorate;
- (d) to provide for independent and impartial investigation of identified criminal offences allegedly committed by members of the South African Police Service and Municipal Police Services;
- (e) to make disciplinary recommendations in respect of members of the South African Police Service and Municipal Police Services resulting from investigations conducted by the Directorate;
- (f) to provide for close co-operation between the Directorate and the Secretariat; and
- (g) to enhance accountability and transparency by the South African Police Service and Municipal Police Services in accordance with the principles of the Constitution.

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Establishment

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3. (1) The Independent Police Investigative Directorate, to be structured at national level, with provincial offices, is hereby established.

(2) The Directorate must exercise its functions in accordance with this Act and any other relevant law.

(3) The Directorate is financed from money that is appropriated by Parliament.

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Independence and impartiality

4. (1) The Directorate functions independently from the South African Police Service.

(2) Each organ of state must assist the Directorate to maintain its impartiality and to perform its functions effectively.

CHAPTER 2

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NATIONAL OFFICE

National office

5. The national office is hereby established and is headed by the Executive Director.

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Appointment of Executive Director

6. (1) The Minister must nominate a suitably qualified person for appointment to the office of Executive Director to head the Directorate in accordance with a procedure to be determined by the Minister.
- (2) The relevant Parliamentary Committee must, within a period of 30 parliamentary working days of the nomination in terms of subsection (1), confirm or reject such nomination. 5
- (3) In the event of an appointment being confirmed—
- (a) the successful candidate is appointed to the office of Executive Director subject to the laws governing the public service with effect from a date agreed upon by such person and the Minister; and 10
- (b) such appointment is for a term of five years, which is renewable for one additional term only.
- (4) When the Executive Director is unable to perform the functions of office, or during a vacancy in the Directorate, the Minister may designate another person to act as Executive Director until the Executive Director returns to perform the functions of office or the vacancy is filled. 15
- (5) In the case of a vacancy, the Minister must fill the vacancy within a reasonable period of time, which period must not exceed one year.
- (6) The Minister may, remove the Executive Director from office on account of— 20
- (a) misconduct;
- (b) ill health; or
- (c) inability to perform the duties of that office effectively.

Responsibilities of Executive Director

7. (1) The Executive Director is the accounting officer of the Directorate and must ensure that— 25
- (a) proper records of all financial transactions, assets and liabilities of the Directorate are kept;
- (b) the financial affairs of the Directorate comply with the Public Finance Management Act; and 30
- (c) an annual report is prepared in the manner contemplated in section 32.
- (2) The Executive Director is responsible for the appointment of the provincial heads of each province as contemplated in section 22(1).
- (3)(a) The Executive Director must appoint such staff as may be necessary to enable the Directorate to perform its functions in terms of this Act. 35
- (b) The staff component must be established in accordance with the Public Service Act.
- (c) The conditions of service, including remuneration and allowances of such staff, are regulated in terms of the Public Service Act.
- (d) The Executive Director must direct that a register of declaration of interest by managers and investigators be kept in the prescribed form and manner. 40
- (e) The Executive Director must give guidelines with regard to—
- (i) the investigation and management of cases by officials within the respective provincial offices;
- (ii) administration of the national and provincial offices; and 45
- (iii) training of staff at national and provincial level.
- (4) The Executive Director must refer criminal offences revealed as a result of an investigation, to the National Prosecuting Authority for criminal prosecution and notify the Minister of such referral.
- (5) The National Prosecuting Authority must notify the Executive Director of its intention to prosecute, whereafter the Executive Director must notify the Minister thereof and provide a copy thereof to the Secretary. 50
- (6) The Executive Director must ensure that complaints regarding disciplinary matters are referred to the National Commissioner and where appropriate, the relevant Provincial Commissioner. 55
- (7) Once a month the Executive Director must submit to the Minister a summary of the disciplinary matters and provide a copy thereof to the Secretary.

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(8) All recommendations which are not of a criminal or disciplinary nature must be referred to the Minister and provide a copy thereof to the Secretary.

(9) The Executive Director may upon receipt of a complaint, cause to investigate any offence allegedly committed by any member of the South African Police Service or Municipal Police Services, and may, where appropriate, refer such investigation to the National or Provincial Commissioner concerned. 5

(10) The Executive Director must refer criminal matters which fall outside the scope of the Directorate, to the appropriate authority for further investigation in terms of applicable legislation.

(11) The Executive Director must provide strategic leadership to the Directorate. 10

(12) The Executive Director must at any time when requested to do so by the Minister or Parliament, report on the activities of the Directorate to the Minister or Parliament.

Composition of national office

8. (1) The national office consists of—

- (a) the Executive Director who controls the office; 15
- (b) the Corporate Services Unit;
- (c) the Investigation and Information Management Unit;
- (d) the Legal Services Unit; and
- (e) any other unit established, subject to the approval of the Minister and Parliament. 20

(2) The Executive Director must appoint members at the national office.

(3) A person may not be appointed as a member of the national office unless information with respect to that member has been gathered in an appropriate security screening investigation as prescribed by the Minister.

(4) The security screening investigation contemplated in subsection (3), must be done in conjunction with the National Intelligence Agency, as referred to in section 3 of the Intelligence Services Act, 2002 (Act No. 65 of 2002). 25

(5) The Executive Director must issue a security clearance certificate in respect of such person wherein it is certified that such person has successfully undergone a security clearance and is appointed as an employee of the Directorate. 30

(6) Any member of the national directorate may from time to time, or at such regular intervals as the Executive Director may determine, be subjected to a further security screening as contemplated in subsection (3).

(7) The Executive Director, after consultation with the National Intelligence Agency, must withdraw a security clearance certificate referred to in subsection (5) if he or she obtains information which, after evaluation by him or her, causes him or her to believe that the person in question could be a security risk or acted in any manner prejudicial to the objects of this Act. 35

(8) If the security clearance certificate referred to in subsection (7) is withdrawn, the person concerned is unfit to continue to hold such office and the Executive Director must discharge him or her from the Directorate. 40

Functions of national office

9. The functions of the national office are to—

- (a) give strategic leadership to the Directorate;
- (b) develop and implement policy for the Directorate; 45
- (c) oversee and monitor performance at provincial level and intervene to rectify challenges where necessary;
- (d) gather, keep and analyse information in relation to investigations;
- (e) identify and review legislative needs and report on such matters to the Secretariat; 50
- (f) do internal auditing of the Directorate;
- (g) provide administrative support to the Directorate;
- (h) strengthen the co-operative relationship between the Directorate and the Secretariat;

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- (i) report to the relevant MEC on matters referred to the Executive Director by the MEC;
- (j) submit an annual report to the Minister and to Parliament;
- (k) implement information measures to develop public awareness of the provisions of this Act; 5
- (l) deal with any other matter referred to it by the Minister;
- (m) make recommendations to the South African Police Service resulting from investigations done by the Directorate; and
- (n) report twice a year to Parliament on the number and type of cases investigated, the recommendations, the detail and outcome of those recommendations. 10

Delegations

10. (1) Subject to subsections (2) and (3), the Executive Director may delegate functions entrusted to the Executive Director under this Act to any other person with appropriate knowledge and experience who is under the control of the Executive Director. 15
- (2) A delegation under subsection (1) must be in writing and—
- (a) may be subject to any conditions or restrictions determined by the Executive Director;
 - (b) does not prevent the exercise of any power of the Executive Director; and
 - (c) may be withdrawn or amended by the Executive Director. 20
- (3) The Executive Director may not delegate any of the powers, functions or duties referred to in sections 7(1), (2), (3), (5), (6), (7), (8), (9) and (10), 8, 20, 22, 31(2), 32(1) and (2), and 34 of this Act.

CHAPTER 3

MANAGEMENT COMMITTEE 25

Establishment of Management Committee

11. There is hereby established a Management Committee.

Composition of Committee

12. (1) The Committee established in terms of section 11 consists of—
- (a) the Executive Director; and
 - (b) the provincial head for each province. 30
- (2) The Executive Director is the chairperson of the Committee.
- (3) The Executive Director may invite any person not mentioned in subsection (1) to a meeting of the Committee.

Functions of Committee 35

13. (1) The Committee is responsible for the following functions:
- (a) To ensure co-ordination and alignment within each province regarding—
 - (i) strategic and performance plans;
 - (ii) priorities, objectives and strategies across national and provincial levels;
 - (iii) adherence to financial requirements prescribed in terms of the Public Finance Management Act; and
 - (iv) interaction between the various provincial directorates;
 - (b) to identify any other matter of strategic importance to the functioning of the Directorate within each province;
 - (c) to discuss performance in the provision of services in order to detect failures and to initiate preventative or corrective action when necessary; 45
 - (d) to raise national management issues within the Directorate; and
 - (e) to ensure regular reporting on matters specific to the performance of the functions of the respective provincial directorates.

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Meetings of Committee

14. (1) The Committee meets as often as circumstances require, but at least four times every year, at such time and place as the Executive Director may determine.

(2) The Committee may determine its own procedure for its meetings.

CHAPTER 4

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CONSULTATIVE FORUM**Establishment of Consultative Forum**

15. There is hereby established a Consultative Forum.

Composition of forum

16. (1) The forum established in terms of section 15 consists of—

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(a) the Executive Director; and

(b) the Secretary.

(2) The Executive Director or Secretary, in consultation with one another, may invite any person not mentioned in subsection (1) to a meeting of the forum.

Functions of forum

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17. The functions of the forum are to—

(a) facilitate closer cooperation between the Secretary and the Executive Director; and

(b) discuss, amongst other, issues relating to trends, recommendations and implementation of such recommendations.

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Meetings of forum

18. (1) The Secretary must convene the first meeting of the forum and preside at that meeting.

(2) The Secretary and the Executive Director must alternate as chairperson at meetings.

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(3) The forum determines its own procedure and agenda for its meetings.

(4) The forum must meet at least four times a year on issues of common interest.

CHAPTER 5**PROVINCIAL OFFICES****Provincial offices**

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19. Each provincial office is headed by a provincial head who is appointed—

(a) at the level of Chief Director; and

(b) on a permanent basis in terms of section 20(1).

Appointment of provincial heads

20. (1) The Executive Director appoints the provincial head for each province in accordance with the laws governing the public service.

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(2) The provincial head must conclude a written performance agreement with the Executive Director—

(a) within a reasonable time after the appointment of the provincial head; and

(b) thereafter, annually within one month of the commencement of each financial year.

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(3) The performance agreement referred to in subsection (2) must include—

(a) measurable performance objectives and targets that must be met, and must provide for the time-frames within which those performance objectives and targets must be met;

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- (b) standards and procedures for evaluating performance and intervals for evaluation; and
- (c) the consequences of substandard performance.
- (4) When the provincial head is unable to perform the functions of office, or during a vacancy in the provincial office, the Executive Director may designate another person to act as provincial head until the provincial head returns to perform the functions of office or the vacancy is filled. 5
- (5) In the case of a vacancy, the Executive Director must fill the vacancy within a reasonable period of time, which period shall not exceed six months.

Responsibilities of provincial head 10

21. (1) A provincial head is responsible for the following:
- (a) Appointment and performance management of staff at provincial level;
- (b) to facilitate investigation of cases and to perform any other function incidental to such investigations;
- (c) to control and monitor active cases; 15
- (d) to refer matters investigated by the provincial office under this Act to the National or relevant provincial prosecuting authority for criminal prosecution;
- (e) to report to the Executive Director on matters investigated;
- (f) to refer disciplinary matters to the Provincial Commissioner;
- (g) to facilitate cooperation between the provincial head and the provincial police secretariat; 20
- (h) to report to the Executive Director on recommendations and finalisation of cases;
- (i) to report to the Executive Director on the management of provincial offices and their finances; 25
- (j) to report to the relevant MEC on matters referred to the Provincial Head by that MEC;
- (k) to ensure adherence to guidelines issued by the national office relating to the investigation and management of cases by officials within the respective provincial offices; 30
- (l) to keep proper financial records in accordance with the prescribed norms and standards;
- (m) to prepare financial statements for submission to the Executive Director within two months after the end of the financial year;
- (n) to ensure compliance with administrative guidelines issued by the Executive Director; and 35
- (o) to manage the provincial office.

CHAPTER 6

APPOINTMENT, REMUNERATION, FUNCTIONS AND POWERS OF INVESTIGATORS 40

Appointment of investigators

22. (1) The Executive Director, in consultation with the relevant provincial head, must appoint a fit and proper person as an investigator of the Directorate, subject to subsections (2), (3) and (4).
- (2) A person appointed as an investigator— 45
- (a) must have at least a grade 12 certificate or a relevant diploma or degree; and
- (b) must have—
- (i) knowledge and relevant experience of criminal investigation; or
- (ii) any other relevant experience.
- (3) A person may not be appointed as an investigator unless information with respect to that person has been gathered in an appropriate security screening investigation as prescribed by the Minister. 50

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(4) The security screening investigation contemplated in subsection (3), must be done in conjunction with the National Intelligence Agency, as referred to in section 3 of the Intelligence Services Act, 2002 (Act No. 65 of 2002).

(5) The Executive Director or official so delegated by him or her must issue a security screening certificate in respect of such person wherein it is certified that such person has successfully undergone a security clearance and is appointed as an investigator in terms of this Act. 5

(6) Any investigator may from time to time, or at such regular intervals as the Executive Director may determine, be subjected to a further security screening as contemplated in subsection (3). 10

(7) A person must be discharged from his or her position as an investigator if he or she fails to conform to the security clearance prescripts.

(8) An investigator is given policing powers contemplated in section 24(2) by the Minister, within three months after his or her appointment.

(9) The Executive Director must issue a document in the prescribed form, which shall serve as proof to certify that an investigator has been duly authorised to exercise the powers and perform the functions as contemplated in section 24. 15

Remuneration and conditions of service of investigators

23. The conditions of service, including the salary and allowances payable to an investigator appointed under this Act, must be on par with members appointed as detectives in terms of the South African Police Service Act. 20

Functions and investigative powers

24. (1) An investigator may, subject to the control and direction of the Executive Director or the relevant provincial head, exercise such powers and must perform such duties as are conferred or imposed upon him or her by or under this Act or any other law, and must obey all lawful directions which he or she may from time to time receive from a person having the authority to give such directions under this Act. 25

(2) An investigator has the powers as provided for in the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which are bestowed upon a peace officer or a police official, relating to— 30

- (a) the investigation of offences;
- (b) the ascertainment of bodily features of an accused person;
- (c) the entry and search of premises;
- (d) the seizure and disposal of articles;
- (e) arrests;
- (f) the execution of warrants; and
- (g) the attendance of an accused person in court. 35

(3) (a) For the purposes of conducting an investigation, an investigator may direct any person to submit an affidavit or affirmed declaration or to appear before him or her to give evidence or to produce any document in that person's possession or under his or her control which has a bearing on the matter being investigated, and may question such person thereon. 40

(b) An investigator or any person duly authorised thereto by him or her may request an explanation from any person whom he or she reasonably suspects of having information which has a bearing on a matter being or to be investigated. 45

(4) A person questioned by an investigator conducting an investigation must answer each question truthfully and to the best of that person's ability, but—

- (a) a person is not obliged to answer any question if the answer is self-incriminating; and
- (b) the person asking the questions must inform that person of the right set out in paragraph (a). 50

(5) No self-incriminating answer given or statement made by any person to an investigator exercising powers in terms of this Act will be admissible as evidence against that person in criminal proceedings instituted against that person in any court, except in criminal proceedings for perjury. 55

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Conflict of interest and disclosure of interest

25. (1) No member of the Directorate may conduct an investigation, or render assistance with an investigation, in respect of a matter in which he or she has a financial or any other interest which might preclude him or her from exercising or performing his or her powers, duties and functions in an objective manner. 5

(2) If, during an investigation, it appears to a member of the Directorate that a matter concerns a financial or other interest of that member as referred to in subsection (1), that member must—

- (a) immediately and fully disclose the fact and nature of that interest to the Executive Director; and 10
- (b) withdraw from any further involvement in that investigation.

Integrity measures

26. (1) The Minister may prescribe measures for integrity testing of members of the Directorate, which may include random entrapment, testing for the abuse of alcohol or drugs, or the use of a polygraph or similar instrument to ascertain, confirm or examine in a scientific manner the truthfulness of a statement made by a person. 15

(2) The necessary samples required for any test referred to in subsection (1) may be taken, but any sample taken from the body of a member may only be taken by a registered medical practitioner or a registered nurse.

(3) The Minister shall prescribe measures to ensure the confidentiality of information obtained through integrity testing, if such measures are prescribed in terms of subsection (1). 20

Limitation of liability

27. An investigator is not liable in respect of any act or omission in good faith and without gross negligence in performing a function in terms of this Act. 25

Type of matters to be investigated

28. (1) The Directorate must investigate—

- (a) any deaths in police custody;
- (b) deaths as a result of police actions;
- (c) any complaint relating to the discharge of an official firearm by any police officer; 30
- (d) rape by a police officer, whether the police officer is on or off duty;
- (e) rape of any person while that person is in police custody;
- (f) any complaint of torture or assault against a police officer in the execution of his or her duties; 35
- (g) corruption matters within the police initiated by the Executive Director on his or her own, or after the receipt of a complaint from a member of the public, or referred to the Directorate by the Minister, an MEC or the Secretary, as the case may be; and
- (h) any other matter referred to it as a result of a decision by the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case may be, 40

in the prescribed manner.

(2) The Directorate may investigate matters relating to systemic corruption involving the police. 45

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CHAPTER 7

**REPORTING OBLIGATIONS AND COOPERATION BY MEMBERS OF THE
SOUTH AFRICAN POLICE SERVICE AND MUNICIPAL POLICE SERVICE
AND DISCIPLINARY RECOMMENDATIONS****Reporting obligations and cooperation by members 5**

29. (1) The Station Commander, or any member of the South African Police Service or Municipal Police Service must—

- (a) immediately after becoming aware, notify the Directorate of any matters referred to in section 28(1)(a) to (f); and
- (b) within 24 hours thereafter, submit a written report to the Directorate in the prescribed form and manner of any matter as contemplated in paragraph (a). 10

(2) The members of the South African Police Service or Municipal Police Services must provide their full cooperation to the Directorate, including but not limited to—

- (a) the arrangement of an identification parade within 48 hours of the request made by the Directorate; 15
- (b) the availability of members for the taking of an affidavit or an affirmed declaration or to give evidence or produce any document in that member's possession or under his or her control which has a bearing on the matter being investigated; and
- (c) any other information or documentation required for investigation purposes. 20

Disciplinary recommendations

30. The National Commissioner or the appropriate Provincial Commissioner to whom recommendations regarding disciplinary matters were referred, as contemplated in section 7(6) and (7), must—

- (a) within 30 days of receipt thereof, initiate disciplinary proceedings in terms of the recommendations made by the Directorate and inform the Minister in writing, and provide a copy thereof to the Executive Director and the Secretary; 25
- (b) quarterly submit a written report to the Minister on the progress regarding disciplinary matters made in terms of paragraph (a) and provide a copy thereof to the Executive Director and the Secretary; and 30
- (c) immediately on finalisation of any disciplinary matter referred to it by the Directorate, to inform the Minister in writing of the outcome thereof and provide a copy thereof to the Executive Director and the Secretary.

CHAPTER 8 35

FINANCES AND ACCOUNTABILITY AND ANNUAL REPORT**Finances and accountability**

31. (1) The Executive Director—

- (a) must, subject to the Public Finance Management Act—
 - (i) be charged with the responsibility of accounting for money received or paid out for or on account of the office of the Directorate; 40
 - (ii) cause the necessary accounting and other related records to be kept; and
- (b) may exercise such powers and perform such duties as may from time to time be conferred upon or assigned to him or her, and in respect thereof be accountable to the Minister. 45

(2) The records referred to in subsection (1)(a) must be audited by the Auditor-General.

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Annual report

32. (1) The Executive Director must prepare and submit to the Minister an annual report in the form prescribed by the Minister within five months after the end of the financial year.

(2) The annual report referred to in subsection (1) must include the following documents:

- (a) The audited financial statements prepared in terms of this Act;
- (b) the Auditor-General's report prepared in terms of this Act; and
- (c) a detailed report on the activities of the Directorate undertaken during the year to which the audit relates.

(3) The Minister must table in Parliament a copy of the annual report and financial statements, and the audit report on those statements, within one month after receipt thereof if Parliament is then in session or, if Parliament is not then in session, within one month after the commencement of its next ensuing session.

(4) The Executive Director must publish the annual report, financial statements and the audit report on those statements.

CHAPTER 9**OFFENCES AND PENALTIES****Offences and penalties**

33. (1) Any person or private entity, who interferes, hinders or obstructs the Executive Director or a member of the Directorate in the exercise or performance of his or her powers or functions, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding two years.

(2) Any member of the Directorate who wilfully discloses information in circumstances in which he or she knows, or could reasonably be expected to know, that such a disclosure will or may prejudicially affect the exercise or the performance by the Directorate of the powers and functions, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(3) Any police officer who fails to comply with section 29 is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(4) Any member who fails to make disclosure in accordance with section 25(2)(a), or fails to withdraw in terms of section 25(2)(b), as the case may be, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(5) Any person who pretends to be an investigator in terms of this Act, is guilty of an offence and liable on conviction to a fine or to imprisonment for period not exceeding two years.

CHAPTER 10**REGULATIONS, TRANSITIONAL ARRANGEMENTS, REPEAL AND SHORT TITLE AND COMMENCEMENT****Regulations**

34. (1) The Minister may, after consultation with the Executive Director, make regulations regarding—

- (a) access and control of confidential information and records pertaining to investigations instituted in terms of this Act;
- (b) the procedure to be followed when investigating matters referred to in section 28(1)(a) to (h);
- (c) the procedure to be followed when reporting on cases dealt with under this Act;

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- (d) the procedure to be followed for referring, receiving, registering, processing and disposing of complaints;
 - (e) the procedure to be followed when investigating criminal matters;
 - (f) the procedure to be followed for initiating special investigations;
 - (g) the measures for integrity testing of members of the Directorate as contemplated in section 26(1);
 - (h) the measures to ensure the confidentiality of information obtained as contemplated in section 26(3);
 - (i) any issues to be contained in the annual report contemplated in section 32;
 - (j) the procedure and format to be followed regarding reporting to the Directorate as contemplated in section 29(1);
 - (k) the procedure to be followed for the arrangement and the holding of identification parades, as contemplated in section 29(2)(a);
 - (l) the procedure to be followed for the taking of an affidavit or an affirmed declaration or to give evidence or produce any document in that member's possession or under his or her control which has a bearing on the matter being investigated, as contemplated in section 29(2)(b);
 - (m) the procedure to be followed for the submission of any other information or documentation required for investigation purposes, as contemplated in section 29(2)(c);
 - (n) the procedure to be followed in respect of disciplinary recommendations as contemplated in section 30;
 - (o) the manner and procedure to secure a crime scene to be investigated by the Directorate; and
 - (p) in general, any ancillary or incidental matter that it is necessary to prescribe for the proper implementation or administration of this Act.
- (2) The regulations referred to in subsection (1)(a) to (o) must be submitted to Parliament for scrutiny at least one month before promulgation—
- (a) while it is in session; or
 - (b) after the next session starts.
- (3) Regulations with regard to the implementation of this Act must be submitted to the Minister by the Executive Director within three months of the commencement of this Act.

Transitional arrangements

35. (1) As from the fixed date—
- (a) all powers exercised and functions performed by investigators immediately before the fixed date, must be exercised and performed by the Directorate;
 - (b) any investigation instituted in terms of the previous Act which was pending must be disposed of as if this Act had not been passed; and
 - (c) the allocated budget, assets and liabilities of the Directorate as agreed upon between the accounting officers of the Independent Complaints Directorate and the Directorate, must be transferred to the Directorate in accordance of section 42 of the Public Finance Management Act.
- (2) The Registrar of Deeds must make the necessary entries and endorsements for the transfer of any property in terms of this section.
- (3) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of the employer must be regarded as having taken place when the investigators and administrative and support personnel are transferred to take up employment with the Directorate.
- (4) For as long as remuneration, allowances and other conditions of service under the South African Police Service Act are more favourable than those determined under this Act, the remuneration, allowances and other conditions of service under the South African Police Service Act prevails.
- (5) A security clearance issued before the fixed date, remains valid until such time it is reissued in terms of this Act.

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(6) (a) This Act does not affect the validity of any investigation or prosecution conducted, pending or under investigation by the Independent Complaints Directorate on or before the fixed date.

(b) All matters which relate to service complaints of the South African Police Service will be transferred to the South African Police Service and where appropriate, the Secretariat.

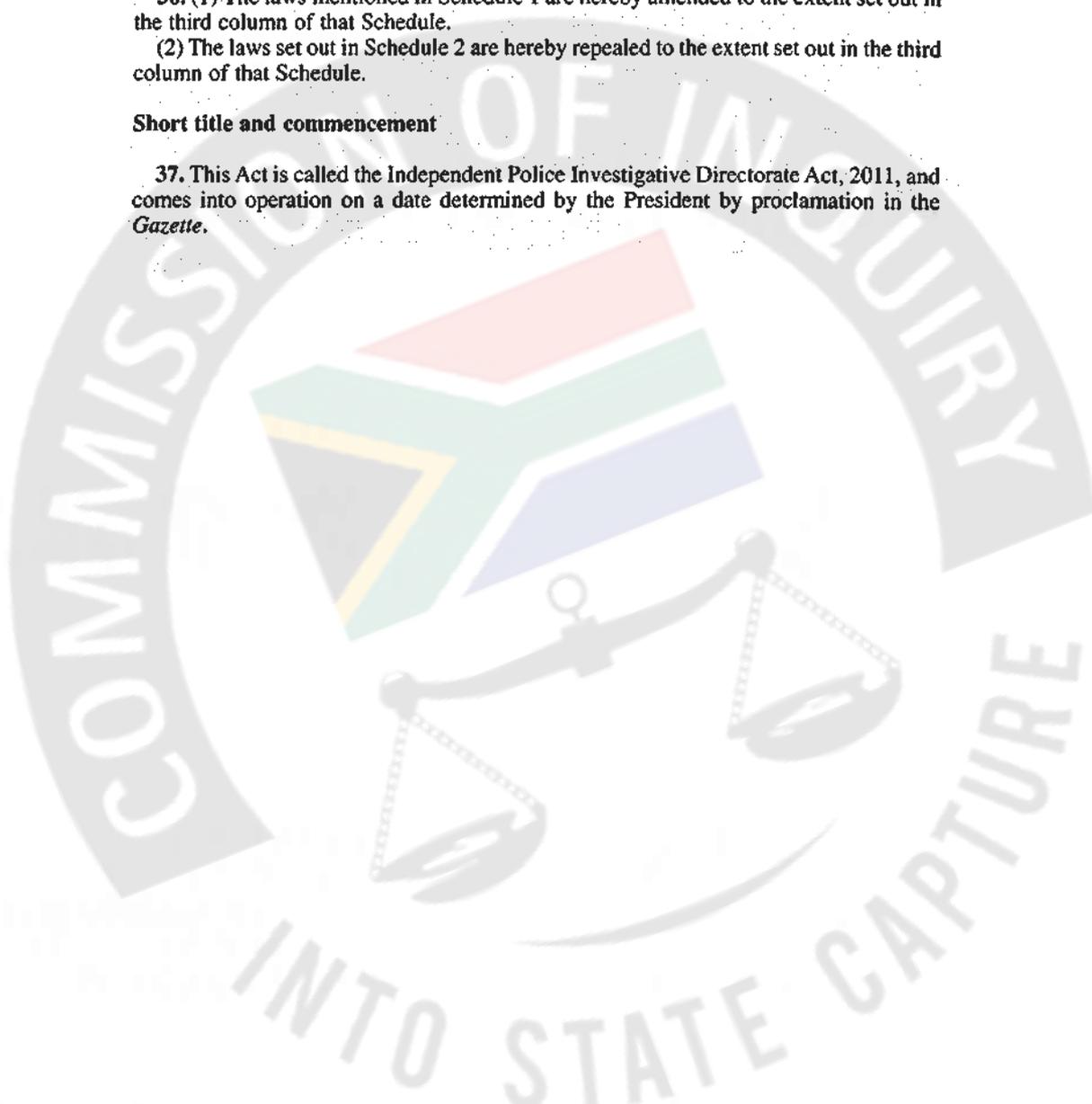
Amendment and repeal of laws

36. (1) The laws mentioned in Schedule 1 are hereby amended to the extent set out in the third column of that Schedule.

(2) The laws set out in Schedule 2 are hereby repealed to the extent set out in the third column of that Schedule.

Short title and commencement

37. This Act is called the Independent Police Investigative Directorate Act, 2011, and comes into operation on a date determined by the President by proclamation in the *Gazette*.



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SCHEDULE 1

LAWS AMENDED

Number and year of law	Short title	Extent of repeal or amendment	
Act 68 of 1995	South African Police Service Act	<p data-bbox="786 669 1206 789">Amendment of section 1 of Act 68 of 1995, as amended by section 1 of Act 41 of 1997 and section 1 of Act 83 of 1998</p> <p data-bbox="786 825 1182 917">1. Section 1 of the South African Police Service Act, 1995 is hereby amended—</p> <p data-bbox="810 917 1198 1134">(a) by the substitution for the definition of “secretariat” of the following definition: “secretariat” means the Secretariat for [Safety and Security] Police established under section 2(1);”</p> <p data-bbox="810 1134 1214 1350">(b) by the substitution for the definition of “Secretary” of the following definition: “Secretary” means the Secretary [for Safety and Security] of Police appointed under section 2(2);”</p> <p data-bbox="786 1379 1198 1439">Amendment of section 2 of Act 68 of 1995</p> <p data-bbox="786 1471 1206 1591">1. Section 2 of the South African Police Service Act, 1995, is hereby amended by the substitution for subsection (1) of the following subsection: “(1) (a) The Minister shall establish a secretariat to be called the Secretariat for [Safety and Security] Police.</p> <p data-bbox="810 1716 1214 1993">(b) A provincial government may establish a provincial secretariat to be called the Provincial Secretariat for [Safety and Security] Police: Provided that the date on which a provincial secretariat will come into operation shall be determined by a provincial government in consultation with the Minister.”</p>	<p data-bbox="1249 640 1272 664">5</p> <p data-bbox="1249 765 1272 789">10</p> <p data-bbox="1249 917 1272 941">15</p> <p data-bbox="1249 1069 1272 1093">20</p> <p data-bbox="1249 1220 1272 1244">25</p> <p data-bbox="1249 1372 1272 1396">30</p> <p data-bbox="1249 1524 1272 1548">35</p> <p data-bbox="1249 1675 1272 1700">40</p> <p data-bbox="1249 1827 1272 1851">45</p>

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Number and year of law	Short title	Extent of repeal or amendment	
Act 112 of 1998	Witness Protection Act	<p>Amendment of section 1 of Act 112 of 1998</p> <p>1. Section 1 of the Witness Protection Act, 1998, is hereby amended by the substitution for the definition of “Complaints Directorate” of the following definition:</p> <p>“Complaints Directorate” means the Independent [Complaints] Police Investigative Directorate, established under section [50] 2 of the [South African Police Service Act, 1995 (Act No. 68 of 1995)] Independent Police Investigative Directorate Act, 2010;”.</p> <p>2. The substitution for the words “Complaints Directorate”, wherever they occur in the Act, of the word “Directorate”.</p>	5 10 15 20
Act 116 of 1998	Domestic Violence Act, 1998	<p>Amendment of section 18 of Act 116 of 1998</p> <p>1. Section 18 of the Domestic Violence Act, 1998, is hereby amended—</p> <p>(a) by the substitution in subsection (4) for the following subsection:</p> <p>“(4) (a) Failure by a member of the South African Police Service to comply with an obligation imposed in terms of this Act or the national instructions referred to in subsection (3), constitutes misconduct as contemplated in the South African Police Service Act, 1995, and the [Independent Complaints Directorate] Secretariat, established in terms of [that Act] section 4(1) of the Civilian Secretariat for Police Service Act, 2010, must forthwith be informed of any such failure reported to the South African Police Service.</p>	25 30 35 40 45

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Number and year of law	Short title	Extent of repeal or amendment
		<p>(b) Unless the [Independent Complaints Directorate] Secretariat directs otherwise in any specific case, the South African Police Service must institute disciplinary proceedings against any member who allegedly failed to comply with an obligation referred to in paragraph (a).”</p> <p>(b) by the substitution in subsection (5) for paragraphs (c) and (d) of the following paragraphs respectively:</p> <p>“(5) (c) The [Independent Complaints Directorate] Secretariat must, every six months, submit a report to Parliament regarding the number and particulars of matters reported to it in terms of subsection (4)(a), and setting out the recommendations made in respect of such matters.</p> <p>(d) The National Commissioner of the South African Police Service must, every six months, submit a report to Parliament regarding—</p> <p>(iii) steps taken as a result of recommendations made by the [Independent Complaints Directorate] Secretariat.”</p>

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Number and year of law	Short title	Extent of repeal or amendment	
Act 70 of 2002	Regulation of Interception of Communications and Provision of Communication-Related Information Act	<p data-bbox="786 520 1222 633">Amendment of section 1 of Act 70 of 2002, as amended by the schedule of Act 36 of 2005 and section 1 of Act 48 of 2008.</p> <p data-bbox="786 669 1222 813">1. Section 1 of the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002, is hereby amended—</p> <p data-bbox="810 825 1222 1090">(a) by the substitution for the definition of “Executive Director” of the following definition: “Executive Director” means the Executive Director appointed in terms of section [51] 5(1) of the [South African Police Service Act] Independent Police Investigative Directorate Act, 2010;”</p> <p data-bbox="810 1102 1222 1464">(b) by the substitution for the definition of “Independent Complaints Directorate” of the following definition: “Independent Complaints Directorate” means the Independent [Complaints] Police Investigative Directorate established by section [50(1)] 2 of the [South African Police Service Act] Independent Police Investigative Directorate Act, 2010;”</p> <p data-bbox="786 1500 1222 1620">2. The substitution for the words “Independent Complaints Directorate”, wherever they occur in the Act, of the word “Directorate”.</p>	<p data-bbox="1238 544 1267 604">10 5</p> <p data-bbox="1238 700 1267 736">15</p> <p data-bbox="1238 845 1267 881">20</p> <p data-bbox="1238 1001 1267 1037">25</p> <p data-bbox="1238 1158 1267 1194">30</p> <p data-bbox="1238 1314 1267 1350">35</p> <p data-bbox="1238 1459 1267 1495">40</p>

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GOVERNMENT GAZETTE, 16 MAY 2011

Act No. 1 of 2011

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE ACT, 2011

SCHEDULE 2**LAWS REPEALED**

No. and year of law	Short Title	Extent of repeal
Act 68 of 1995	South African Police Service Act, 1995	Chapter 10

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ANNEXURE “HIK 20”



HIK 20

Matthews Sesoko

From: IKhuba@ipid.gov.za
Sent: Monday, September 30, 2013 10:47 AM
To: KMbeki@ipid.gov.za
Cc: DMokoena@ipid.gov.za
Subject: Interview with General Dramat

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

Kind Regards

I H KHUBA



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ANNEXURE “HIK 21”



Amphure & Drafts
 HIK 21
 AB HIK/WS
 AB 2
 AB



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Department:
 Independent Police Investigative Directorate
 REPUBLIC OF SOUTH AFRICA

Private Bag X9525, Polokwane, 0700, 56 A Market Street, Fernito Building, 2nd Floor, Polokwane
 Tel: (015) 291 8000 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 GCN 2013030375
- 1.2 Incident Description Code 312
- 1.3 Type of Report Criminal Prosecution
- 1.4 Report Date 22 January 2014
- 1.5 Date of Last Report 09 November 2012
- 1.6 Complaint Category Section 28(1)(f) and 28(1)(h)
- 1.7 Complainant Shepard Chuma and others
- 1.8 Date of Complaint 10 October 2012
- 1.9 SAPS CR/CAS Number Diepsloot, CAS 390/07/2012
- 1.10 Suspect Identification Lt Gen. Dramat and others
- 1.11 Investigator Task Team
- 1.12 Assignment Investigations
- 1.13 Reporting Staff Member Innocent Khuba

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1. BACKGROUND

- 1.1 The Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by General Sibiyá. 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 Sibiyá and Lt General Dramat, conducted operations in Soweto and Diepsloot to trace Zimbabwean Nationals. The suspects were wanted in connection with the murder of a Zimbabwean police Colonel in Bulawayo. The members were accompanied by Zimbabwean Police. Five Zimbabweans were arrested in Diepsloot and detained at various stations as illegal immigrants and others for fictitious crimes. They were allegedly assaulted by SAPS members and Zimbabwean Police and transported to Beit Bridge where they were handed over to the Zimbabwean Authorities. Four of them were reported murdered in the hands of Zimbabwean Police.
- 2.2 According to the allegation, Major General Sibiyá 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 6964 John Malatjie Street Diepsloot together with Nelson, Maqhawe and Witness standing when they were approached by two unknown Black males. One of them produced an appointment card and the other produced a firearm and ordered them to lie down. He will further state that one of the Police Officer then took out a paper and started reading names like Mthelisi Sibanda, Godi Dube, Prichard Chuma and John. He asked

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them whether they know such people but none of such names were known to them. The officer was wearing a cowboy hat and they heard other police officers calling him Cowboy. Few minutes later, Cowboy asked the other Police Officers about where to detain them. While they argued about the place to detain them, the other officer suggested that General 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.

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 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 Sibiyi 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 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.

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.

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.

Handwritten signatures and initials: H, H, A, M, and other illegible marks.

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 Sibilya 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 Sibilya.

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 Sibilya. On 2010/11/05 Gen. Sibilya 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 Sibilya, 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 Nyonl. 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 Bhokitsa 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

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case. He will further state that Captain Maluleke confirmed that he indeed took the said Foreign Nationals to Bell 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 Wilness 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 Pappo: 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.

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STATEMENTS OF HOME AFFAIRS OFFICIALS

Nolwandile 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 Beit Bridge. He will further state that when SAPS bring an illegal foreigner at Port of Entry they must hand in a Body Receipt form and not the Detention Warrant. The Warrant of Detention is not a deportation document and must not be produced or stamped at Port of Entry. He will dismiss the allegation that the stamp used on the documents claimed to be Home Affairs documents by the police is a deportation stamp.

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

4.4 STATEMENTS OF MEMBERS OF SAPS IN LIMPOPO

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

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

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

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

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

He will state that he told Superintendent Ncube that he has to verify with his seniors about the arrangements. He was given a number of General Dramat by Superintendent Ncube. He called Colonel Radzlanf 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 Madllonga was one of his team members posted at Belt Bridge reporting under Colonel Radzilani. He remembers receiving a call from Colonel Madllonga 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 Madllonga about the Zimbabwean Police.

Colonel Duvhani Sharon Radzilani: She will state that in 2010 she was the direct supervisor of Colonel Madllonga at the Belt Bridge Port of entry. She will further state that in 2010 Colonel Madllonga 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 Madllonga 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 Sibiyal.

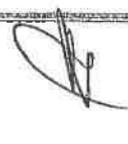
Captain Arnold Boonstra: He will state that in November 2010 (a date and time of which he cannot remember) he was requested by Lt Col Neethling to assist in tracing the suspects who were wanted by Captain Maluleke. He went to Dlepsloot shopping Centre and waited for the members involved in the operation 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 Polices 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.

Piantinah Mokoebu: 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

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

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

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

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

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

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

STATEMENTS OF DIEPSLOOT SAPS MEMBERS REGARDING GORDON DUBE

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

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Isaac Dlamini: He will state that in January 2011 docket Diepsloot Cas 93/01/2011 was assigned to him for further investigation. The docket had three suspect arrested for possession of unlicensed firearm and ammunition. The names of the suspects were Menzi Dube, God Dube and Sidingumunzi Dumani. He received a call from "Cowboy" Maluleke of the Hawks to hand the Case dockets Diepsloot Cas 93/01/2011 to his office in Silverton. He said the docket had to be investigated together with other dockets wherein God Dube is a suspect. He further said that the firearm which is an exhibit in his docket was used to kill a senior officer in Zimbabwe. Captain Maluleke took the docket and gave them acknowledgement of receipt. He will further state that Captain Cowboy in the presence of Constable Rambuda told him that he will facilitate the release of the suspect from prison and he will talk to the Prosecutor to withdraw the case. After sometimes seeing that the docket was under his name, he opened a duplicate and sent it to the prosecutor. The prosecutor decided to decline to prosecute and the duplicate docket was filed.

Lean Meyer: He will state that he was investigating several cases wherein Godl Dube was a suspect. The case were as follows, Wierdabrug CAS 631/12/2010, 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 Godl 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 Godl 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 Dalsy 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 Rikholso 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 Godl Dube. She contacted Constable Rikotso and informed him that Cptain Malukele was at Wierdabrug inquiring about Godl 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 Godl Dube on the cell Register and decided to call Constable Rikotso. Constable Rikotso confirmed that he arrested Godl Dube the previous night (11/01/2011). She went to the cells and interviewed Godl Dube who said he would get a lawyer because the police assaulted him.

5. DOCUMENTARY EVIDENCE ACQUIRED FROM VARIOUS POLICE STATIONS

5.1.1. EXTRACTS FROM OCCURRENCE BOOKS & SAPS 14 REGISTERS

The investigation at Orlando Police Station uncovered the following:

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Specific reference to OB 276 to 279: The entries made from 04h10 of 06/11/2010 to 12h00 of the 08/11/2010 confirms that Captain M L. Maluleke of the DPCI with force number 0622729618 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 Phxane 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 Moatshl 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 12/04/12: Gordon Dube, Andrew Dube, Dumani Stimusy were detained for possession of unlicensed firearm. The same firearm was found to belong to the murdered Zimbabwean Police Officer.

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

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

Copies of dockets linking Gordon Dube: Wierdabrug CAS 531/12/2010, Wierdabrug CAS 220/02/2010, Wierdabrug CAS 147/11/2010, Wierdabrug CAS 1022/12/2010, Wierdabrug CAS 310/10/2010 and 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 DOCUMENTARY 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

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

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

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

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

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

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

Statement of Bongani Moyo: he will state under oath that in May 2011 he was in Zimbabwe Bulawayo busy speaking over the cellphone when Zimbabwean police arrived at his house. After identifying him they assaulted him and handcuffed him. They put him in the bakke 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 Maqhawe 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 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 (0826516311). 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.

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

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 Madlonga: 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 Belt 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 Leboya: 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;

- o 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 Siblya wherein General Siblya 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.
- o 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;
 - o 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.
 - o 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 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

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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 Madlonya 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 these dates correspond with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.

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

- o He congratulated officers for arresting Johnson Nyonl 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 to tell anyone about the operation they had just done.

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

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

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Intelligence have done when they arrested Zimbabwean Nationals involved in the murder of Senior Police Officer in Zimbabwe. The letter was as a result of a request made by Former General Toka of Crime Intelligence requesting General Mzwandile Peiros 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 Bail Bridge for fraud. However at Sliverton, 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 Bail 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

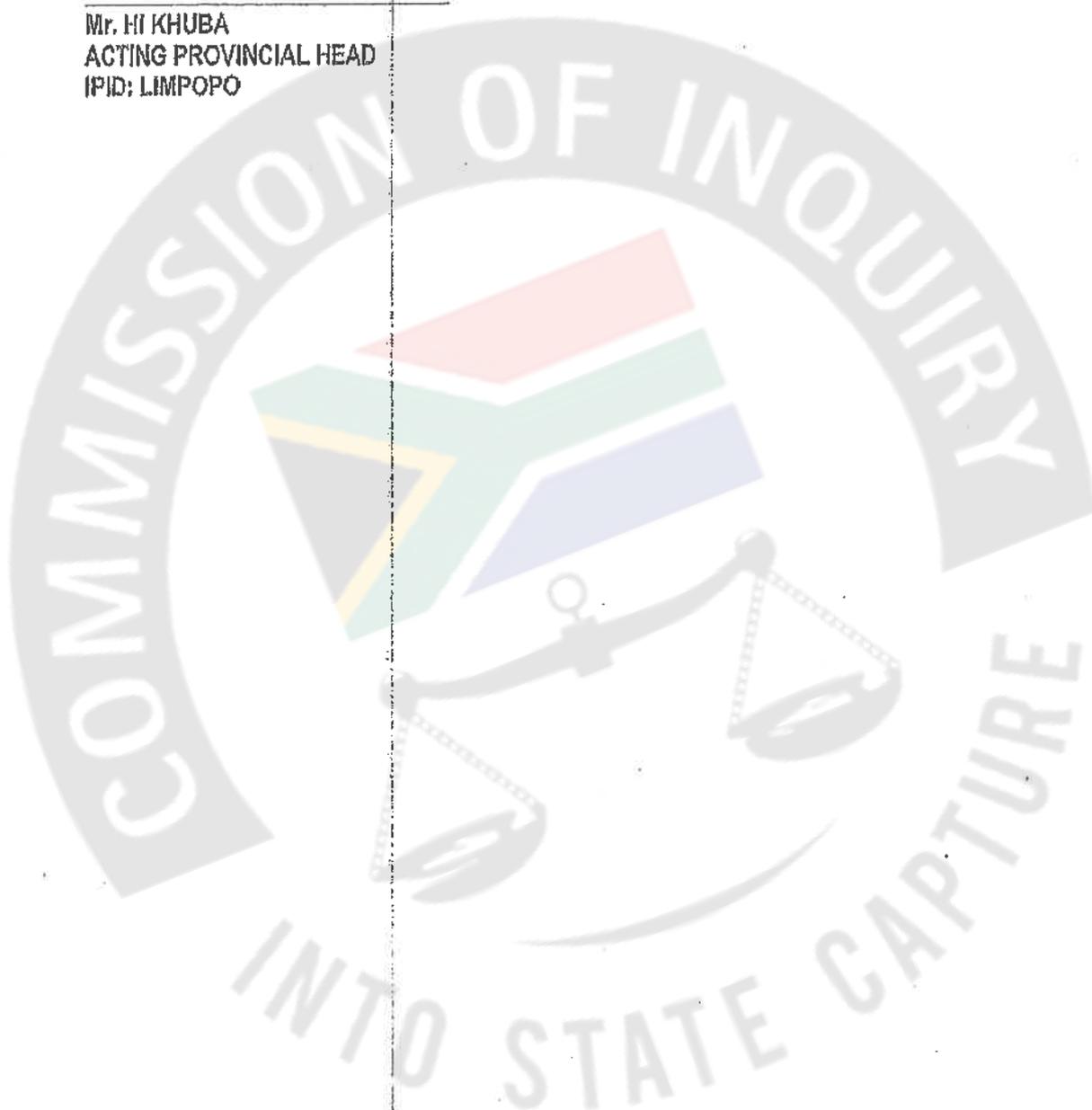
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Based on the available evidence, the Independent Police Investigative Directorate recommends that Lt General Dramat, Major General Sibiyi, Lt Col M Maluleke, Constable Radebe, Captain S E Nkosi and Warrant Officer Makoe be charged criminally of;

- 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)

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Mr. HI KHUBA
ACTING PROVINCIAL HEAD
IPID: LIMPOPO



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ANNEXURE “HIK 22”



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ANTHONY MOSING

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

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ANTHONY MOSING

PRESENT: MR ANTHONY MOSING - NPA
 MR SANDILE JULY - Director, Werksmans
 MS KERRY BADAL - Associate, Werksmans
 MR SANDILE TOM - Associate, Werksmans
 MR KWAZI BUTHELEZI - Candidate Attorney

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14 April 2015

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MR MOSING: ... has to be refreshed if, for instance, they refer to them coming to see us at a certain stage.

MR JULY: Somewhere in February?

MR MOSING: Yes, yes. But I can tell you what I recall clearly offhand about the matter and then we can fill in gaps from memory.

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MR JULY: I can let you know that we are on record now. Today is 14 March 2015.

MR MOSING: Okay, thanks, Mr July. I think maybe from my side, before we really get into the details, of course I have been told that I am now

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ANTHONY MOSING

cleared to speak with you.

MR JULY: Oh, yes, yes, I got an email.

MR MOSING: Of course coming here now and thinking in terms of what is going to be required, I just needed to understand what exactly I am 5 authorised to be able to speak about. But really, I haven't seen the request - the email that went to the NPA. All I got was: Yes, you can; you're allowed to go and talk. DR MAITE just said yesterday that I'm allowed to 10 consult with WERKSMANS about the letter, but I'm not too sure exactly what you will require from me eventually. I thought that if I could see the request that you drafted to the NPA, which led to them agreeing for 15 me to come here, just in case there is anything that might - I don't want to be in trouble, or anything like that, because of course I'm discussing matters which are *sub judice* now within the NPA. In other words, 20 this matter is *sub judice* within the NPA still. And whatever I'm saying, you must understand ...

MR JULY: Our role is very limited, but I appreciate your concerns. We don't know what is really 25

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ANTHONY MOSING

sub judice at the NPA. Our mandate is to discover and unravel a number of things, but the main issue is that there is a report that was submitted. Then there is a second report. We need to establish the status of the two reports, that's all - only that. It's about the report, but I think it's better that you see the letter from the Minister which was written to us, and also the letter from the Minister of Police to the Minister of Justice, asking the NDPP to release anybody who may be of assistance in our investigation.

MR MOSING: The release part, I am available, because I will participate, it's understood. But I'm not too sure what further issue ...

MR JULY: I'm not sure what is happening at the NPA regarding this report or these reports, but our issue is about the two reports - one given on 22 January and one which is dated 18 March.

MR MOSING: Okay. I think that I will be able to explain, but I think probably I will start from the beginning, in order to get to the report. That must be in context in terms of our

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ANTHONY MOSING

understanding of the reports, the old report,
if that is the case. Is that ...

MR JULY: That's fine, I'm with you.

MR MOSING: I just want to see, because I have a report
which I need to find in my files. I actually 5
thought I didn't have it, but it's actually
two copies. I drafted them in pencil at the
time, because they were not, let's say, the
official version.

MR JULY: I think maybe also for your benefit it is 10
important that you read this mandate, so that
you understand.

MR MOSING: I don't know whether you are aware, but from
my involvement in the matter I think - and I 15
must also make sure of the dates - but I would
say we got involved in the matter at a
relatively early stage when the investigations
basically started. I must mention that my
position at the NPA at the time was that I was 20
heading a unit which is called the Special
Projects Division, which is basically an
office of the NDPP. As such I reported to
ADVOCATE JIVA, who was the Acting NDPP at the
time. So I attended a meeting where we were 25
then instructed to assist with this

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investigation. I think MR MOUKANGWE was
involved at that stage. I'm not sure what his
rank is in the SOUTH AFRICAN POLICE SERVICE.
There had already been some statements
obtained from - I'm not sure whether it's 5
three or four - ZIMBABWEAN Nationals, who,
let's say, had survived this ordeal, and who
at the time were in witness protection. There
were also statements I think from four Crime
Intelligence members, who, it appears, were 10
part of the so-called TOMS unit of GAUTENG.
They were seconded to be part of that unit,
and they also made statements pertaining to
the first alleged kidnapping of four
ZIMBABWEAN Nationals. 15
I'm trying to think what other evidence there
was, but I think at that stage that was
basically the evidence at the time. Although
the evidence indicated or mentioned certain
names of senior police officials from Ops in 20
particular, the evidence wasn't really very
conclusive. We obviously advised the
investigation that there would have to be a
lot more investigation done to get to a stage
where one could make concrete decisions from 25

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a prosecution point of view. At some stage, also, I think IPID got involved early on as well, because to our minds they were the relevant body as well. They informed us that they were also tasked at the time by the Minister to investigate the matter. I think we were also shown an investigation that was done by the Civilian Secretariat for Police regarding these allegations and the report that they gave after having received the reports. I think there were about three or four reports from the HAWKS and the Police which dealt with the allegations. Part of the reports were actually answers to Parliamentary questions. From that report of the Civilian Secretariat I think one could see that they pointed out a number of inconsistencies and unsatisfactory aspects which they advised the Minister to have investigated.

I must say, it was difficult to make a general observation. I think, given the nature of the case, and the suspects involved, it was generally difficult to get people to cooperate. There were a lot of police members involved in TOMS, and it was only these Crime

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Intelligence guys who had made statements. But I think in the light of the allegation then that there was a fight between Crime Intelligence units and the HAWKS, and maybe there was some sort of personal vendetta or some sort of thing, we had to view the evidence with caution. That's why we insisted that the police must investigate the matter and try to get other people who were involved in these things. I think it was generally difficult. I must say MR KHUBA from IPID was involved in investigating right from the start, with MOUKANGWE, but then he would report or discuss developments in the investigation with myself and BILLY MOELETSI. I think we met on several occasions, but I cannot say exactly how many times. I think we also saw the report that the HAWKS' Integrity Unit had conducted into the allegations of the involvement of their members, which basically exonerated them. I think the breakthrough in the investigation really started when MR KHUBA obtained a statement from a certain MADILONGA. I'm not sure what his rank is now, but he was the head of the Border ...

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MR JULY: He's dead.

MR MOSING: Yes, apparently he's dead. I was shocked. I actually advised him: You know what, this is a key witness, you must put him in witness protection. But I thought with him deceased it weakened the case. That was generally my view at the time. I think I'll get to it when I come to the point when we stopped with this investigation. He excitedly even phoned me in the night or over the weekend to say he's got this statement. I think he even emailed the statement to me. When I read it, it was really like a light that was switched on in the investigation. It was detailed - a very good statement, and one which one could view credibly, although I think it contradicted an earlier statement he had made to the HAWKS' investigations. But at least he explained why he had made that earlier statement.

From that statement I think the investigation really came to a point where everything was reasonably clear, as to what really transpired. I don't know - I don't want to deal with every step of the investigations, up

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to the point where it became - although one
can, but I wouldn't want to leave out gaps.
I don't have the docket, and of course I don't
remember every statement, but I think we ended
up understanding - because initially the 5
allegations were that there were four
ZIMBABWEAN Nationals. I think that's how the
police reported it. There were four
ZIMBABWEAN Nationals who were deported under
a HOME AFFAIRS process. I think at the start 10
he got statements from HOME AFFAIRS people
which actually showed that these documents
were not authentic. They were even submitted
to a document dispute expert, who gave a
report as well that ... 15

MR JULY: The documents that were used to deport
them?

MR MOSING: To deport them, yes. There were, shall I say,
a lot of gaps with regard to that deportation.
Firstly, there was a moratorium against 20
deportation. He even got from HOME AFFAIRS a
complete list of all the people who had been
deported during that period of the moratorium,
and none of these people were on that list.
According to HOME AFFAIRS' evidence, the 25

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persons were only deported during that period
if they had committed a crime or were involved
in criminal activities. Other than that there
was a complete moratorium. Also, copies of
those deportation documents were not available 5
at HOME AFFAIRS, so the only copies were the
ones that the HAWKS had. I think the issue
also with the apparent falsification of those
documents was that the same stamp appeared to
have been used. The documents were really 10
identical, to the extent that they didn't
appear to be very authentic. Also, the fact
why the HAWKS had to deport these people
instead of them being taken to LINDELA, and so
on. Because on that same night they were 15
detained in SOWETO, there were other illegal
immigrants, and those were taken to LINDELA.
These four were taken a separate route. What
transpired from the earlier statements of the
ZIMBABWEAN Nationals was that two of these 20
guys actually never crossed the border, they
were dumped somewhere next to the freeway -
that's according to their statements. It
transpires that only two were actually taken
over the border. That was also contrary to 25

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the reports and contrary to what was contained in the reports from the HAWKS in answer to the Parliamentary questions. So there already it was clear that things were not as they appeared to have been. 5

When MADILONGA gave his statement, as I said, things started falling into place. The investigating officer then managed to uncover, let us say, the other kidnappings and deportations. Let me just have a look, 10 because I actually wrote a memo to my bosses, explaining the matter in detail. I said:

"Significant progress was made by the investigating team since July 2013. In summary the following evidence was then 15 obtained."

That's when I think additional statements - of course we had the SAP13's, the police stations where these people were kept. There was a SELEKE or SELEPE IO, who did not give us a 20 statement, but we insisted that they must try and get a statement from him. Then one captain from TOMS gave a statement. He was the first one to confirm that there were policemen from ZIMBABWE present during that 25

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first operation. Because initially, as I said, the allegation was only made by the CIG guys. For some reason I treated that with caution. I wasn't too sure whether it was a made-up story. But then NIEUWOUDT, I think is 5 his surname, confirmed that yes, that was with the first operation. I think it was 5 November. On 23 November is when they realised that SHEPARD TSHUMA in a follow-up operation was kept at ALEXANDRA Police 10 Station. From the records there he was taken out by a certain SELEPE or SELEKE - SELEPE, I think it was. Eventually SELEPE also made a statement to say he was requested to transport this guy. I think he is also from TOMS. He 15 confirmed that he transported TSHUMA - it's not SHEPARD TSHUMA, I think it's another TSHUMA. PRITCHARD CHUMA, because there are two CHUMAS. It's PRITCHARD CHUMA, and he transported him to the border with MALULEKE, 20 so MALULEKE was following in another vehicle. At the border he handed him over to MALULEKE, and MALULEKE took him into the office there, and then he turned back. So at least we could account for PRITCHARD as well. Then the other 25

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two incidents happened, and in the investigation I'm really satisfied that we had all the statements, to show that: Here are the other two - which was GORDON DUBE as well as JOHNSON NYONI. Because I think DUBE and JOHN NYONI were arrested later, around January, after that incident. The people who were involved in those arrests - it shows that Crime Intelligence gathering investigators from PRETORIA were involved in those arrests. With DUBE I have actually set it out in this memo, and I can give you a copy of this, because that really explains what my understanding was at the time of the investigation - how it unfolded. DUBE was supposed to appear in court at ATTRIDGEVILLE on serious offences of robbery and house breaking, because he was a wanted criminal. The Crime Intelligence guys came from PRETORIA - that's what they normally do, they go to the police station in the area and look for the suspects, to help trace them through their sources. So MALULEKE understood that they were looking for DUBE, and he actually asked them, to say: Trace this person for us, which

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they did in DIEPSLOOT, and they arrested him. We got a statement from the investigating officer who was MEYER, of those documents, who said MALULEKE demanded that he hand over DUBE, the accused, to MALULEKE, to be taken to ZIMBABWE, where he was to face charges of armed robbery and murder. The investigating officer did that, contrary to the fact that this case was on the roll in ATTRIDGEVILLE. I don't think we could trace the charge sheet, or if we did trace it - no, we did have the charge sheet, but we didn't have the explanation from the prosecutor. Apparently the prosecutor had resigned as well - in the ATTRIDGEVILLE case - because we wanted to get an understanding of why he allowed an accused who was facing court not to be brought to court, and whether there was a warrant issued, and all that. But it seems from the computer of MALULEKE there was a statement MALULEKE made, which I think MEYER also confirmed, which may have been handed to court to show that DUBE was taken to ZIMBABWE for deportation purposes and he had been sentenced to life imprisonment and was never coming back

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to SOUTH AFRICA. That seems to have been the explanation to close our diary.

The firearm as well - when DUBE was arrested they found a firearm which allegedly was a firearm robbed from this Colonel in ZIMBABWE, 5
and although it was handed in to Ballistics, the two police guys were instructed by MALULEKE to go and fetch that firearm and bring it to PRETORIA to MALULEKE, which they did. That firearm - and there are photographs 10
you can see, which were taken on the premises of PROMED Building, where GENERAL DRAMAT is based, you can see is still in the forensic bag. They deliberately took a photo of it as being the firearm, as if it was being handed 15
to the ZIMBABWEAN Police to return with it. So we managed to trace that DUBE was arrested, and he, together with JOHNSON NYONI - I just want to see the dates here, because on the 12th - there were documents, sort of progress 20
reports of MALULEKE that we saw, but he didn't explain, and it didn't make sense from the initial story. However, when we got this information and he had explained the various incidents, you can say, on 5 November they 25

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arrested four people and deported two. On 23
November they arrested PETER CHUMA and
deported him as well, presumably, because he
was taken to the border. The two further
incidents were then these guys DUBE and 5
JOHNSON NYONI. NYONI was arrested as well,
using these Crime Intelligence gathering
officers from PRETORIA, because they had a
source in DIEPSLOOT. I think he is the one
who alerted them to DUBE as well as NYONI. 10
They then arrested him as well. But he was
arrested and apparently taken directly to
PROMED BUILDING, and that's when allegedly, as
some of the witnesses stated, GENERAL DRAMAT
came and congratulated them whilst he was in 15
the vehicle in custody. There were
photographs of him being there. After that
the members say a braai was made to thank them
for their participation. This was a TRT unit,
sorry, not the TOMS - in other words the 20
support unit that helped arrest them, the
TACTICAL RESPONSE TEAM.
After that, NYONI was kept at the MOOT Police
Station. We managed to get the records there
that showed SAB14, or whatever, and showed 25

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that he was detained, and was allegedly
detained for fraud. Then the next day he was
taken out by MALULEKE himself. The record
says he was taken to BEIT BRIDGE to be
deported. 28 January I think corresponds with 5
MADILONGA's testimony that people were taken
to the border. That really accounted for all
five, because seemingly there were five people
sought by the ZIMBABWEAN Police. It looks as
if they did an excellent job in arresting all 10
five of them, and all five of them you can say
were taken out (indistinct). The only thing
still remaining were the corroborating
documents in the computer of MALULEKE, which
showed that there was a letter from the 15
ZIMBABWEAN High Police Office, written to our
SOUTH AFRICAN counterpart, where they thanked
them for these arrests of DUBE and NYONI, and
also some other operations. I'm not sure
which ones, but they happened at the same 20
time.

There was just one more thing, there was a
suspect, MOYO, who was facing charges in
PRETORIA for bank robbery. He is a ZIMBABWEAN
National as well. He had escaped several 25

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times, and the one time he had escaped -
because from that computer of MALULEKE I think
there was some evidence which showed they may
have been involved in getting MOYO, almost
like the reciprocal action on the part of the 5
ZIMBABWEAN Police to reciprocate for what
happened with these five. That happened
around May of 2011. We pursued that
investigation and statements and KHUBA even
went to see MOYO in prison. MOYO's story is 10
yes, he was shot by the ZIMBABWEAN Police
after he had escaped from SOUTH AFRICA, he was
brought back to SOUTH AFRICA, and at the
border he was seemingly handed over to the
SOUTH AFRICAN POLICE - the HAWKS - and taken 15
to a hospital in MUSINA, where he was again
brought to court in SOUTH AFRICA. I thought
that also corroborated the basic allegations
that the SOUTH AFRICAN POLICE helped. On the
evidence regarding who of the police was 20
involved, I think that it was where KHUBA
spoke with DRAMAT several times, trying to get
their statements - their warning statements.
He had taken a warning statement from
MALULEKE, but he was trying not to be 25

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cooperative, really. From MADILONGA's statement he mentioned that when this contingent of ZIMBABWEAN Police came there, they had a cellphone number, which they said was DRAMAT's and they should phone DRAMAT to confirm. It seems it turned out that that number was his official cellphone, and he was called. We also have a record of his cellphone to show the call was received from that number. So there was just a slight thing about the dates. I think he misjudged the dates in terms of when the ZIMBABWEAN Police came, but it was a minor thing. In fact what he said really corroborated it.

What we did, because the only thing that was really doubtful was the involvement of SIBIYA. The four initial Crime Intelligence officers did allude to the fact that he was present - not all four of them, but they had actually made two or three statements each.

MR JULY: Now, when you're talking about "present", do you mean present at the crime scene, where they were assaulting, and all those kinds of things?

MR MOSING: Yes, at the very first - on 5 November. To me

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the evidence wasn't really conclusive, but one
guy said MALULEKE did all the talking during
the briefing. Because they first briefed all
the members at the place where they met. I
think it was some supermarket just outside of 5
DIEPSLOOT where they all gathered, and
seemingly MALULEKE was doing the briefing, and
then the two ZIMBABWEAN Police guys were
present. The story was that they were from
PRETORIA, and they were actually ZIMBABWEAN 10
Police guys. They were now going to look for
suspects. They said GENERAL SIBIYA was
present, but he was sitting in the car, and he
let MALULEKE do all the talking. Then when
they moved into DIEPSLOOT the other members 15
managed to arrest these four guys. Then there
were discussions as to what must happen to
them, and where must they be taken. Some of
the ZIMBABWEAN witnesses said the General in
the car said they must go to SOWETO Police 20
Station. You see, all that evidence of course
was not conclusive, to say who the General
was, and for me, what was really not
satisfactory was that these Crime Intelligence
members ought to know SIBIYA. They knew him 25

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because they worked with him as part of the TOMS. That evidence wasn't conclusive at that stage.

With the cellphone location we tried to see, because that would have proved conclusively 5 whether he was present or not at the scenes, especially at the first scene. Unfortunately I think the one cellphone that was alleged to be his, if I understood it correctly, showed that he may not have been there, he was 10 somewhere else in PRETORIA, or whatever. I think it was the cellphones as well as the vehicle tracking, because there was tracking on those vehicles. That is why you have that evidence from some expert company that mapped 15 the movements of the vehicles. Those other vehicles definitely show that they were around that vicinity, and from there they moved to SOWETO. But again, that evidence wasn't conclusive to say that SIBIYA was there beyond 20 a reasonable doubt.

That's basically the investigation. Then KHUBA prepared his report, because we agreed we had uncovered what may have been the true version of what happened with 25

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all these events. That version was clearly very different from the official version that had been given by the HAWKS in the beginning. We were satisfied that definitely there were offences committed, and again we could define who the members were who were involved. 5

It is true that when KHUBA was requested to draft a report, because it was our understanding that the ICD previously - and now IPID - when they do an investigation they would compile a report, with a clear recommendation as to who must be charged or not, and they then submit it with the docket. He did compile the first report, which is dated 22 October 2013. I have a copy of it here. He submitted it to us and then ... 10 15

MR JULY: Can we have copies of that report?

MR MOSING: I think you can have a copy of that. Yes, I will make a copy of it. When he submitted this report to us, we basically sent it back to him to say it was not sufficient, because for the persons who must make a decision - the evidence in the report must be summarised 20 25

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properly. In fact, summarise all this evidence and mark it accordingly, to say: A1 says this, A2 that, A3 that. There were some inaccuracies in terms of that. But you will see I made pencil notes. So he went back and of course he did that. Then I think around 22 January 2014 was when the report was brought in this fashion, of which I have copies. There was one last thing that KHUBA needed to get before we could say we were closing the investigation from our perspective. Remember now, we were merely asked to assist the investigation. It was made clear to the investigators that the decision to prosecute is not ours, it's not myself and BILLY, it is going to be the DPP.

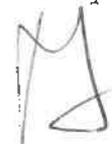
MR JULY: All they do even then, is they recommend.

MR MOSING: Yes, they recommend. But I'm saying our role in the matter we made clear to them, that this report is not given to me so that I can make a decision, we would submit it to the relevant DPP office, who would take it, and we were merely guiding that investigation and assisting them. As I said, we had continuous

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discussions with the investigating team, so at
no stage did he disagree really as to what was
happening. I think there was a lot of
pressure as well to terminate the
investigation, to move over to arrest. We 5
basically had to say: Make your investigation
complete first, make sure you've got all the
evidence, which at least indicates a *prima*
facie case so that a prosecutor can take it
forward and at least is assured of getting a 10
conviction. But really there wasn't any
pressure from anybody to say: Arrest this
person and arrest that person, in a sense.
But I'm saying of course this matter happened
some time ago already, and there was some 15
delay in really getting to the nitty-gritty,
to the truth of the whole event, until we
started making progress. It was just to make
sure: Finish your investigation so that there
is nothing extra to go and get. So by the 20
time he then wrote the final report, which we
then had agreed in terms of who would be
charged, and so on - as I said, where we had
agreed, and we mentioned names as well, as was
mentioned in this report dated 22 January 25



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2014. Based on this report, which we understood to be the final report, with the investigation being final as far as we were concerned, the matter was now ready to be submitted to a prosecutor to make a decision on whether to prosecute anyone or not. BILLY MOELETSI and myself drafted a memorandum to the Deputy National Director of Public Prosecutions, ADVOCATE JIVA, attaching - let me just get that report, first of all.

MR JULY: Let's take a break while you are looking.

THE INTERVIEW ADJOURNS

THE INTERVIEW RESUMES

MR JULY: You prepared a memorandum to the Deputy National Director of Public Prosecutions, and I think you were looking for it.

MR MOSING: Thank you, Mr July. The memo I was looking for is actually from myself as Head, Special Projects to ADVOCATE JIVA, the Deputy National Director of Public Prosecutions. I think at that stage MR NXASANA of the NDPP was already appointed in October 2013, because the report is dated 13 February 2014. It's also addressed to CHAUKE, the DPP of SOUTH GAUTENG, because it was my understanding that the

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matter should be referred to the DPP, who would then decide on the prosecution. As I indicated, I was not to decide the prosecution, but merely to assist and guide the investigations. 5

If I can just read a few introductory things in this report, it says:

"The purpose of the report was 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." 10

Then paragraph 2 is "BACKGROUND", and it says:

"The investigation 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 two lever-arch files, together with other files containing the cellular phone data and evidence obtained from a computer belonging to the DPCI, is also enclosed." 15 20

Then the third paragraph is a summary of the 25

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facts of the investigation. So I don't know whether I can call it standard practice to provide this to the NDPP or my supervisor, really, with our report on the assistance we gave regarding the matter. As you can see, as far as we were concerned the investigation was complete, to the extent that the matter could now be referred to the DPP for a decision. It's just a pity that I did not refer to the date of the report of IPID which accompanied the docket. 5 10

MR JULY: But the date of your memo is ...?

MR MOSING: My date is 13 February 2014. It then precedes...

MR JULY: ... March? 15

MR MOSING: Yes. Not to go through the whole summary of the evidence ...

MR JULY: You will also make a copy of that?

MR MOSING: I will make a copy of this, yes. We did an analysis of the evidence, as far as we were concerned, and then the challenges that we anticipated. The last paragraph really deals with the recommendations which we, as the team guiding the investigations, were making to the DPP. It reads: 20 25



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"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 contained in the docket. Those directly implicated in the actions are the Head of the DPCI, Lieutenant-General Dramat, Lieutenant-Colonel Maluleke, Warrant Office Makoe, Constable Radebe and Captain 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 uttering in respect of the Home Affairs document that was submitted to the Civilian Secretariat and others."

In summary our recommendations tallied with the recommendations that were contained in the report from IPID which was dated 22 January 2014. To refer to those recommendations, that reads:

"Based on the available evidence, the



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Independent Police Investigative
Directorate recommends that Lieutenant-
General Dramat, Major-General Sibiya,
Lieutenant-Colonel Maluleke, Constable
Radebe, Captain S E Nkosi and Warrant
Officer Makoe be charged criminally for
kidnapping, defeating the ends of
justice, assault and theft (only
applicable to Captain Maluleke, Warrant
Officer Makoe, Radebe and Nkosi)."

That is the assault and theft charges. So in
essence we were in agreement with this
recommendation. It is in line with what we
had seen from the investigation up to that
stage. I then handed this memorandum,
together with the dockets - and I think I even
handed it personally to ADVOCATE CHAUKE, who
at that stage was at the head office, in the
presence of ADVOCATE JIVA, who was the head of
Prosecution Services at the time. This
included the report from IPID, dated 22
January 2014.

That was as far as our involvement went in the
matter. To our mind the matter was with the
NDPP SOUTH GAUTENG, who was going to make a

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decision whether to prosecute or not to
prosecute. Some time during 2014 - and I
don't have the exact dates - I was called by
ADVOCATE ZEISS VAN ZYL from the DPP SOUTH
GAUTENG office, who was enquiring about this 5
particular docket. He mentioned that some
police people came and fetched the docket
from him under circumstances which for him
were very suspicious. He felt they were going
to bring the docket back, they hadn't 10
returned the docket, and he was getting
worried and suspicious about it. He thought
the docket was back with us, being at head
office. I said to him: No, that can't be the
case because the docket is now with the DPP, 15
for the DPP to decide the matter. He also
phoned ADVOCATE MOELETSI to the same effect -
I think he phoned MOELETSI before he phoned
me. When he heard we hadn't received the
docket, he was worried. As I said, he became 20
very concerned. We then suggested as well
that perhaps the docket was returned to the
NDPP, MR NXASANA, who was now the new head of
the NPA, without our knowledge, and they could
enquire about it from him. So I think they 25

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wrote a memo enquiring about it, setting out the circumstances of the matter, and enquiring about the dockets. I have seen that memo in the file, in an email. It was in the custody of the NDPP, MR NXASANA. This was in the last 5
few days of December 2014 - last year - and this was after the media reporting that GENERAL DRAMAT had been suspended, and so on, with regard to this matter. MR NXASANA of the NDPP called me in and asked me about the 10
matter, and then mentioned that the docket was with him. He showed me a box with certain lever-arch files which appeared to be the docket in the matter, and he showed me the IPID report. I saw it was dated some time in 15
March - I think it was 18 March 2014. He showed me the recommendation, and I was shocked to see that the recommendation was completely different to the recommendation that we had seen when the matter was referred 20
to the DPP SOUTH GAUTENG for prosecution or for decision. I think the latter report basically said that GENERAL DRAMAT and GENERAL SIBIYA were exonerated - that's the word that was used. I then briefly paged through the 25

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body of the report to see whether certain evidence was still there, still discussed in that report, particularly the statement of MADILONGA, because that was the one that I think pertinently implicated GENERAL DRAMAT as such. I did see that a summary of his evidence was still in that report. I then mentioned to the NDPP that to my mind this recommendation was not the recommendation we...

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MR JULY: It was not consistent with the statement?

MR MOSING: ... it was not consistent with the evidence that was in the report - that was still part of the report.

MR JULY: Tell me, Mr Mosing, because you were in your capacity as the NPA, you were just assisting.

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MR MOSING: Yes.

MR JULY: The decision to prosecute was not yours, but you were assisting. Were you consulted when the second report or the so-called second report was produced?

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MR MOSING: No, not at all. That's why I said I was so surprised in December 2014 to see that the recommendation in the report now said these two were exonerated. As you can see from my

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memo, initially I felt that the evidence was not conclusive with regard to SIBIYA, but with GENERAL DRAMAT we ourselves had recommended as well that there was evidence that implicated him.

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MR JULY: And the part which was not conclusive was his location?

MR MOSING: Yes. It was a question that look, that could have been supplemented by further evidence from members who were there, who had not yet made statements at the time, as well as ID parades perhaps, because it was mentioned by the ZIMBABWE Police, but it was also dark and maybe they couldn't identify him properly. But I felt that the other police members, who were part of that operation, or even other evidence could come out that showed that. Because with cellphone things - with cellphones people know how to bypass things. If you are a policeman of that calibre, you will know what evidence - I think the investigators had mentioned that he may have used other cellphones, which they didn't have, and which would perhaps have placed him in that location. It's also unlikely, it's

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improbable that he wouldn't have been there, because he was actually the person designated to work in cooperation with the ZIMBABWEAN Police with regard to this cross-border cooperation.

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MR JULY: His own statement says that. He says he was asked for personnel, and he had to provide that personnel.

MR MOSING: Yes.

MR JULY: The question then is how does that personnel carry out its duties without instructions from him?

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MR MOSING: Yes, and TOMS in GAUTENG were reporting to him basically, I think. That's also the statement of the members from Crime Intelligence.

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Because their evidence, which they gave right at the beginning, and which is now corroborated by the rest of the investigation, suddenly gains a little bit more credibility.

Because now you can actually see, if they say he was present, then he would have been present. You start now giving a bit more

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belief to what they were saying, because they are not just uncorroborated statements from people that are said to be in cahoots, or

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maybe have some motive. But now that the whole case was done, I think if you look at the evidence, I was not excluding the fact that the DPP could decide that SIBIYA was properly implicated, or that other evidence could do that. It's just that at that stage when we did our memo, or our report basically, the evidence was not conclusive as far as he was concerned. But we definitely felt there was a strong case to be made out regarding the rest.

Can I just maybe say that that report of March also did not even mention the other members like MALULEKE, MAKOE - I think it maybe mentioned MALULEKE, but MAKOE ...

MR JULY: It doesn't mention what should happen to others.

MR MOSING: And for me throughout that case it had always been clear - in fact we had gone so far as to give the IO draft charge sheets as far as the kidnapping and assault. We had pinpointed exactly the theft of the cellphones and the monies. We had prepared those charge sheets for the investigating officer. It was always that these people should be charged for those

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smaller offences as well. For them to be excluded completely in the report just showed me that the report is not very consistent with the evidence.

MR JULY:

I was going to say the meeting - and we don't know when the meeting took place between KHUBA, MAKOE and SESOKO, a meeting with you. MAKOE confirms the meeting, KHUBA confirms the meeting and the only person who is not sure about the meeting is SESOKO.

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MR MOSING:

I think the only time that I met MR SESOKO was once, when he was part of this thing. That could be the meeting that is being referred to. I remember it was also at a venue which was not the usual venue where they used to meet. Due to the nature of the case, we were also not meeting in the office places because of the need to keep the matter confidential. That was the only time SESOKO came, and it was here at the PETROPORT. What exactly was discussed was really nothing out of the ordinary from what had already been discussed, and I think that was not after the reports were done, it was still well within the matter being investigated. Unfortunately I did not -

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I can try and find out when, more or less, from my records, to be exact. Perhaps I will be able to pinpoint the exact date. But it wasn't as if it was a matter where it was being referred to the NDPP already or that the investigations were done at that stage. 5

I think the purpose of MR KHUBA bringing MR SESOKO as well, was because SESOKO was a senior person within IPID. I think he's the Chief Director, or something like that. Obviously at that stage we were getting a little bit worried as the team, because these allegations were serious, they involved high-profile people, and the question was whether IPID reported these things as well to the principals, or whatever, so that at least there was proper reporting about that. I think that's what MR SESOKO's role would have been, because KHUBA was merely the investigator, and we were just assisting him. 10 15 20

MR JULY:

In your experience does the investigating officer, who is appointed by IPID and who signs the report, have to sign the report with other people, or does he sign the report alone? 25

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MR MOSING:

For us, when we received this report of 22
January, it was signed by MR KHUBA. It was an
official report and it was a final report.
There was no doubt that it was still subject
to somebody in higher office - because it was 5
done on a proper letterhead. As I indicated,
there were previous drafts which we helped him
to correct, so that he could give us a
complete product. There was no indication
that this report was still subject to being 10
corrected, or signed, or authorised, or
approved by somebody else. I think it was
basically the report from IPID about the
matter. That is why I did not expect - and if
it was going to be changed, I would have 15
thought that they would at least have
discussed it with us to say: This evidence
has changed, we've got new evidence which
shows something else. But nothing was
discussed. To my mind, given what ADVOCATE 20
VAN ZYL wrote in his memo, he said basically
that he received the docket, as we had handed
them over, they were with him for a couple of
weeks, or something like that, he never looked
at them at the time, and they were then 25

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retrieved by IPID. So nothing new was added to that investigation. Even up to today I'm not sure what was added which then led to the report being changed, which then exonerated these people. If there is that evidence one can at least say yes, maybe they got some other evidence that ...

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MR JULY: But again, does it change the report, or do you add to the report and that will influence the decision?

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MR MOSING: You would normally make a supplementary report to say: This was the decision at that stage, now we've conducted a further investigation, and this further investigation then changes the initial recommendation. But to me it doesn't look like there was. I didn't see that.

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I must also just mention that during November GENERAL DRAMAT actually wrote through his attorneys' representation to the NDPP, which then happened to come to me as well. As a consequence of that I had to draft a memo to the NDPP, basically explaining the case and what was going on with the matter. From that as well, the involvement, in particular of

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GENERAL DRAMAT, because he was the one who was
now making this representation which we had to
address as to whether or not he was implicated
in the matter - we said that they were
responsible. As I said, when I saw it that 5
day, they say now that he is exonerated, and
I was really surprised because the evidence we
had managed to obtain, despite the
difficulties, was reasonably strong, to the
extent that a person taking a prosecuting 10
decision would have managed to say:
Definitely. To my mind now, I know the matter
since January this year was referred to the
DPP in PRETORIA by the NDPP. I understand
there was a recommendation to charge GENERAL 15
DRAMAT. Again, there doesn't seem to have
been - it was still on the same evidence that
we had. I think the only thing that was
different was also a recommendation of a
charge of murder. Between MOELETSI and myself 20
we had disagreed, and I also felt that there
was a case to be made out for murder, but he
felt otherwise. The murder being especially
of the first guy who was killed in ZIMBABWE,
and even others who would have been killed as 25

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a result of this kidnapping and handing over. Because there was evidence to the effect that MALULEKE actually bragged to the other members that the first one who was taken up was killed by the police, and that's how they dispense justice there, therefore if you continue on that argument, it means that he knew exactly what was going to happen. And if that thing happens then you are actually guilty of murder. It seems like it was borne out by our colleagues. 5 10

MR JULY: While we have this, can we ask to make copies of those documents?

MR MOSING: From the lady of the Secretariat pertaining to the report of their investigation - that statement was actually obtained. 15

MR JULY: What is her name?

MR MOSING: I'll tell you now.

MR JULY: I think it's QHOBOSHEANE.

MR MOSING: QHOBOSHEANE, yes. You'll see the date of her statement. It was very late. It was roundabout this time - here it is, JENNIFER IRISH-QUOBOSHEANE. It was the only thing KHUBA had to get before he basically finalised this thing. It's dated 17 February. The 20 25

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report I said was dated 13 February. So that was the only thing he wanted to add to the docket before he could finally submit the docket for a decision. I think that's why I perhaps wrote "draft" on this report. I want to see if he added ... 5

MR JULY: What was the conclusion of QUOBOSHEANE, the recommendation?

MR MOSING: It's the same. In fact she didn't make any recommendation - I think. 10

MR JULY: It then makes sense that the October one was still a draft, hence there was no recommendation.

MR MOSING: Yes. That one was a draft, and because we didn't want this decision to be only ours. They're the investigators, they are bound to indicate what the conclusion is of their investigation. I think that was one of the reasons why I said you must go and write your report in the usual format, and then he's the guy who makes a recommendation on prosecution. If they say there is no case, then at least there is a recommendation. The prosecutor will be guided also by what the attitude is of the investigator. It's probably contained 15 20 25

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there, it's not just put under headings ...

MR JULY: Like the one which was ...

MR MOSING: Yes.

MR JULY: Also it was a final in October, but the only
reason why it had to (?), is the manner in 5
which it was drafted?

MR MOSING: Yes, it was the cosmetics. You see, if you
look at this one - the final one in January -
after he had changed it, it read better. I
think what he didn't do, it wasn't really 10
structured. We said: Discuss your evidence
that you rely on.

MR JULY: And then he changed that one to blocks when it
came to - he made blocks in order to get rid
of certain information. 15

MR MOSING: You see, that part I haven't seen. Where is
the new report? I didn't even get a copy of
that report.

MR JULY: If you look at this ...

MR MOSING: Oh, is this now the report? You see what is 20
also interesting, I looked at the dates, and
I thought, no, no, those dates can't be.

MR JULY: Let's start at page 9. If you look at page 9,
that is where the problem starts.

MR MOSING: And the rest is all the same? 25

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MR JULY: Yes. Then on page 9, on the report of 22 January, if you look at page 9 as well - look at the paragraph that starts in the middle with:

"He will state that ..."

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It's the fourth paragraph. It's in the middle.

MR MOSING: You know why? Remember I said this one is a draft.

MS BADAL: Oh, is this yours?

MR MOSING: Yes.

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MR JULY: Oh, let me show you this one.

MR MOSING: There would have been some changes. Can I just look to see what it says at the front? That's why I wrote "draft", because he needed to do something else before we could say yes. It will be identical, but there was something...

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MR JULY: It will be the pages that will be different. But the problem with this here is page 9.

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

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MS BADAL: This is 18 March.

MR JULY: On 18 March, where it is supposed to start with "He will state", after the paragraph ends

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with "suspects". After that it's supposed to read:

"He will state that ..."

MR MOSING: Yes, yes.

MR JULY: It's not there. 5

MR MOSING: It's not there.

MR JULY: He starts here.

MR MOSING: He left out that entire part?

MR JULY: Yes.

MR MOSING: What does it state. (Reading to himself.) No 10
but this is ridiculous, because this is
exactly the basis of MADILONGA's evidence,
where he said they had a cellphone, he phoned,
he had called RADZILANI. RADZILANI made a
statement - I think he made a statement as 15
well, which corroborated that guy, because he
didn't want to phone DRAMAT himself. He was
a junior officer, so he phoned his immediate
boss, and I think he said his immediate boss
told him: You can phone Dramat, and he then 20
phoned.

"... but she requested that he should
call Brigadier Makushu, who was a
Provincial Head Protection and Security
Services. He then called him on his 25

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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 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 cellphone and he responded
by saying that he is aware of the
Zimbabwean Police and he must let them
come." 5 10

MR JULY: That doesn't say this.

MR MOSING: No, that is clear tampering. What does KHUBA
say, because KHUBA ... 15

MR JULY: It was taken out.

MR MOSING: But he knows that it was supposed to be in?

MR JULY: He knows that it was supposed to be there.

MR MOSING: Clearly that is what we also understood.

MR JULY: Then if you go to page 21, this paragraph: 20
"DOCUMENTARY EVIDENCE ACQUIRED FROM DPCI
OFFICES ..."
This is what it says.

MR MOSING: That is 5.2.

MR JULY: It starts with "Success report". What then 25

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happens, you see this looks like it reads the same, but here it changes when it comes to another success report.

"The report bears reference number 26/02/1 and again to the Deputy National Commissioner DPCI. The person to whom enquiries must be directed is Captain Maluleke ... 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."

But here, on that one, there is not that paragraph. So this is the part that is not there.

MR MOSING: Both of them?

MR JULY: Both of them. 20

MR MOSING: But they removed this one?

MR JULY: Yes. In 5.2. You see if you start here:

"The report bears reference number 14/02/01 ... General Dramat held a meeting with Zimbabwean police ..."

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ANTHONY MOSING

That is not there. You won't see it there.
It's this part of the report. This is where
it starts.

MR MOSING: It just says:

"The report also covers ..."

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MR JULY: Yes. It says:

"The report also covers the arrest of
Gordon Dube ..."

Instead of having ...

MR MOSING: I think it's this part here:

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"The report also covers the arrest of
Gordon Dube ..."

But it doesn't talk about this other part.

MR JULY: Yes, they delete all of this part.

MR MOSING: If you look at that success report, and you
look at how they are reporting here and how
they are reporting there, you will see which
one is more credible and which one is more
complete. That will be a simple exercise, to
show this one is (talking together).

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MR JULY: You will see what has been deleted there is,
it says:

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

You won't find it there.

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MR MOSING: It's not there, it just says:
 "He sent email to Zimbabwean Police
 trying to find out how they travelled
 back home and that he is still
 tracing..." 5

This one says also sent email to the
 ZIMBABWEAN Police, so in the first one he is
 saying - I mean, really, it's no wonder they
 said he is chopping and changing on this
 thing. 10

MR JULY: Yes, and there is no GENERAL DRAMAT mentioned
 there. I think 5.5 on the next page, just
 before "CELL PHONE RECORD OF LIEUTENANT
 NEETHLING", it says:
 "Captain Maluleke also communicated with 15
 General Dramat in terms of outgoing
 SMSs..."

MR MOSING: "... at a very important milestone of the
 operation."

MR JULY: "He also called a Zimbabwean number ..." 20
 And if you go and check on ...

MR MOSING: Did they change this now?

MR JULY: They changed it.

MR MOSING: "EVIDENCE IN TERMS OF SECTION 205."

MR JULY: Yes, do you see? Then they changed it and 25

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they put it in blocks.

MR MOSING:

They put it in blocks and changed the whole thing. But you see what they are saying - I don't know, but they are saying basically this was a progress report. Before that it's a draft, it's a progress report. If you're now writing further - let's say it's a draft, but the fact of the matter remains that you have this draft, and then you have the other report. Clearly this other report - first of all it doesn't deal as comprehensively with the evidence as this one does. It's less questionable (talking together). 5 10

MR JULY:

There is no explanation. Why did they leave out the information about the meeting of 5 November? That meeting DRAMAT does not dispute. 15

MR MOSING:

That was key. That's why I said MADILONGA's statement really corroborates the story. It was just on the dates that he wasn't sure. I think he made a mistake about the exact date, but if you look at the records, the movement in and out, and the cellphone records in terms of what date he phoned, that fits in perfectly. And McINTOSH POLELA, who was a 20 25

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spokesperson, confirmed that he was called into a meeting where these people were, although he didn't really understand what the story was about - although he's trying to cover up a little bit. But I think he fully 5 knew what the story was. The strange thing is that even with this thing, because he was the spokesperson and he had to address the media on this thing, he didn't disclose it then, to say: There was this meeting. He should have 10 actually (?). So if you push him into a corner he probably will have to explain himself, because he phoned the media - remember that's when they came up with this story that there was a deportation, and all 15 that. In the light of the meeting he would have known that this was not a deportation.

MR JULY: So if it was there in the public, why do you delete it from the report, unless you want to come to a conclusion that is consistent with 20 what you are saying?

MR MOSING: But it was never in the public then. I think they never revealed, even to the Secretariat on three or four occasions, in the light of Parliamentary questions, in the light of the 25

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ANTHONY MOSING

Civilian Secretariat, while the Minister was asking for explanations, they never ever revealed that there were ZIMBABWEAN Police who came here, and then there was a request and there was a meeting that took place, and as a result of that they did X, Y and Z. They never said that. I think they hid the fact that there was a ZIMBABWEAN delegation that came. And this was what MADILONGA actually revealed. They tried to cover it up by making a statement that (?) made initially in their investigation, to cover up the statement, where he basically said something to suit the story of the deportation. But that meeting was key. It informed the MALULEKE case, and he also eventually - although he's not saying so now - that's where he got his (?). In fact from his progress report you can see that he's the one who said the meeting took place when the ZIMBABWEANS came, and then he was tasked to go and do this thing. That is why every time he is reporting back. So how do you change it now in your report, and you delete all reference to that meeting, or even reference to them coming into the country?

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Because that whole report isn't consistent with the evidence.

MR JULY: It is.

MR MOSING: If you look at this one and you look at that one, you will see this one is more in line with the evidence than the later one is. That should also be conclusive that this report is... 5

MR JULY: That's fine.

MR MOSING: Sandile, sorry, just on that report, so that there is no confusion, both of these are dated 22 January, but I think because there have been some changes maybe we must compare these two. As I indicated, I wrote "draft", and I think I wrote draft because he still had to do one or two things. Although the date is still the same, this was already like the end. You can see this thing is almost like a final thing. There was just maybe one thing or another that he had to add. 10 15 20

MR JULY: This one is the one that he signed.

MR MOSING: Yes, this one he also signed. But, as I say, because there were maybe one or two things, I just want to check where exactly it was. Because you can see it starts there already, 25

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where there is a bit of difference there. They will be identical, except maybe there was something that he - this was CHUMA, this was SIBANDA and NYENDA and NELSON CHAUKE ...

MR JULY: No, but this one could be the way that it came out when he printed the grid. 5

MR MOSING: Because this is now my copy, and we haven't really ...

MR JULY: Let's go to paragraph 4.3.

MR MOSING: 4.3 is: 10

"STATEMENTS OF HOME AFFAIRS OFFICIALS:
QABA, NDWANDWE, JACKSON, SKOSANA,
LODEWICKUS ..."

Then you have:

"STATEMENTS OF SAPS:
MADILONGA ..." 15

Maybe MADILONGA's statement - these two are the same. I doubt there will be anything changed in this one.

MR JULY: No, this one is the same, you see. 20

MR MOSING: I know there must have been just some small thing that he did, which then accounts for the fact that the documents are not exactly the same.

MR JULY: But it will just be a question of the timing. 25

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ANTHONY MOSING

After that it was this.

MR MOSING: Yes, because like I say this one is just my draft. It was almost complete to the final one, so I think he may have just - perhaps it could be that MOSEANE(?), the addition of her. 5
Because he had to deal with the evidence. If you can see where he says anything about her - because I think the rest will ...

MR JULY: This is what you submitted to the NDPP?

MR MOSING: Yes. Like I say, what actually happened, was 10
I thought I hadn't kept copies, because I didn't make any.

MR JULY: You see, the difference between this one and this one, even if they differ in terms of the format, the conclusion is the same. 15

MR MOSING: Yes, and the statements are the same.

MR JULY: Then they come with another report, where the people who were also involved in the investigation are not even advised: We are now changing this report. Because even 20
MOUKANGWE was not advised.

MR MOSING: Yes, I don't think he would have ...

MR JULY: And they didn't even tell KHUBA - if you look, this was taken out, and I don't know why.

MR MOSING: KHUBA was also surprised. 25

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ANNEXURE “HIK 23”



HIK 23
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

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

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GEORGE BALOZI
SIBONGILE MZINYATHI

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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GEORGE BALOZI
SIBONGILE MZINYATHI

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.

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.

MR JULY:

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

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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GEORGE BALOYI
SIBONGILE MZINYATHI

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? 5

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
SIBONGILE 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 BALOZI
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.

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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,

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GEORGE BALOZI
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.

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.

MR MZINYATHI:

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

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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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GEORGE BALOYI
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 5
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 10
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 15
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 20
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 25

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GEORGE BALOZI
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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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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GEORGE BALOYI
STRONGILE MZINYATHI

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 5 together with the docket on 13 March for consideration and feedback."

I sent this to the NDPP via email and hard copy. Then after enquiring, the NDPP wrote to us - George? 10

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 15 is the author of the request.

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? 20

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. 25

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GEORGE BALOYI
STRONGILE 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. 5

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. 10

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. 15

MR BALOYI: But these are the internal workings of the NPA. 20
I suppose they do not form part of your investigation.

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 25

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GEORGE BALOZI
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 10
January, because it was handed to him in 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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GEORGE BALOYI
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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GEORGE BALOYI
SIBONGILE MZINYATHI

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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SIBONGILE MZINYATHI

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 about 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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GEORGE BALOYI
SIBONGILE MZINYASHI

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
 Mr Mzinyashi
 ignores
 this information*

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GEORGE BALOYI
SIBONGILE MZINYATHI

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.

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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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*Violence means
it's
important
information*

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GEORGE BALOZI
SIBONGILE MZINYATHI

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, 5
 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 10
 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.

I read through the docket, and at some point I 15
 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 20
 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 25

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GEORGE BALOYI
SIBONGILE MZINYATHI

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?

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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 25

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GEORGE BALOYI
SIBONGILE MZINMATHI

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, and I said: What was BARRY ROUX's view on this and that? He told me what BARRY ROUX's views were.

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MR JULY:

Did he say when he asked for that?

MR BALOYI:

I think he did, and it must have been around 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 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 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.

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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

Handwritten initials and signatures at the bottom of the page, including "H", "H", and "M".

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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. I said: Look, I think you misunderstood me. 20 25

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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 5
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 10
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 15
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 20
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, 25

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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 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 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 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, 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

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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

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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*misinformed
does not
understand
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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 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 happened. 5 10

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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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 does not say anything. ... 5

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 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. 10

MR BALOYI: Actually now that you mention it, Mr July, I think during our conversation, when he mentioned that the 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, and the meeting with LIEUTENANT COLONEL MKHWANAZI. 15 20

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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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? 5

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? 10 15

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. 20

MR JULY:

In any event we are meeting with this guy at 12h00. I think we are finished. We are happy 25

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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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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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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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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' ..."

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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 ..."

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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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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. 15

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. 20

THE INTERVIEW ADJOURNS

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ANNEXURE “HIK 24”



HIK 24

- (b) attending a meeting of a political party, organisation, movement or body:
Provided that no member shall attend such a meeting in uniform; or
- (c) exercising his or her right to vote.

Obedience

47. (1) Subject to subsection (2), a member shall obey any order or instruction given to him or her by a superior or a person who is competent to do so: Provided that a member shall not obey a patently unlawful order or instruction. 5

(2) Where it is reasonable in the circumstances, a member may demand that an order or instruction referred to in subsection (1) be recorded in writing before obeying it.

(3) A member may, after having obeyed an order or instruction referred to in subsection (1), demand that such an order or instruction be recorded in writing. 10

Reserve Police Service

48. (1) The National Commissioner may determine the requirements for recruitment, resignation, training, ranks, promotion, duties and nature of service, discipline, uniform, equipment and conditions of service of members of the Reserve Police Service and any other matter which he or she deems necessary in order to establish and maintain different categories of members of the Reserve Police Service. 15

(2) The National Commissioner may appoint a person as a member of the Reserve in the prescribed manner.

(3) The National or Provincial Commissioner may in the prescribed manner order any member of the Reserve to report for service, and any such member who refuses or fails to comply with such order shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months: Provided that the Minister may by regulation exclude categories of members of the Reserve from the application of this subsection. 20

(4) The National or Provincial Commissioner may, subject to the Constitution, at any time discharge a member of the Reserve from the Service. 25

(5) During a period contemplated in section 49, the National or Provincial Commissioner may refuse to accept the resignation of a member of the Reserve, unless he or she produces evidence that he or she has enlisted for military service in a recognised unit of the South African National Defence Force. 30

(6) A member of the Reserve shall be deemed to be in the employ of the Service while on duty, notwithstanding the fact that such member may not be remunerated by the Service. 35

Limitation on right to resign

49. (1) No member may, during a period in which a state of national defence, declared under section 82(4)(b)(i) of the Constitution, or a state of emergency, proclaimed in accordance with section 34(1) of the Constitution, is in force, resign from the Service without the written permission of the National Commissioner. 40

(2) The National Commissioner may, in circumstances other than those mentioned in subsection (1), where the maintenance of public order in the Republic or any part thereof so requires, order that no member may resign from the Service without his or her written permission during a period of time specified in the order, which period may not exceed 30 days.

CHAPTER 10

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INDEPENDENT COMPLAINTS DIRECTORATE**Establishment and independence**

50. (1)(a) The Independent Complaints Directorate, which shall be structured at both national and provincial levels, is hereby established. 50

(b) The date on which the provincial structures of the directorate will come into operation, shall be determined by the Executive Director in consultation with the Minister.

(2) The directorate shall function independently from the Service.

(3) (a) No organ of state and no member or employee of an organ of state nor any

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other person shall interfere with the Executive Director or a member of the personnel of the directorate in the exercise and performance of his or her powers and functions.

(b) Any person who wilfully interferes with the Executive Director or a member of the personnel of the directorate in the exercise or performance of his or her powers or functions, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years. 5

(4) All organs of state shall accord such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the directorate in the exercise and performance of its powers and functions.

Appointment of Executive Director 10

51. (1) The Minister shall nominate a suitably qualified person for appointment to the office of Executive Director to head the directorate in accordance with a procedure to be determined by the Minister in consultation with the Parliamentary Committees.

(2) The Parliamentary Committees shall, within a period of 30 parliamentary working days of the nomination in terms of subsection (1), confirm or reject such nomination. 15

(3) In the event of the nomination being confirmed—

(a) such person shall be appointed to the office of Executive Director subject to the laws governing the public service with effect from a date agreed upon by such person and the Minister; and

(b) such appointment shall be for a period not exceeding five years: Provided that such person shall be eligible for consecutive appointments in accordance with this section. 20

(4) The Executive Director may be removed from his or her office under the circumstances and in the manner prescribed by the Minister in consultation with the Parliamentary Committees. 25

Personnel and expenditure

52. (1) The personnel of the directorate shall consist of persons appointed by the Executive Director in consultation with the Minister subject to the laws governing the public service and such other persons as may be seconded or transferred to the directorate. 30

(2) The terms and conditions of service of the personnel of the directorate shall be determined by the Minister in consultation with the Executive Director and the Public Service Commission.

(3) The functions of the directorate shall be funded by money appropriated by Parliament for that purpose. 35

(4) The Executive Director shall, subject to the Exchequer Act, 1975 (Act No. 66 of 1975)—

(a) be the accounting officer charged with the responsibility of accounting for all money appropriated by Parliament for the purposes of the performance of the functions of the directorate and the utilisation thereof; and 40

(b) cause the necessary accounting and other related records to be kept.

Functions of directorate

53. (1) (a) The principal function of the directorate shall be the achievement of the object contemplated in section 222 of the Constitution.

(b) The Executive Director shall be responsible for— 45

- (i) the performance of the functions of the directorate; and
- (ii) the management and administration of the directorate.

(2) In order to achieve its object, the directorate—

(a) may *mero motu* or upon receipt of a complaint, investigate any misconduct or offence allegedly committed by any member, and may, where appropriate, refer such investigation to the Commissioner concerned; 50

(b) shall *mero motu* or upon receipt of a complaint, investigate any death in police custody or as a result of police action; and

(c) may investigate any matter referred to the directorate by the Minister or the member of the Executive Council. 55

(3) (a) The Minister may, upon the request of and in consultation with the Executive Director, authorise those members of the personnel of the directorate identified by the

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Executive Director, to exercise those powers and perform those duties conferred on or assigned to any member by or under this Act or any other law.

(b) The members of the personnel referred to in paragraph (a) shall have such immunities and privileges as may be conferred by law on a member in order to ensure the independent and effective exercise and performance of their powers and duties. . . . 5

(4) A document, in the prescribed form, certifying that a person is a member of the personnel of the directorate and has been authorised to exercise the powers and perform the duties of a member, shall be *prima facie* proof that such member has been authorised as contemplated in subsection (3).

(5) Any member of the personnel of the directorate who wilfully discloses any information in circumstances in which he or she knows or could reasonably be expected to know that such disclosure would or may prejudicially affect the performance by the directorate or the Service of its functions, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(6) The Executive Director may— 15

(a) at any time withdraw any referral made under subsection (2)(a);

(b) request and obtain information from any Commissioner or police official as may be necessary for conducting any investigation;

(c) (i) monitor the progress of; 20
(ii) set guidelines regarding;

(iii) request and obtain information regarding, an investigation referred to a Commissioner under subsection (2)(a);

(d) request and obtain the co-operation of any member as may be necessary to achieve the object of the directorate;

(e) commence an investigation on any matter notwithstanding the fact that an investigation regarding the same matter has been referred under subsection (2)(a), is pending or has been closed by the Service, or the docket regarding the matter has been submitted to the attorney-general for decision: Provided that in the case of a— 25

(i) referred or pending investigation, the directorate shall act after consultation with the member heading the investigation; or 30

(ii) docket regarding a matter having been submitted to the attorney-general for decision, the directorate shall act in consultation with the attorney-general;

(f) request and obtain information from the attorney-general's office in so far as it may be necessary for the directorate to conduct an investigation: Provided that the attorney-general may on reasonable grounds refuse to accede to such request; 35

(g) submit the results of an investigation to the attorney-general for his or her decision; 40

(h) in consultation with the Minister and with the concurrence of the Minister of Finance, obtain the necessary resources and logistical support or engage the services of experts, or other suitable persons, to enable the directorate to achieve its object;

(i) make recommendations to the Commissioner concerned; 45

(j) make any recommendation to the Minister or a member of the Executive Council which he or she deems necessary regarding any matter investigated by the directorate or relating to the performance of the directorate's functions: Provided that in the event of a recommendation made to a member of the Executive Council, a copy thereof shall be forwarded to the Minister; and 50

(k) subject to the Exchequer Act, 1975 (Act No. 66 of 1975), delegate any of his or her powers to any member of the personnel of the directorate.

(7) The Executive Director shall, in consultation with the Minister, issue instructions to be complied with by the directorate which shall *inter alia* include instructions regarding— 55

(a) the lodging, receiving and processing of complaints;

(b) recording and safe-guarding of information and evidence;

(c) disclosure of information;

(d) the making of findings and recommendations; and

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- (e) all matters incidental to the matters referred to in paragraphs (a) to (d).
- (8) The National or Provincial Commissioner shall notify the directorate of all cases of death in police custody or as a result of police action.
- (9) The Minister may prescribe procedures regarding—
- (a) protecting the identity and integrity of complainants; and 5
- (b) witness protection programmes.

Reporting

54. The Executive Director shall—
- (a) within three months after the end of each financial year, submit to the Minister a written report on the activities of the directorate during that financial year, 10 which report shall be tabled in Parliament by the Minister within 14 days after receipt thereof or, if Parliament is not then in session, within 14 days after the commencement of the next ensuing session; and
- (b) at any time when requested to do so by the Minister or either the Parliamentary Committees, submit a report on the activities of the directorate 15 to the Minister or that Committee.

CHAPTER 11

GENERAL PROVISIONS

Non-liability for acts under irregular warrant

55. (1) Any member who acts under a warrant or process which is bad in law on account of a defect in the substance or form thereof shall, if he or she has no knowledge that such warrant or process is bad in law and whether or not such defect is apparent on the face of the warrant or process, be exempt from liability in respect of such act as if the warrant or process were valid in law.

(2)(a) Any member who is authorised to arrest a person under a warrant of arrest and who, in the reasonable belief that he or she is arresting such person arrests another, shall be exempt from liability in respect of such wrongful arrest. 25

(b) Any member who is called upon to assist in making an arrest as contemplated in paragraph (a) or who is required to detain a person so arrested, and who reasonably believes that the said person is the person whose arrest has been authorised by the warrant of arrest, shall likewise be exempt from liability in respect of such assistance or detention. 30

Limitation of liability of State and members

56. Whenever any person is conveyed in or makes use of any vehicle, aircraft or vessel, being the property or under the control of the State in the Service, the State or any member shall not be liable to such person or his or her spouse, parent, child or other dependant for any loss or damage resulting from any bodily injury, loss of life or loss of or damage to property caused by or arising out of or in any way connected with the conveyance in or the use of such vehicle, aircraft or vessel, unless such person is so conveyed or makes use thereof in or in the interest of the performance of the functions 35 of the State: Provided that the provisions of this section shall not affect the liability of a member who wilfully causes the said loss or damage. 40

Actions against Service

57. (1) No legal proceedings shall be instituted against the Service or any body or person in respect of any alleged act performed under or in terms of this Act or any other law, or an alleged failure to do anything which should have been done in terms of this Act or any other law, unless the legal proceedings are instituted before the expiry of a period of 12 calendar months after the date upon which the claimant became aware of 45

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ANNEXURE “HIK 25”



CONFIDENTIAL

HIK 25



INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Private Bag X9525, POLOKWANE, 0700. 78 Hans van Rensburg Street, Old Mutual Building, Ground Floor, POLOKWANE
Tel: (015) 283 8000, Fax: (015) 297 0829, Email: Complaints.Limpopo@ipid.gov.za

DPP MEMORANDUM

To: Office of the Director of Public Prosecutions
Limpopo

From: Independent Police Investigative Directorate
Limpopo

Subject: IPID Investigation: Case Docket for DPP Consideration and Decision

Reference: Malipsdrift Cas 07/06/2018: (Assault Common) CCN: 2018060128

1. Summary of Allegations:

The complainant alleged that on 2018-01-19 at about 21:30 he was at his place of residence when two police officers by the name of Montjane and Nkosi came to his parents' house to attend a complaint of domestic violence between him and his mother. They ordered him to sit down so they can talk to him and he said he refused. From there they punched him on his neck, grabbed him by his belt and further assaulted him with fists.

2. Case Docket Contents:

- 2.1 In terms of Section 7(4) of the IPID Act No 1 of 2011, you are hereby requested to make a decision in this case
- 2.2 The IPID has completed the investigation and all the necessary statements, technical reports and expert reports are attached in the docket for your attention in accordance with Regulation 5(3)(i) of the IPID Regulations issued on the 10 February 2012, under Government Notice No 35018.
- 2.3 Please find attached the original contents of the IPID Case Docket Malipsdrift Cas 07/06/2018 and CCN 2018060128 containing the following information.

Reference	Case Docket Content
A1	Statement of Makaputfa Lawrence Mathabatha
A2	J88 form

CONFIDENTIAL

A3	Additional statement of Makaputla Lawrence Mathabatha
A4	Statement of Lerumo Jacob Matabane
A5	On duty statement
A6	Witness statement of Lesiba Edward Mathabatha (Khutso)
A7	Copy of OB entry showing members on duty
A8	Duty list
A9	Statement of Cst Montjane
A10	Warning statement of W/O Nkosi
A11	Statement of Cst Mphahlele
A12	IO statement of Ms. Maponya

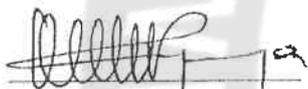
3. IPID Recommendation

Based on the information contained in the case docket above, it is the view of the IPID that the NPA should in terms of Section 179(2) of the Constitution of the Republic of South Africa make a decision whether or not to institute criminal proceedings against the member and to carry out any necessary functions incidental to instituting criminal proceedings.

4. Conclusion

In terms of Section 7(5) of the IPID Act, the IPID awaits your decision in accordance with your constitutional mandate as per Section 179(2) of the Constitution referred to above, to enable the institution IPID to comply with its obligations as provided for in Section 7(5) of IPID Act.

Kind Regards


Mmatema Maponya
 Senior Investigator
 IPID: Limpopo

2019-01-31
 Date


Mr. Davis Mokoena
 Deputy Provincial Head
 IPID: Limpopo

2019/01/31
 Date

ANNEXURE “HIK 26”



HIK 26

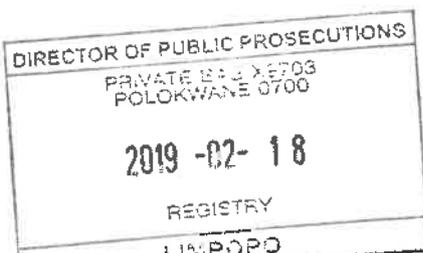
National Prosecutions Service
Director of Public Prosecutions
Limpopo, Polokwane



NATIONAL PROSECUTING AUTHORITY
South Africa

REF. /VERW. NO. 10/3/5-IPID G17/19

The Provincial Head: IPID
Private bag X 9525
POLOKWANE
0700



15 February 2019

POLOKWANE

Tel: +27 15 045 0250

THE STATE versus W/O NKOSI PK AND ANOTHER
MALIPSDRIFT CAS 07/06/2018
Your CCN: 2018060128

36 Bodenstein Street
POLOKWANE
0700

The Director of Public Prosecutions remarks as follows:

P/Bag X9693
POLOKWANE
0700
South Africa
www.npa.gov.za

1. I decline to prosecute.
2. The case docket, **MALIPSDRIFT CAS 07/06/2018**, is enclosed.

M. MUGERI
For **DIRECTOR OF PUBLIC PROSECUTIONS**
LIMPOPO DIVISION, POLOKWANE



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ANNEXURE “HIK 27”



CONFIDENTIAL

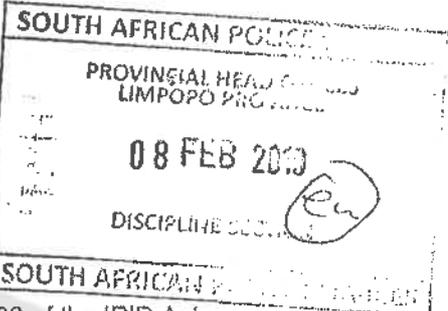
HIK 27 86



INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Private Bag X9525, Polokwane, 0700. Hans Van Rensburg Street. Old Mutual Building, Polokwane Tel: (015) 283 8000, Fax: (015) 297 0829, Email: Complaints.Limpopo@ipid.gov.za

SAPS MEMORANDUM



From: Office of the SAPS Provincial Commissioner
Limpopo Province
Independent Police Investigative Directorate
Limpopo Province

Subject: No Disciplinary Recommendations in terms of Sec 30 of the IPID Act

IPID classification: Section 28(1)(f) – Assault

Reference: Malipsdrift Cas: 07/06/2018: Assault Common; CCN: 2018060128

Suspects: No: 05156530, W/O Nkosi P.K and No: 71657614 Cst Montjane C.M

Recommendation Type: Positive Recommendation Report

Summary of Allegations:

The complainant alleged that on 2018-01-19 at about 21:30 he was at his place of residence when two police officers by the name of Montjane and Nkosi came to his parents' house to attend a complaint of domestic violence between him and his mother. They ordered him to sit down so they can talk to him and he said he refused. From there they punched him on his neck, grabbed him by his belt and further assaulted him with fists.

Case Docket Contents:

- In terms of Section 30 of the IPID Act No. 1 of 2011 read with the SAPS Disciplinary Regulations issued on the 1 November 2016, you are hereby directed not to initiate disciplinary proceedings against Cst Montjane C.M with force number: 71657614 and W/O Nkosi P.K with force number 05156530 attached to Malipsdrift Saps.
- The investigation is complete and all the necessary statements/reports/technical/expert reports have been attached in the case docket, Malipsdrift Cas: 07/06/2018 as per the Case Content table below.

Reference	Case Docket Content
A1	Statement of Makaputla Lawrence Mathabatha
A2	J88 form
A3	Additional statement of Makaputla Lawrence Mathabatha
A4	Statement of Lerumo Jacob Matabane

CONFIDENTIAL

A5	On duty statement
A6	Witness statement of Lesiba Edward Mathabatha (Khutso)
A7	Copy of OB entry showing members on duty
A8	Duty list
A9	Statement of Cst Montjane
A10	Warning statement of W/O Nkosi
A11	Statement of Cst Mphahlele
A12	IO statement of Ms. Maponya

IPID Analysis

- The complainant alleged that he was assaulted by two police members at his parents's house who came to attend to a complaint of domestic violence between him and his mother. He managed to identify them as Nkosi and Montjane. The members involved were interviewed and it was found that Cst Montjane was not on duty on that day and W/O Nkosi was on duty with Mphahlele. He admitted that he attended to the complaint with Cst Mphahlele. Cst Mphahlele corroborated his statement.
- The complainant mentioned his mother and his nephew as the witnesses in this case. His mother refused to submit her statement stating that she did not witness any assault and that his son who is the complainant is disrespectful and arrogant towards her.
- The complainant does not know exactly who assaulted him as on the first statement he indicated that it was Mphahlele and Montjane. He later submitted another statement implicating Nkosi and Montjane. Montjane was not on duty at that time and he was working a different shift.

IPID Recommendation:

3. Based on the above information contained in the case docket, the IPID recommends that no disciplinary steps be taken against Cst Montjane C.M and W/O Nkosi for Assault Common of Lawrence Mathabatha on 2018-01-19 at approximately 21:00 at Malipsdrift Saps.

Conclusion

IPID awaits your acknowledgement of this report to enable the institution to comply with the administrative provisions of the IPID Act.

Kind Regards


 Ms. Mmatema Maponya
 Senior Investigator
 IPID Limpopo

2019-01-31
 Date

Approved/ Not Approved



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2019/01/31





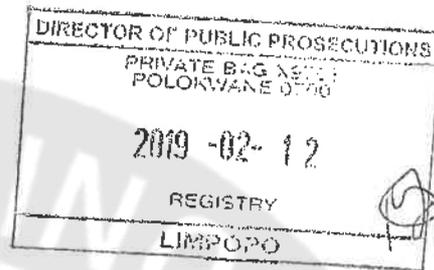
INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Private Bag X9525, Polokwane, 0700. Hans Van Rensburg Street. Old Mutual Building, Polokwane
 Tel: (015) 283 8000, Fax: (015) 297 0829; email: Complaints.Limpopo@ipld.gov.za

OFFICE OF THE DPP
 POLOKWANE

CCN:2018060128
 Date: 2019/01/31

ATT: DIRECTOR OF PUBLIC PROSECUTION.



Dear Sir/Madam

SUBJECT: DOCKET FOR YOUR DECISION

No	CCN	Station	CAS	Suspect Name	Persal	Offence	Acknowledged
1	2018060128	Malipsdrift	07/06/2018	W/O Nkosi P.K Cst Montjane C.M	0515653-0 7165761-4	Assault Common	

We eagerly await your response on these matters.

[Signature]
 Provincial Head
 IPID Limpopo

Date: 2019/01/31



[Handwritten mark]

[Handwritten mark]

ANNEXURE “HIK 28”



HIK 28

Matthews Sesoko

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

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

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

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

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

TEL: +27 128456366
 MOBILE: +27 847388076

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

Good day Advocate.

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

Kind Regards

I H KHUBA




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Handwritten signature

ANNEXURE “HIK 29”



HIK 29

Garth Hulley

From: Susan Wentzel
Sent: Tuesday, 21 July 2020 14:08
To: Garth Hulley
Subject: FW: IPID: RENDITION REQUESTED DOCUMENTS

Dear Garth

Please could you print this.

Kind Regards:
 Susan Wentzel

COMMISSION OF INQUIRY INTO STATE CAPTURE Hillside House, 2nd Floor, 17 Empire Road, Parktown,
 Johannesburg, 2193, Gauteng South Africa,
 Mobile: 083 264 8845
 Email: Susanw@commissionsc.org.za
 Website: www.sastatecapture.org.za

Evidence Leader



From: Matthews Sesoko <sesokomatthews@gmail.com>
Date: Monday, 20 July 2020 at 11:28
To: Susan Wentzel <SusanW@commissionsc.org.za>
Subject: Fwd: IPID: RENDITION REQUESTED DOCUMENTS

Hi Susan

Email received from Adams and Adams.

Regards

Matthews Sesoko

----- Forwarded message -----

From: S'lindile Khumalo <S'lindile.Khumalo@adams.africa>
Date: Mon, 20 Jul 2020, 11:13
Subject: IPID: RENDITION REQUESTED DOCUMENTS
To: Matthews Sesoko <sesokomatthews@gmail.com>
Cc: Jac Marais <Jac.Marais@adams.africa>, Thando Manentsa <Thando.Manentsa@adams.africa>

Dear Mr Sesoko

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IPID: RENDITION REQUESTED DOCUMENTS

I refer to the above matter and our discussion yesterday.

Kindly find attached Werksmans' response to our request for the transcripts and audio recordings of the interviews conducted by them.

I have also attached the transcript that was prepared internally in June 2015.

Kind regards

S'lindile Khumalo

Candidate Attorney

x	<p>DIRECT +27 11 895 1074 PRIMARY +27 11 895 1000 FAX +27 11 784 2888 EMAIL S'lindile.Khumalo@adams.africa</p> <p>JOHANNESBURG OFFICE: 2nd Floor, 34 Fredman Drive (Cnr. 5th Street), Sandton, South Africa PO BOX 10155, Johannesburg 2000, South Africa</p>	x x x
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x	
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----- Forwarded message -----

From: Sandile July <SJuly@werksmans.com>
 To: Jac Marais <jac.marais@adamsadams.com>, Sandile July <SJuly@werksmans.com>
 Cc: Michael Gwala <michael.gwala@adamsadams.com>, Manisha Maganbhai-Mooloo <Manisha.Mooloo@adamsadams.com>, Ansuya Buccas <Ansuya.Buccas@adamsadams.com>, Varana Chutterpaul <Varana.Chutterpaul@adamsadams.com>, "Thema, SJ" <sj.thema@hoganlovells.com>, Jameel Hamid <Jameel.Hamid@adams.africa>
 Bcc:
 Date: Wed, 3 Jun 2015 09:31:05 +0000

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Subject: RE: IN RE: INVESTIGATION BY THE MINISTER OF POLICE ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT; MAJOR GENERAL SHADRACK SIBIYA; AND OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES INVESTIGATION ("DPCI") IN THE ILLEGAL RENDITION OF ZIMBABW



This email and its attachments are private, confidential, may be subject to legal professional privilege and are only for the use of the intended recipient.

Dear Mr Marais

We have left the requested audio files at the reception of Hogan Lovells for your collection.

Please be advised that we do not possess the audio recording of Adv Chauke's interview as he explained the documents he provided to us, hence the interview was not recorded.

Regarding Adv Jiba's interview, that interview was also not recorded as it lasted only five minutes, which entailed Adv Jiba confirming that she received the November and January memo addressed to her by Adv Mosing.

During the Sesoko interview, we experienced technical problems with the recording, However, Mr Sesoko has an audio recording of the interview.

For future purposes, please refrain from contacting us directly in this matter and kindly deal with the Attorneys of the Minister of Police , Hogan Lovells.

We hope you find the above in order.

Kwazi Buthelezi

Candidate Attorney

T: +27 11 535 8177 | F: +27 11 535 8591 | kbuthelezi@werksmans.com

Werksmans Attorneys

155 5th Street, Sandton, Johannesburg, 2196

Private Bag 10015, Sandton, 2146, South Africa

T: +27 11 535 8000 | F: +27 11 535 8600 | www.werksmans.com

From: Jac Marais [<mailto:jac.marais@adamsadams.com>]

Sent: 02 June 2015 15:52 PM

To: Sandile July

Handwritten initials 'JM'

Handwritten signature 'M'

ANNEXURE “HIK 30”



01042015/MINI29566.1
Summary - Innocent Khuba on 26 March 2015/#3596139v2

HIK 30

SUMMARY OF INTERVIEW WITH INNOCENT KHUBA ("Khuba") ON 26 MARCH 2015

- 1 An interview was conducted at the offices of Worksmans Attorneys on 26 March 2015, regarding Khuba's involvement in the matter.
- 2 Khuba is a member of the Independent Police Investigate Directorate and was the lead investigator in the investigation of involvement of police officials in the rendition of the five Zimbabwean nationals. Khuba was responsible for drafting and signing the first IPID report dated 22 January 2014, and was a co-signatory to the second report dated 18 March 2014.
- 3 According to Khuba, he was tasked with investigating the rendition by the erstwhile acting executive director, Koekie Mbeki. The case was brought to him by Sesoko, in his capacity as head of Investigations within IPID. Notwithstanding that Sesoko brought the case to Khuba, Khuba was asked by Koekie Mbeki not to involve Sesoko in the investigation process.

The investigation process and preparation of the first report

- 4 Upon commencing his investigation, Khuba realised that an investigation had already been undertaken by a member of crime intelligence, Colonel Mukangwe. Khuba was directed by Koekie Mbeki to liaise with Colonel Mukangwe in respect of his involvement in the investigation.
- 5 Khuba briefed Colonel Mukangwe on the investigation and continued such investigation with the assistance of Colonel Mukangwe, whose name does not appear on either the first or the second report.
- 6 Khuba also contacted advocates Moseng and Moeletsi of the NPA, who Khuba kept updated with the progress of the matter throughout the investigation.
- 7 Khuba began his investigation by interviewing certain members of the Department of Home Affairs. Subsequently, Khuba engaged in a meeting with General Dramat of which meeting Colonel Mukangwe was a party to. At this meeting, General Dramat stated that he does not recall meeting with the Zimbabwean Police. Khuba requested certain documents, including statements and documents related to the

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internal investigation into the rendition, from General Dramat who instructed that such request be made in writing.

- 8 When Khuba was finally provided with the requested documents, it appeared as if the statements provided recorded that the investigation was conducted properly and 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 statement of events regarding his involvement in the rendition. Madilonga's statement is annexed to this report as [•].
- 9 Khuba conducted further investigations relating to the passage of individuals through the border on the dates surrounding the rendition. In addition, Khuba spoke to Leonie Verster being Captain Maluleke's supervisor. Leonie Verster indicated that Captain Maluleke did not respect the chain of command and would communicate directly with general Sibiya. Leonie Verster also drew Khuba's attention to the success reports directed to General Dramat, General Lebeya, General Hlatwayo and others. Khuba perused the three success reports with which he had been provided and noted that one report dealt with the deportation or the arrest of Ndeya and others in relation to the murder of a Zimbabwean police officer in Zimbabwe.
- 10 Point number one in each success report said that the Zimbabwean police came and met with General Dramat on the 5th and requested assistance. Another point recorded Captain Maluleke's appointment. Khuba obtained the laptop of Captain Maluleke and found that the success reports were generated from that laptop. The laptop also contained photographs of the operation as well as correspondence to Zimbabwean police officers.
- 11 Khuba's investigation continued. As part of the investigation, Khuba met with members of crime intelligence. At the offices, Khuba noticed that the photographs which he obtained from Captain Maluleke's laptop relating to the operation were posted on the office walls. Khuba was informed by a member of crime intelligence, Mkasibe [the name Mokasina is reflected in the portion of the transcript which relates to this individual, however, it appears that this name has been transcribed incorrectly and refers to Mkasibe, instead] that once the operation was complete,

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14/04/2015

they went to DPCI's offices and General Dramat personally came to the offices at House No. 3 and congratulated them for a job well done and requested that they not tell anyone the details of the operation. Mkasibe confirmed that he has a historical relationship with General Dramat due to their mutual involvement in Umkhonto We Sizwe.

- 12 Mkasibe's statement was corroborated by Mngwenya who confirmed that General Dramat addressed the officers and congratulated them; however, Mngwenya did not mention General 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 General Dramat attended to congratulate them, however, upon her return, she was informed that General Dramat was congratulating the officers at the offices at House No.3.
- 13 Subsequently there was a leak of information regarding the investigation which was published in the Sunday times. At this time, Khuba and advocate Moseng began drafting questions to General Dramat who requested to be provided with written questions. Once General Dramat was provided with the questions, Khuba received correspondence from General Dramat's lawyers regarding the questions and was finally provided with partial answers to the questions posed.
- 14 Khuba also interviewed Captain Maluleke specifically regarding his promotion from captain to colonel. Khuba was not successful in obtaining the file regarding Captain Maluleke's appointment.
- 15 Next Khuba states that he obtained the cell phone records of General Dramat, Genral Sibya and Captain Maluleke.
- 16 Khuba records that General Dramat sent a report, in response to the question posed by a member of COPE regarding the rendition, explaining the circumstances of the rendition 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 travel to the border, as well as cell phone and vehicle tracker records positioning Captain Maluleke, Mokoe, Nkosi and constable Radebe at Diepsloot on the night of the arrests.

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- 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 the original report relating to the cell phone records of General Sibiya. Although Khuba was in possession of the draft report, he requested the original report in order to determine if General Sibiya could be placed in Diepsloot on the night of the arrests.
- 18 At this time, and in fact to date, Khuba did not receive Leonie Verster's statement in regard to the operation. Khuba states that the report was signed without the inclusion of the cell phone report mentioned above, the statement of Leonie Verster, the statement of General Dramat, the statement of General Sibiya, the statement of the secretary of police, etc due to the pressure being placed upon Khuba by advocate Moseng, to publish the report.
- 19 On or about February 2014, Khuba collected new evidence. He states that at this stage he had not evaluated the evidence in order to determine its impact on the outcome of the report.

Involvement of McBride and Sesoko and the drafting of the second report

- 20 On or about March 2014, McBride was appointed as Executive Director of IPID. At this time he requested an update on all the high profile matters. Khuba emailed an unsigned copy of the report to Sesoko for the attention of McBride.
- 21 McBride then met with Khuba and Khuba briefed McBride on the matter. Subsequently Khuba briefed Mr Sesoko. The following day Khuba met with McBride, Sesoko and Glen Angus.
- 22 McBride questioned Colonel Mukangwe's involvement in the investigation as a member of crime intelligence and not IPID. Khuba then discussed the new evidence with McBride, including General Sibiya's involvement in the matter and positioning through cell phone records. Khuba indicated that his challenge in respect of the evidence indicating that General Sibiya was not present at Diepsloot on the night of the arrests. Khuba took Sesoko's advice in this regard as Sesoko has prosecutorial experience.

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- 23 In Khuba's statement from General Sibiyá, Sibiyá states that he did not meet with the Zimbabwean police. In his statement to parliament he implies that he had no knowledge of the events relating to the rendition. However, Khuba noted that Sibiyá sent smses to General Dramat and Lebeya. In addition, Khuba records that General Dramat also received smses from Captain Maluleke at milestones in the operation.
- 24 Subsequent to discussing General Sibiyá's involvement in the operation with Sesoko, Khuba and Sesoko began working on the second report. Khuba states that McBride never physically worked on the report but made handwritten notes that were mostly related to grammar. Khuba states that he does not have copies of the notes made by McBride as they were destroyed in order to prevent a leak of information.
- 25 The first draft of the second report went to and fro amongst the three co-signatories to the report. Khuba states that at no stage did McBride request that Khuba exonerates any particular individual, in the report.
- 26 Khuba states that he signed the last page of the second report once it was finalised and did not initial each page so he would be incapable of knowing if any information was added or removed. Once he had signed the second report, Khuba records that he provided McBride and Sesoko with the report and is unaware of how they delivered it to the NDPP.
- 27 Once Khuba had completed his overview of the investigation process, summarised above, his attention was drawn to the discrepancies between the recommendation of the first report and the second report. Khuba's explanation for the deletion was related to the fact that an evaluation of the evidence in relation to Sibiyá and in conjunction with Sesoko, it was decided that it would not be possible to prove that Sibiyá was guilty of assault beyond a reasonable doubt. The understanding was that the DPP may overturn a recommendation made by the report.
- 28 The question was also posed to Khuba as to why the recommendation in respect of General Dramat was changed, when initially the recommendation was based on General Dramat's knowledge of the events and not his physical participation. Khuba was not able to adequately address this issue.

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29 Khuba stressed that if there were changes to the report, he had no way of knowing if the report that he provided as a final version had been changed. According to Khuba he did not check whether the final report signed by all parties, was the same document that he emailed to Sesoko.

Khuba's response to the discrepancies between the first and second report

30 Khuba's attention was drawn specifically to the deletion of specific wording and information which related to General Dramat which is present in the first report but not the second report. Khuba agreed that a specific portion of information relating to General Dramat had been removed even though it had nothing to do with the material evidence that Khuba claims was the basis of the need for the second report.

31 Khuba's attention was also drawn to the reorganisation of the cell phone record evidence and the deletion of the information relating to the cell phone records. Khuba's response was that he was trying to give the evidence in a more concise manner.

32 Although Khuba acknowledged the deletion of information regarding General Dramat once same had been pointed out to him, he was unable to meaningfully explain the reasons for such deletions. Khuba cited the reasons for some deletions were related to a weighing up of evidence after discussions with Sesoko. Khuba also asserts that information was not left out but presented differently, but did not illustrate his point by reference to either report.

33 Khuba further stated that he is strongly concerned about the removal of certain information, specifically the deletion of evidence which implicates General Dramat. He states that the second report only went through three hands, being the three co-signatories to the report. Khuba confirms that he does not know who is responsible for the deletion of the evidence relating to General Dramat.

34 Khuba further acknowledged that the knowledge of a crime being committed without taking steps to prevent it, is a crime. Notwithstanding the foregoing, in discussions with Sesoko and given Sesoko's prosecutorial background, Khuba did not fully embrace the point that General Dramat's knowledge alone was sufficient to constitute a crime.

- 35 Khuba confirmed that the investigation process is not only designed to determine if someone should be charged criminally but may also be used to recommend internal action be taken, if necessary.
- 36 Khuba also mentioned an info note dated on or about 18 or 20 March 2014 which he thinks might assist with the investigation and undertook to provide us with a copy of same. We have not received a copy of the info note, to date.
- 37 In summary, Khuba confirmed that the reason for the second report, was based on the new evidence received by Khuba and the discussions amongst the three co-signatories to the second report.
- 38 **We gathered the following from our interview with Khuba**
- the reason for the second report, was based on the new evidence received by Khuba and the discussions amongst the three co-signatories to the second report;
 - he signed the last page of the second report once it was finalised and did not initial each page so he would be incapable of knowing if any information was added or removed. Once he had signed the second report, Khuba records that he provided McBride and Sesoko with the report and is unaware of how they delivered it to the NDPP;
 - Khuba was not able to adequately explain the reasons for the alternation of the recommendation, or for the majority of the discrepancies in the report;
 - he is strongly concerned about the removal of certain information, specifically the deletion of evidence which implicates General Dramat. He states that the second report only went through three hands, being the three co-signatories to the report;
 - he does not know who is responsible for the deletion of the evidence relating to General Dramat; and



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- the investigation process is not only designed to determine if someone should be charged criminally but may also be used to recommend internal action be taken, if necessary.



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ANNEXURE “HIK 31”



ZB/ZB
22032016/MINI29566.1
Affidavit#4208280v1

HIK/W3
HIK 31
A22

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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Affidavit/#4208280v1
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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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Affidavit/#4206280v1
22032016

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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);
- 5.6 **Annexure "SJ09"** - Robert McBride, Executive Director: IPID (17 April 2015);
- 5.7 **Annexure "SJ10"** - Mr Mzinyathi, Director of Public Prosecutions: North Gauteng (17 April 2015); and
- 5.8 Advocate Chauke, DPP for South Gauteng (no transcript available);
- 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).

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Affidavit/ #4208280v1
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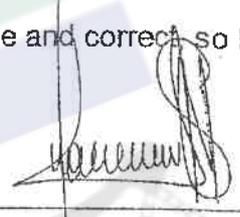
4 A22

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:

SIKHONA FUNANI

Business Address:

Practising Attorney

Designation:

COMMISSIONER OF OATHS EX OFFICIO

Capacity:

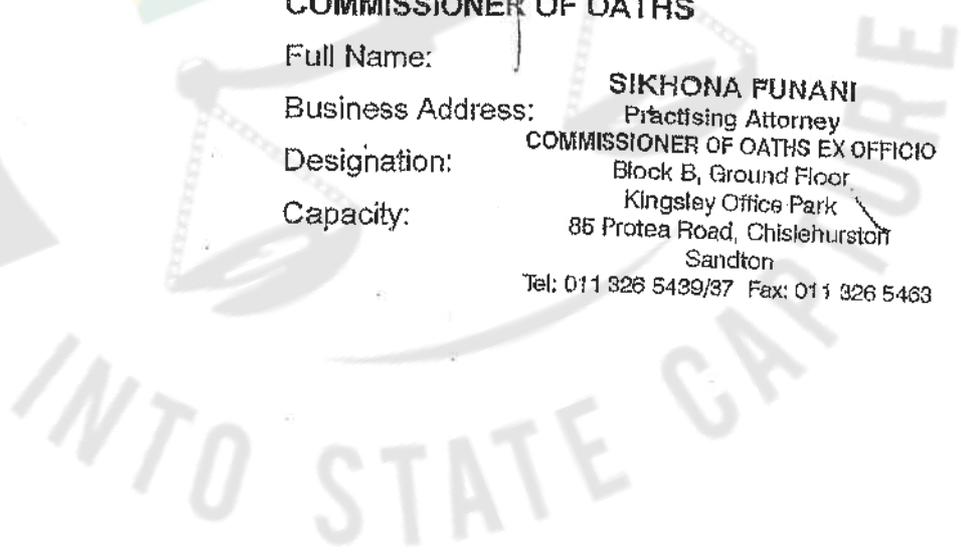
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Sandton

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







ZB/ZB
22032016/MINI29566.1
Affidavit #4208280v1

HIK/W3

A22

AFFIDAVIT

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SANDILE JULY

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- 4 Included in the terms of reference for the investigation were the following questions –

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Affidavit/ #4208280v1
22032016

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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?;
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Affidavit #4206280v1
22032016

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- 5.5 **Annexure "SJ08"**- George Baloyi, Deputy Director of Public Prosecutions, North Gauteng (17 April 2015);
- 5.6 **Annexure "SJ09"** - Robert McBride, Executive Director: IPID (17 April 2015);
- 5.7 **Annexure "SJ10"** - Mr Mzinyathi, Director of Public Prosecutions: North Gauteng (17 April 2015); and
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- 5.10 Matthews Sesoko, Head of Investigations: IPID (no transcript available).

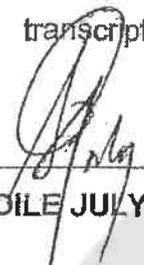
H1 *H1*

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Affidavit/#4208280v1
22032015

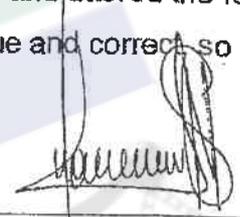
4 A22

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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

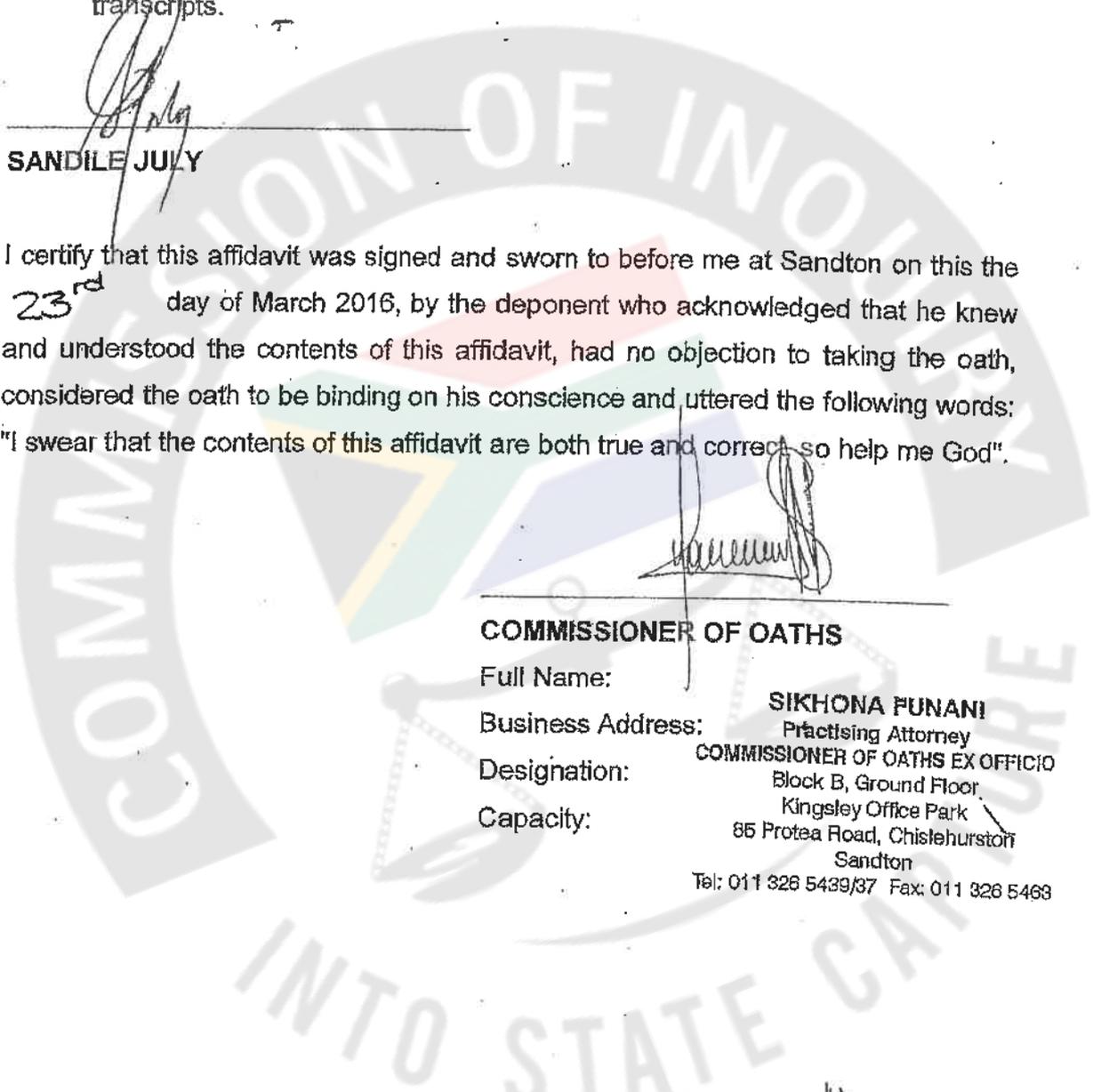
Full Name:

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Designation:

Capacity:

SIKHONA FUNANI
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85 Protea Road, Chislehurst
Sandton
Tel: 011 326 5439/37 Fax: 011 326 5463



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ANNEXURE “HIK 32”



HIK 32
ANNEXURE HIK/W2.

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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 2015

Starting

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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 WERKSMANS, and SANDILE TOM is also an Associate from WERKSMANS. 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/LEED
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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INNOCENT KHUBA

8 July/EPID
21.03.15

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 BEURMAN 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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8 July/IFIN
27.03.15

INNOCENT KHUBA

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 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 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 on the entire evidence available, as well as the information that MOKANGWE knew at that time.

What I did after that, I started to look for witnesses. I contacted the girlfriend of one 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

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INNOCENT KHUBA

8 July/IPFD
27.03.15

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. 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 Rendition case. There was no cooperation from anyone.

I then contacted HOME AFFAIRS, because my point of departure was I needed to know from HOME AFFAIRS who are these people who are 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, 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

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INNOCENT KHOBA

6 JULY/1988
27.03.16

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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8 July/1920
27.03.15

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 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 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 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 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

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8 July/IPID
27.03.18 .

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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8 July/1970
27.03.18.

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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5 July 1970
27.03.16

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

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6 July/1979
27.03.18

INNOCENT KEDWA

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: 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 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 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 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

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8 July/1970
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 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 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 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 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

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8 July/TPED
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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8 July/IFED
27.03.15

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 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 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 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 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

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8 July/ITIP
27.03.16

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, 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

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.

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 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

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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

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 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,

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 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.

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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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INNOCENT KHUBA

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. 5

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, 10 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 15 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 20 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. 25

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INNOCENT KHUMA

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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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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
 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
 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
 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
 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

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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.

After that, when I had taken all the statements, I even went to the houses of the TRF 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.

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

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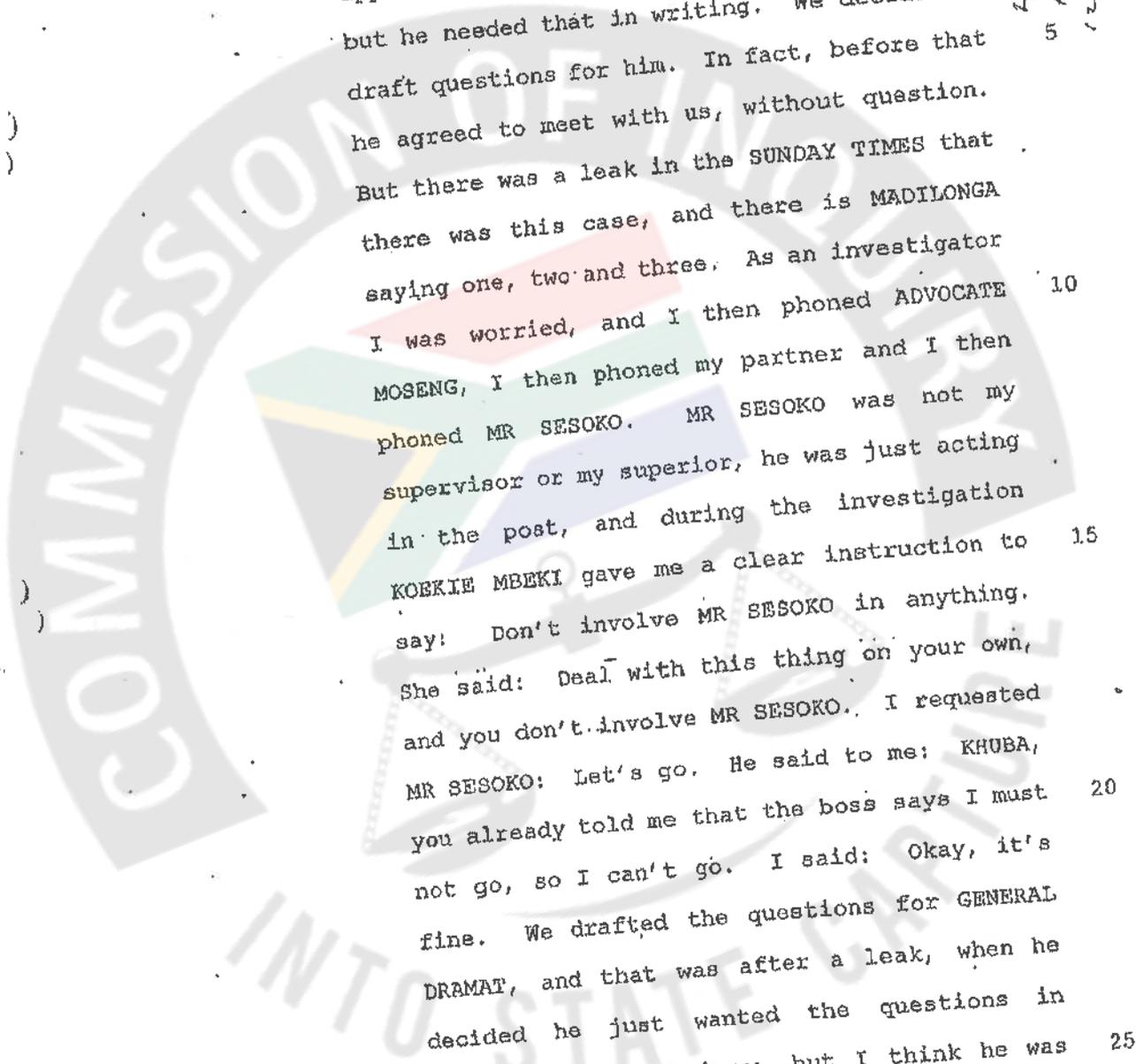
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INNOCENT KHUBA

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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

He did not refused
was asked questions
writing
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INNOCENT KHUBA

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 KHURA

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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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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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 KHUBA

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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27.03.15

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.

HT HT R J

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INNOCENT KHEBA

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 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. 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 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 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

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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 KHUBA

and on the 28th the register of NOORD 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.

HT HT R J

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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 safes.

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

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27.03.18

INNOCENT KHUBA

person who was doing the cellphone records.
 The person who was doing the cellphones 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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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 5
 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 10
 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 15
 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 20
 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 25

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INNOCENT KHUBA

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

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
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
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
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

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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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27.03.15

INNOCENT KHUBA

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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Handwritten initials/signature

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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.

MR JULY:

Why don't we ...

MR KHUBA:

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

THE INTERVIEW ADJOURNS FOR LUNCHTHE 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 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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27.03.25

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 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. 5

I think on 3 March McBRIDE started, if I'm not 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. 10 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 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 20 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? 5

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 10 between updating new evidence in terms of saying what its impact is, and also the issue of ...

MR JULY:

... of saying how does it get you to a conclusion. 15

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 20 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 25

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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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27.03.18

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 10 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 15 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. 20 After leaving the hotel I went straight to PRETORIA to meet with McBRIDE, as well as the...

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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8 July/EPKO
27.03.16

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 5
 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 10
 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 15
 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 20
 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 25

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did not take it as
 significant. I
 the report to sign 192
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 27.03.15

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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5 July/IPTD
27.03.15

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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5 July/1P1D
27.03.15

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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27.03.15

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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9 July/TEID
27.03.15

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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6 July/1970
27.03.15

INNOCENT KHUBA

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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27.03.15

INNOCENT KHUBA

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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27.03.15

INNOCENT KHUBA

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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5 July/IP10
27.03.15

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 KHOBA:

He had an automated email/SMS dispatch.

MR JULY:

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

MR KHOBA:

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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27.03.15

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. 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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8 July/1990
27.03.16

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 diverts - 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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27.03.15

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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27.03.15

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 ... 5 10

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 15 20 25

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27.03.15

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 5
 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 10
 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 15
 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 20
 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 25

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27.03.15

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.
 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

MR JULY:

MR KHUBA:

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8 July/IPFD
27.03.15

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.

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.

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

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

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8 July/1P10
27.03.15

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 ...

MR JULY:

MR KHUBA:

The second report?

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.

Yes, around March.

MR JULY:

The date of signature?

MR KHUBA:

Oh, the date of signature. On my one the

MR JULY:

signature is April. Everybody else signed in March. I'm not sure, there is no date.

March. I'm not sure, there is no date.

H1

H1

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INNOCENT KHUBA

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 Sibuya." 25

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S July/IPID
27.03.18

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."

5

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.

10

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:

15

"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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27.03.15

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

HT HI

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INNOCENT KHUBA

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, 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, people were being taken from here illegally, so he knew about that. Right? 5 10

MR KHUBA:

Yes.

MR JULY:

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

MR KHUBA:

Yes, you're right.

MR JULY:

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

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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INNOCENT KHUBA

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 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 operation. 5 10

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 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 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 15 20 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?

HI HI



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INNOCENT KHUBA

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. 5

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. 10 15

THE INTERVIEW ADJOURNS

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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 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 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 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 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.

MR KHUBA:

Yes. It says:

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[Signature]

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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. 5

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, 10
paragraph 53, which is the second page of the
second report.

MR KHUBA: Paragraph 53 or 5.3?

MR JULY: It's paragraph 5,3, sorry.

MR KHUBA: I see that. 15

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: 20

"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 25

HP H1 R M

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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." 5

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

MR KHUBA:

Let me check.

"He sent emails circulating more than 10 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 15 tracing the main suspects."

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 ... 20

MR KHUBA:

5.5?

MR JULY:

5.5 is the cellphone record of MAJOR GENERAL SIBIYA.

MR KHUBA:

Okay.

MR JULY:

It reads: 25

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INNOCENT KHUBA

"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. 5

The same automated SMSs were sent to Major General Lebeya (at that number). These SMSs were sent at various milestones of the operations." 10

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

This one is not in terms of the analysis?

MR KHUBA:

This one. 15

MR JULY:

No, no, that's fine.

MR KHUBA:

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?

MR JULY:

There it is in the blocks. 20

MR KHUBA:

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.

MR JULY:

Whereas here it is there.

MR KHUBA:

Yes, it's left out, even (indistinct) is 25

MR JULY:

H1 ~~M~~ H1 M

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INNOCENT KHUBA

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
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:

"CELLPHONE RECORD OF LIEUTENANT GENERAL
DRAMAT

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

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
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

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27.03.15

INNOCENT KHUBA

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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Handwritten signatures and initials at the bottom of the page.

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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. 10

MR KHUBA:

Oh, NEETHLING is not there?

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 15
assisted Captain Maluleke to cross the
border with the suspects. He contacted
Lieutenant General Dramat when he
welcomed the Zimbabwean police the first
time." 20

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." 25

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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. 10 15

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 20 25

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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
second paragraph.

5

"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
see where it starts "on 13 November"?

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MR KHUBA:

13 ...?

MR JULY:

13 November.

MR KHUBA:

Yes, I see it:

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

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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:

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"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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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:

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"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 ..."

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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.

15

MR JULY:

It does.

MR KHUBA:

Where?

MR JULY:

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

MR KHUBA:

It doesn't.

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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

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Handwritten marks at the bottom right of the page, including the number "11" and several scribbles.

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27.03.19

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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INNOCENT KHUBA

MR KHUBA:

Okay.

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

5

MR JULY:

Okay.

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.

10

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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#1 [Signature]

[Signature]

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INNOCENT KHUBA

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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..." 5

Here he says:

"The arrest of Dumisani Ndeya ..."

So he is no longer talking about GENERAL DRAMAT. 10

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 ..." 20

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 2!

H1 [Signature] H1 [Signature] [Signature]

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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. 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. 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? 15 20 25

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INNOCENT KHUBA

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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. 15

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 20

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. 25

HT (M) HT M

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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. 5

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. 10

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 20 25

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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

5

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.

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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.

15

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.

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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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H I R M M

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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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27.03.15

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

H1 RHT M

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INNOCENT KHUBA

8 July/TPID
27.03.19

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
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more especially those who were assisting
MALULEKE, would have known. 10

MR JULY:

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report and come to this conclusion still. You
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this conclusion. But once there are ...

MR KHUBA:

... some things that are not there ... 15

MR JULY:

... things that have been removed. -

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the first report and the second report - there 20

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statement, in my statement, to say: How could
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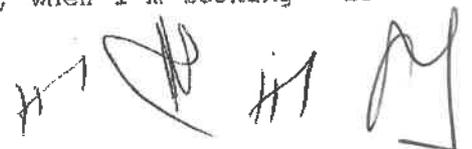
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6 July/IFID
27.03.15

INNOCENT KHUERA

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 when 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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8 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

111  111 

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5 July/EPID
27.03.15

INNOCENT KHUBA

factual thing is no longer a fact.

MR KHUBA:

Mum.

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
deliberately removed part of the report. No. 10
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
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
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 20

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96

8 July/1P1D
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

H7  H7 

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5 July/TPID
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 ...

MR KHUBA:

Of the original report?

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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INNOCENT KHUBA

8 July/1P20
27.03.15

meeting in August 2010 held between Zimbabwe ..."

To that one you may deliberately not make reference.

MR KHUBA:

So it doesn't appear in the analysis? 5

MR JULY:

Yes.

MR KHUBA:

Okay. It's not in the findings?

MR JULY:

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

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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8 July/1910
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-
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
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
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 ...

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

Handwritten signatures and initials at the bottom right of the page.

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INNOCENT KHUBA

3 July/1970
27.03.15

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? 5

MR KHUBA:

MR JULY:

No, you see, the warning statement - that's a
bad memory. It's not ... 10

MR KHUBA:

MR JULY:

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

MR KHUBA:

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." 20

MR JULY:

On which page is that?

25

H1 [Signature] H1 [Signature] M

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INNOCENT KHUBA

8 July/1970
27.03.15

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." 5

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. 10

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. 15

MR JULY:

No, no, let me tell you why - I don't have the questions, but I'm saying now you are the author ... 20

MR KHUBA:

... of the report?

MR JULY:

... of the report. What do you make of the 25

H-1
PHH
M

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INNOCENT KHUBA

8 July/1979
27.03.15

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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5 July/1P10
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 ...

MR KHUBA:

... whether the other one followed procedure
or not? 15

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

H1 H1 M

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5 July/IFID
27.03.15

INNOCENT KHUBA

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

HHH R HH M

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9 July/IFID
27.03.15

INNOCENT KHURA

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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6 July/IBID
27.03.15

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.

HT HT M 2:

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6 July/IPID
27.03.15

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).

H-1 ~~PH~~ H-1 M

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8 July/ITFD
27.03.15

INNOCENT KHUBA

MR JULY:

Criminally?

MR KHUBA:

Yes. But these other ones like NKOSI, 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

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MR JULY:

No. That info note talks about what?

MR KHUBA:

The info note says that he came, he reviewed,

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Handwritten initials: MTHETHWA

Handwritten signature/initials

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9 July/EPID
27.03.15

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 legal 25

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6 July/ITD
27.03.15

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? 5

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 10 forward you cannot find because ...

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

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8 July/IBID
27.03.15

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

HTI [Signature] HTI [Signature] [Signature]

ANNEXURE “HIK 33”



HIK 33
ANNEXURE 10



ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X941, Pretoria, 0001, 114 Vermeulen Street, City Forum Building, Pretoria
Tel: (012) 399 0000 Fax: (012) 326 0408

MEMORANDUM

TO : EXECUTIVE DIRECTOR
MR. RJ MCBRIDE

FROM : INNOCENT H KHUBA

DATE : 24 MARCH 2014

SUBJECT : MOTIVATION FOR THE APPROVAL OF REQUEST TO TRAVEL

1. PURPOSE:

To sought your approval for a request to travel in connection with a meeting with the acting Chief Director: Investigation and Information Management on 17/03/2014 to 18/03/2014 in Pretoria..

2. MOTIVATION

On 17/03/2014 I went to Pretoria for a meeting with the Acting Chief Director: Investigations and Information Management for a final report on Diepsloot Cas 390/07/2012. The purpose of the meeting was to finalize the investigation report to the National Director of Public Prosecution.

3. CONCLUSION

The process of finalizing the report on Diesploot Cas 390/07/2012 could not be completed on 17/03/2014 and verbal approval was requested from the Executive Director to stay over and complete the report on 18/03/2014. It is my submission that the request was to advance the mandate of IPID and bring about speedy completion of the case.

Kind Regards


I H KHUBA
ACTING PROVINCIAL HEAD
2014/03/14

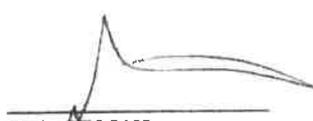
117

1

MOTIVATION FOR THE APPROVAL OF REQUEST TO TRAVEL

(a) I confirm that the above complies with and is not in contravention with relevant and applicable Prescripts or legislation.

(b) I confirm that the above is in line with the PFMA and the Treasury Regulations.



Mr M SESOKO

ACTING CHIEF DIRECTOR: INVESTIGATIONS AND INFORMATION MANAGEMENT

DATE: 17/03/2017

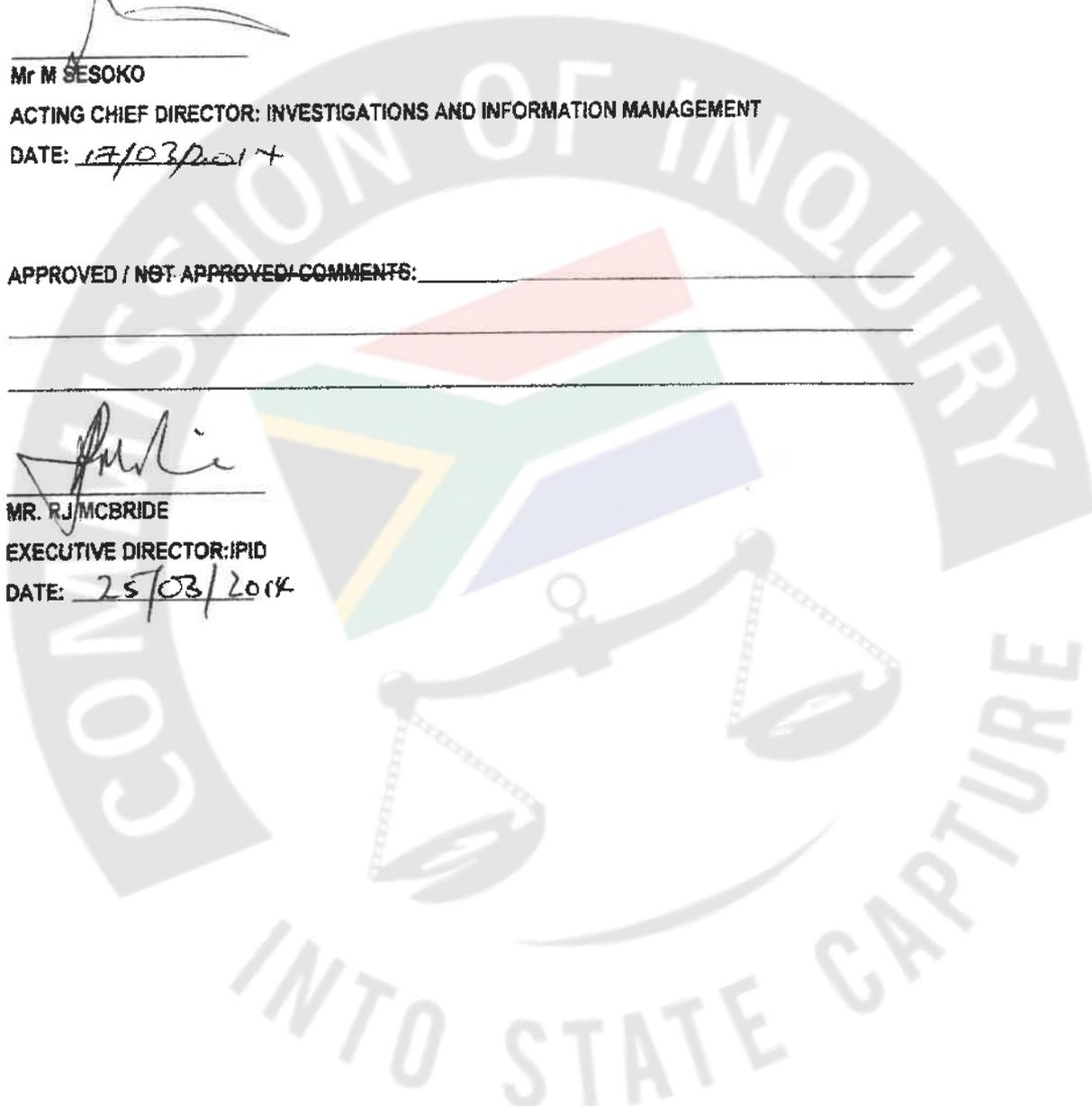
APPROVED / NOT APPROVED / COMMENTS:



MR. RJ/MCBRIDE

EXECUTIVE DIRECTOR:IPID

DATE: 25/03/2017



HT

2


CCV

Confidential



ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

REQUEST FOR TRAVEL ARRANGEMENTS

SURNAME : KHUBA
 INITIALS : H.I.
 DESIGNATION : DIRECTOR INVESTIGATION
 SECTION : INVESTIGATION
 RESPONSIBILITY : LIMPOPO
 OBJECTIVE : INVESTIGATION AND INFORMATION MANAGEMENT
 REQUEST DATE : 2014/03/17
 PURPOSE OF TRAVEL : MEETING WITH THE EXECUTIVE DIRECTOR

ACCOMMODATION	INDICATE	SPECIAL REQUEST	HOTEL	DATE OF ARRIVAL	DATE OF DEPARTURE	COMMENT
BED	X					
BREAKFAST	X					
DINNER	X					
PARKING	X					
SOFT DRINKS	X					

If special requirements are needed please specify: Laundry
 DBB, Double Bed, Non Smoking, 2 Soft Drinks & 10% tip

RECOMMENDED / NOT RECOMMENDED

SIGNATURE: CHIEF DIRECTOR INVESTIGATIONS
 AND INFORMATION MANAGEMENT

DATE: 17/03/2014

NAME OF SUPERVISOR

SIGNATURE OF OFFICIAL

DATE: 25/03/2014

APPROVAL DDG/ HEAD OF COMPONENT/
 RESPONSIBILITY MANAGER

DATE: 25/03/2014

HT

M

Confidential

Procurement office only

Correction
Order submitted to TWF
Copy Order sent to official

Supply Chain Officer



ANNEXURE “HIK 34”



HIK 34

ANNEXURE F: PERFORMANCE ASSESSMENT INSTRUMENT

Annual Performance Assessment Instrument

The manager must forward the completed form to the Directorate, Human Resource Management for filing immediately after completion.

CONFIDENTIAL

Period under review 01/04/2013-31/03/2014
 Surname and initials KHUBA I H
 Job Title PROVINCIAL HEAD
 Remuneration level 13
 Persal no 18763685
 Component INVESTIGATIONS
 Date of appointment to current level 01 JULY 2006

Race: African Coloured Indian White
 Gender: Male Female
 Disability: (specify, if applicable)

(Tick the appropriate box)

Probation Extended Probation Permanent Contract

PART 1 – COMMENTS BY RATED EMPLOYEE

(To be completed by the Employee prior to assessment. If the space provided is insufficient, the comments can be included in the attachment)

1. During the past year my major accomplishments as they related to my performance agreement were:

I managed to meet all strategic objectives for Limpopo. I also investigated high profile cases such as renditions.

2. During the past year I was less successful in the following areas for the reasons stated:

PART 2 – PERFORMANCE ASSESSMENT

Standard Rating Schedule for KRAs and CMC's

Signatures: _____ Date: 2013/03/27 Supervisor: _____ Date: _____

RATING	CATEGORY	%	DESCRIPTION
1	UNACCEPTABLE PERFORMANCE	- 69%	Performance does not meet the standard expected for the job. The review/assessment indicates that the jobholder has achieved less than fully effective results against almost all of the performance criteria and indicators as specified in Performance Agreement and Workplan.
2	PERFORMANCE NOT FULLY EFFECTIVE	70% - 99%	Performance meets some of the standards expected for the job. The review/assessment indicates that the jobholder has achieved less than fully effective results against more than half of the performance criteria and indicators as specified in the Performance Agreement and Workplan.
3	FULLY EFFECTIVE	100% - 114%	Performance fully meets the standard expected in all areas of the job. The review/assessment indicates that the jobholder has achieved as a minimum effective results against all of the performance criteria and indicators as specified in the Performance Agreement and Workplan.
4	PERFORMANCE SIGNIFICANTLY ABOVE EXPECTATIONS	115% - 129%	Performance is significantly higher than the standard expected in the job. The review/assessment indicates that the jobholder has achieved better than fully effective results against more than half of the performance criteria and indicators as specified in the Performance Agreement and Workplan and fully achieved all others throughout the performance cycle.
5	OUTSTANDING PERFORMANCE	130% - 149% 150% +	Performance far exceeds the standard expected of a jobholder at this level. The review/assessment indicates that the jobholder has achieved better than fully effective results against all of the performance criteria and indicators as specified in the Performance Agreement and Workplan and maintained this in all areas of responsibility throughout the performance cycle.

Rating of KRA's by Supervisor and Employee:

KEY RESULT AREAS	Weight (%)	Own rating (1-5)	Supervisor Rating (1-5)	Moderating Committee (1-5)
1. Ensure that the province meets the strategic objectives as set out in the strategic plan of 2010-2013.	50	4	4	4
2. Ensuring productivity, internal controls and compliance with legislative imperatives and policies	20	4	5	4
3. Marketing ICD, maintaining and forging good relations with key stakeholders.	20	4	4	4
4. Develop and maintain internal work processes to improve service delivery	10	3	3	3
Total (Note: Weighting of KRAs must total 100%)	100%			
Score according to calculator: Employees on level 1-12.	70%			

Signatures: _____ Date: 22/11/2012 Supervisor: _____ Date: 23/12/2012

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Rating of CMC's by Supervisor and Employee:

CORE MANAGEMENT CRITERIA – CMC's	Weight (%)	Own rating (1-5)	Supervisor Rating (1-5)	Moderating Committee (1-5)
1. Strategic capability and leadership	25	4	4	4
2. Financial Management	15	4	3	3
3. Problem solving and analysis	15	4	4	4
4. People management and empowerment	35	4	4	4
5. Honesty and integrity	10	3	3	3
Total (Note: Weighting of GAFs must total 100%)	100%			
Score according to calculator: Employees on level 1-12:	30%			

FINAL SCORE

GRAND TOTAL	OWN RATING	SUPERVISOR'S RATING	MODERATING COMM'S RATING
KRA + GAF (70% + 30%) for levels 1 – 12			

PART 3 – DEVELOPMENT, TRAINING, COACHING, GUIDANCE AND EXPOSURE NEEDED

(To be completed by Supervisor in consultation with Employee)

Signatures: _____ Date: 22/02/2015
 Employee: _____ Date: 22/02/2015 Supervisor: _____ Date: 22/02/2015

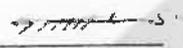
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PART 4

1. Supervisor's recommendation


 Signature _____ Name Ang. Sevilla Date 23/02/2015

2. Employee's comments:


 Signature _____ Name Ang. Sevilla Date 23/02/2015

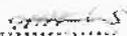
3. Comments of Chairperson of Moderating Committee:

Committee member RFA 2 to the panel
 + based on the motivation of the official

 Signature _____ Name RFA 2 Date 23/02/15

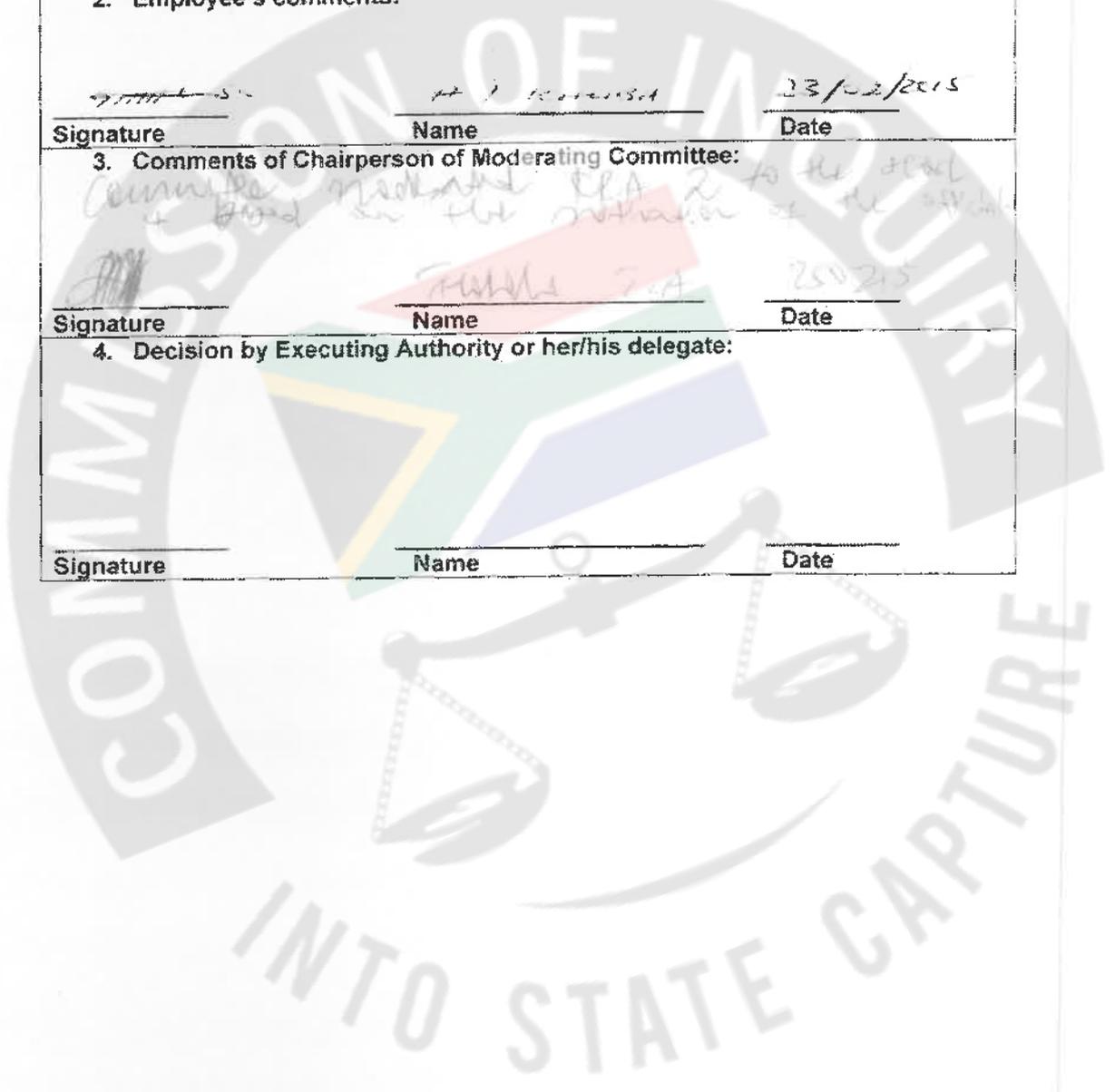
4. Decision by Executing Authority or her/his delegate:

Signature _____ Name _____ Date _____

Signatures: Employee:  Date: 23/02/15 Supervisor:  Date: 23/02/2015







ANNEXURE “HIK 35”



HIK 35



ipid
 Department
 Independent Police Investigative Directorate
 REPUBLIC OF SOUTH AFRICA

Private Bag X941, Pretoria, 0001, 114 Madiba Street, City Forum Building, Pretoria
 Tel: (012) 358 0000 Fax: (012) 326 0408

Ref: ED 2013/01/29
 Eng: KC Mbeki

MR. D.M. MOKOENA
 DEPUTY DIRECTOR: INVESTIGATION
 INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE
 PRIVATE BAG X9525
 POLOKWANE
 0700

27 September 2013

Dear Mr. Mokoena,

RE: ACTING PROVINCIAL HEAD: LIMPOPO: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE (IPID)

1. Kindly be informed that you are hereby appointed to act as the Provincial Head for the Limpopo IPID office during 01 – 31 October 2013.
2. All powers and duties attached to the above-mentioned post have been delegated to you and must be exercised in terms of the relevant prescripts as provided for in Act No.1, Independent Police Investigative Directorate Act, 2011 for the said period.
3. I thank you for accepting this responsibility and trust that you will be successful in the execution of your responsibilities.

Kind regards.


 MS. K.C. MBEKI
 ACTING EXECUTIVE DIRECTOR
 DATE: 27/09/2013

TIPID

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RE: ACTING PROVINCIAL HEAD: LIMPOPO: INDEPENDENT POLICE
INVESTIGATIVE DIRECTORATE (IPID)

I hereby accept / decline the position and responsibilities to act in the above-
mentioned capacity.

M. Mokoena
MR. D.M./MOKOENA
DEPUTY DIRECTOR: INVESTIGATION

2013/09/30
DATE



HI

ANNEXURE “HIK 36”



HIK 36



ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X941, Pretoria, 0001, 114 Madiba Street, City Forum Building, Pretoria
Tel: (012) 399 0000 Fax: (012) 326 0405

Ref: ED 2013/01/29
Enq: KC Mbeki

MR. D.M. MOKOENA
DEPUTY DIRECTOR: INVESTIGATION
INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE
PRIVATE BAG X9525
POLOKWANE
0700

28 October 2013

Dear Mr. Mokoena,

RE: ACTING PROVINCIAL HEAD: LIMPOPO: INDEPENDENT POLICE
INVESTIGATIVE DIRECTORATE (IPID)

1. Kindly be informed that you are hereby appointed to act as the Provincial Head for the Limpopo IPID office during 01 – 30 November 2013.
2. All powers and duties attached to the above-mentioned post have been delegated to you and must be exercised in terms of the relevant prescripts as provided for in Act No.1, Independent Police Investigative Directorate Act, 2011 for the said period.
3. I thank you for accepting this responsibility and trust that you will be successful in the execution of your responsibilities.

Kind regards.


MS. K.C. MBEKI
ACTING EXECUTIVE DIRECTOR
DATE: 2013/10/28

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RE: ACTING PROVINCIAL HEAD: LIMPOPO: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE (IPID)

I hereby accept / ~~decline~~ the position and responsibilities to act in the above-mentioned capacity.



MR. D.M. MOKOENA
DEPUTY DIRECTOR: INVESTIGATION

2013/10/31
DATE



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ANNEXURE “HIK 37”



HIK 37



ipid
Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X641, Pretoria, 0001, 114 Madiba Street, City Forum Building, Pretoria
Tel: (012) 399 0000 Fax: (012) 326 0408

Ref: ED 2013/01/29
Eaq: KC Mbeki

MR. D.M. MOKOENA
DEPUTY DIRECTOR: INVESTIGATION
INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE
PRIVATE BAG X9625
POLOKWANE
0700

Dear Mr. Mokoena,

29 November 2013

RE: ACTING PROVINCIAL HEAD: LIMPOPO: INDEPENDENT POLICE
INVESTIGATIVE DIRECTORATE (IPID)

1. Kindly be informed that you are hereby appointed to act as the Provincial Head for the Limpopo IPID office during 01 – 31 December 2013.
2. All powers and duties attached to the above-mentioned post have been delegated to you and must be exercised in terms of the relevant prescripts as provided for in Act No.1, Independent Police Investigative Directorate Act, 2011 for the said period.
3. I thank you for accepting this responsibility and trust that you will be successful in the execution of your responsibilities.

Kind regards.


MS. K.C. MBEKI
ACTING EXECUTIVE DIRECTOR
DATE: 29/11/2013

COMMISSION OF INQUIRY
INTO STATE CAPTURE

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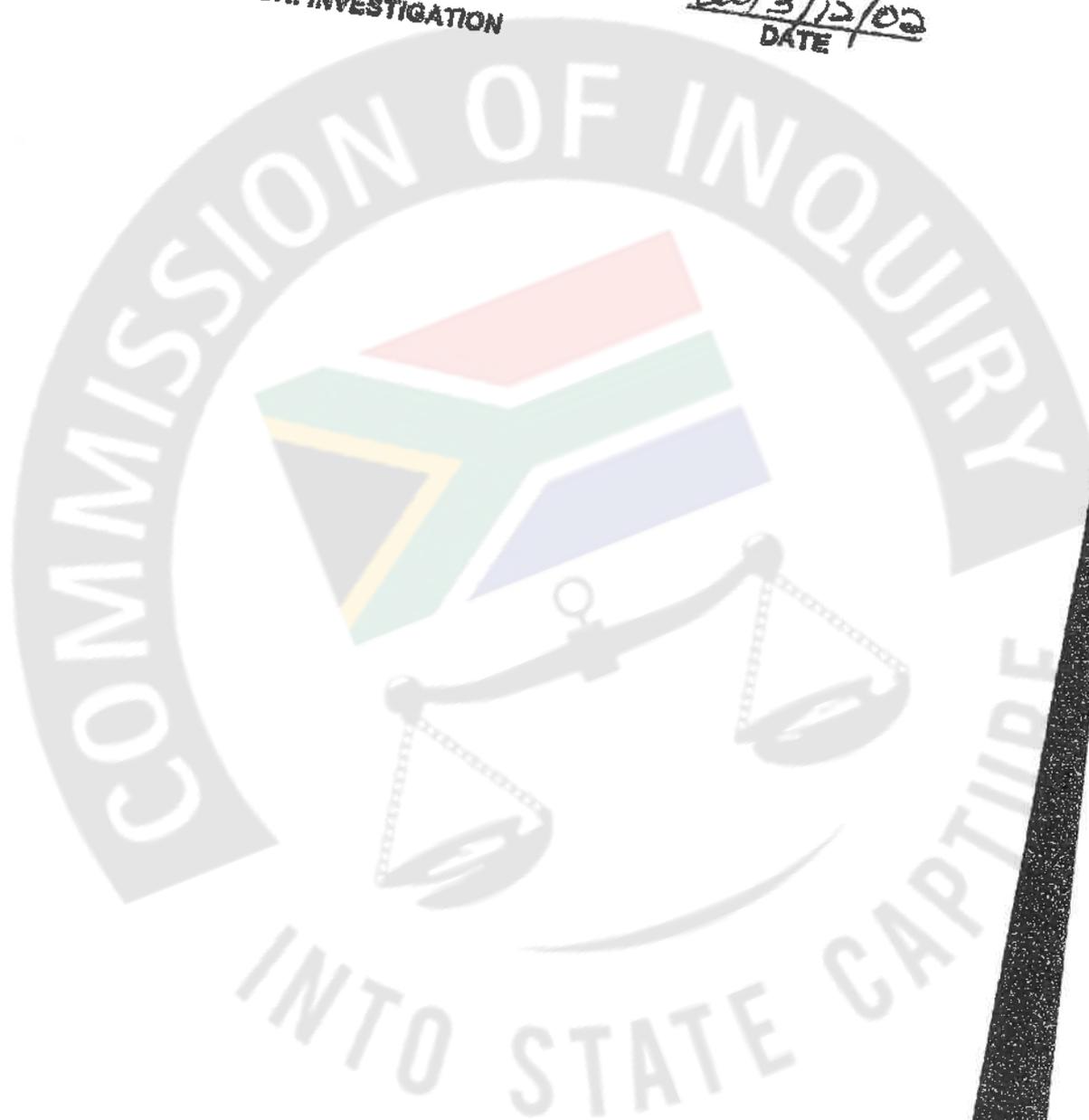


RE: ACTING PROVINCIAL HEAD: LIMPOPO: INDEPENDENT POLICE
INVESTIGATIVE DIRECTORATE (IPID)

I hereby accept / ~~decline~~ the position and responsibilities to act in the above-mentioned capacity.

[Signature]
MR. D.M. MOKOENA
DEPUTY DIRECTOR: INVESTIGATION

2013/12/02
DATE



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ANNEXURE “HIK 38”



HIK 38



ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X941, Pretoria, 0001, 114 Mediba Street, City Forum Building, Pretoria
Tel: (012) 390 0000 Fax: (012) 326 0406

Ref: ED 2013/01/29
Enq: KC Mbeki

MR. D.M. MOKOENA
DEPUTY DIRECTOR: INVESTIGATION
INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE
PRIVATE BAG X9525
POLOKWANE
0700

24 December 2013

Dear Mr. Mokoena,

RE: ACTING PROVINCIAL HEAD: LIMPOPO: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE (IPID)

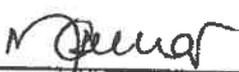
1. Kindly be informed that you are hereby appointed to act as the Provincial Head for the Limpopo IPID office during 01 – 31 January 2014.
2. All powers and duties attached to the above-mentioned post have been delegated to you and must be exercised in terms of the relevant prescripts as provided for in Act No.1, Independent Police Investigative Directorate Act, 2011 for the said period.
3. I thank you for accepting this responsibility and trust that you will be successful in the execution of your responsibilities.

Kind regards.


MS. K.C MBEKI
ACTING EXECUTIVE DIRECTOR
DATE: 31/12/2013

RE: ACTING PROVINCIAL HEAD: LIMPOPO: INDEPENDENT POLICE
INVESTIGATIVE DIRECTORATE (IPID)

I hereby accept / ~~decline~~ the position and responsibilities to act in the above-
mentioned capacity.


MR. D.M. MOKOENA
DEPUTY DIRECTOR: INVESTIGATION

2014/01/07
DATE



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ANNEXURE “HIK 39”



HIK 39
HIK/W7

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



INTERNAL MEMORANDUM

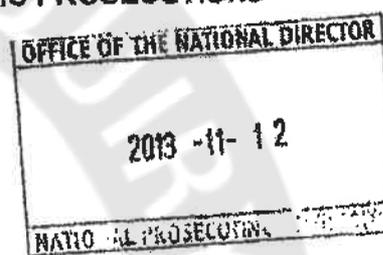
TO: MR M.S.O. NXASANA
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

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.

#7


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

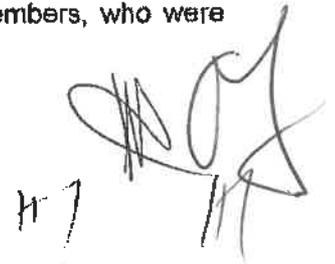


2011 and transported directly to the offices of the DPCI head office in Silverton, Pretoria by some of the members of the TRT unit. Upon arrival, all the members were allegedly addressed by General Dramat and thanked for their efforts. Photographs were taken of the group. Two members of the Zimbabwean 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 2011 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. Maluleke 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 released (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

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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

ANNEXURE “HIK 40”



HIK 40

**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.

PROJECT X - FINAL

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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 W/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 Belt 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 Belt 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 Belt 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
- Releivant dockets and court documents

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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 Matuleke 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 Belt 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

[Signature]
ADV A MOSING
SPECIAL PROJECTS DIVISION
OFFICE OF THE NDPP



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HT *[Signature]* *[Signature]*

ANNEXURE “HIK 41”



HIK 41

A81,

G.P.S. 002-0222

SAPS 21

SOUTH AFRICAN POLICE SERVICE



SUID-AFRIKAANSE POLISIEDIENS

AMAPOLISA OMZANTSI AFRICA

Privaatsak/Private Bag X620
 Posbus/Post Office Box

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 Navrae:
 Enquiries: LT. C. MAKGALWA
 Telefoon:
 Telephone: (012) 401-3305
 Faksnommer:
 Faxnumber: (012) 401 3403
 e-pos:
 e-mail: MakgalwaC@saps.org.za

KANTOOR VAN DIE HOOF
 OFFICE OF THE HEAD
 FORENSIESEWETENSKAPLABORATORIUM
 FORENSIC SCIENCE LABORATORY
 QUESTIONED DOCUMENT UNIT
 PRETORIA
 0001

2013-09-03

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE
 LIMPOPO PROVINCE
 PRIVATE BAG X9525
 POLOKWANE
 0700

**EXAMINATION OF HANDWRITING AND STAMPS: DIEPSLOOT CAS 390/07/2012:
 FRAUD**
 YOUR MINUTE (MR. I.H. KHUBA) DATED 2013-08-21

1. The following exhibits were received by this office for examination, sealed in an official Independent Complaints Directorate forensic exhibit bag with serial number ICD-12753:
 - 1.1 Disputed copies of the "Department of Home Affairs" forms, on seven (7) A4 size pages marked as "E" to "K";
 - 1.2 Collected specimen writing and signatures of various authors, on four (4) "application for leave of absence" forms, marked as "A" to "D".
2. This office was requested to conduct the following analysis:
 - 2.1 To examine and compare the stamp impressions on the documents in question marked as "E" to "K" in order to identify similarities and/or dissimilarities;

Page 1 of 3

2.2 To examine the applicant's portion of writing on the documents in question marked as "E" to "K" and effect a comparison thereof with the specimen writing on the documents marked as "A" to "D" in order to identify or eliminate common authorship.

3. The following observations were made:

3.1 After examining and comparing the stamp impressions on the documents in question marked as "E" to "K", I observed the following:

3.1.1 The stamp impressions appearing at the bottom right hand corner, inside a square below the words "OFFICE STAMP" on the documents marked as "E", "F", "H" and "I" are identical in all aspects, including their position. This clearly indicates that the stamp impressions on the aforementioned documents are products of a common source;

3.1.2 The "Department of Home Affairs" stamp impressions dated "2010-11-08" on the documents marked as "E", "F", "G", "I", "J" and "K" have similar class characteristics (i.e. size, design, alignment and font).

In the absence of the original disputed documents and the physical stamps that are suspected to have been utilized to produce the stamp impressions in question, other identifying features such as inks, defects caused by wear and tear, intentional damage, abuse etc. could not be determined;

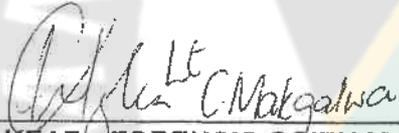
3.2 Two writing types were observed among all seven (7) documents in question marked as "E" to "K", indicating that they were interchangeably completed by two (2) authors;

3.3 Significant differences in respect of elements of style and execution were identified between the writing in question on the documents marked as "E" to "K" and the specimen writing on the documents marked as "A" to "D". However, the differences observed do not imply that the disputed documents were not written by the authors of the specimen writing marked as "A" to "D".

The current comparison material is qualitatively and quantitatively unsatisfactory. Handwriting identification is a discriminatory process that derives from the comparison of writing habits and an evaluation of the significance of their similarities or differences. Therefore, adequate and compatible specimen writing is necessary in order to identify or eliminate an individual as being the author of a particular writing.

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4. In light of the circumstances surrounding the case at hand (i.e. if the applicants are denying that they completed the documents in question), then it is essential to analyse their specimen writing and compare it with the questioned portion of writing in order to corroborate or refute the claim.
5. Therefore, in order for this office to conduct a complete examination in respect of handwriting, the following additional material will be required:
 - 5.1 **Request** specimen writing of all relevant authors involved, on 10-15 forms similar to the forms in question, containing portions of the contents of the questioned material, written in the same writing style (i.e. upper case and lower case print scripts) as the writing in question [writing can be dictated to the authors];
 - 5.2 The procurement of an adequate amount ($\pm 15-20$) of **collected documents** bearing writing of all relevant authors involved [collected writing is a sample of writing made during the normal course of business, social or personal affairs and it is free from intentional disguise]. Writing on any undisputed document such as forms, bank documents, diaries, receipts etc., relative to the dates of the documents in question will be of particular value to the examination.
6. Find attached guidelines for obtaining specimen writing.
7. All exhibits are returned herewith sealed in an official South African Police Service evidence bag with serial number FSC-816471 and in an envelope with seal number SEJ 10 05799.


: LIEUTENANT
f/ HEAD: FORENSIC SCIENCE LABORATORY
n/ DIE HOOF: FORENSIESEWETENSKAPLABORATORIUM
(C MAKGALWA)

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G.P.S. 002-0222

SAPS 21

SOUTH AFRICAN POLICE SERVICE



SUID-AFRIKAANSE POLISIEDIENS

AMAPOLISA OMZANTSI AFRICA

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Navrae:	
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 QUESTIONED DOCUMENT UNIT
 PRETORIA
 0001

2013-07-11

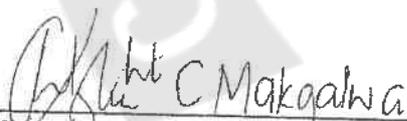
 INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE
 LIMPOPO PROVINCE
 PRIVATE BAG X9525
 POLOKWANE
 0700

**EXAMINATION OF SIGNATURES: DIEPSLOOT CAS 390/07/2012; FRAUD
 YOUR MINUTE (MR. I.H. KHUBA) DATED 2013-06-10**

1. The following exhibits were received by this office for examination, sealed in an envelope and in an official Independent Complaints Directorate forensic exhibit bag with serial number ICD-12768:
 - 1.1 Disputed signatures marked by this office as "Q1" to "Q8", on eight (8) A4 size copies of "the Department of Home Affairs" documents, marked as "E" to "L";
 - 1.2 Collected specimen signatures, purported to be of "Skosana P., Malungani O.J., Ndwanwe P. and Molefe D.E.", marked as "1" to "4", on four (4) "Department of Home Affairs" application for leave of absence documents, marked as "A" to "D";
2. This office was requested to examine the questioned signatures marked as "Q1" to "Q8" and effect a comparison thereof with the specimen signatures marked as "1" to "4" in order to identify or eliminate common authorship.

3. After examination and comparison, the following observations were made:
 - 3.1 The documents in question marked as "E" to "L" are poor quality photocopies. In photocopied material, significant elements of signatures such as direction of stroke, pen pressure, true line quality and other subtle features, cannot be determined with a great deal of certainty. The analysis is therefore limited to general form / appearance.
 - 3.2 The signatures in question marked as "Q1" to "Q8" are inconsistent with one another, displaying divergences/differences in respect of line sequence, overall size, slant and execution. These features are, however, common in the writing of elderly individuals, those of ill health, the infirm, those who lack writing skill or those that are disguising intentionally.

However, the presence of a few correspondences was observed among the questioned signatures.
- 3.3 Significant differences in respect of design and execution were identified between the disputed signatures marked as "Q1" to "Q8" and the specimen signatures marked as "1" to "4".
4. Taking the above observations into consideration, there is evidence at hand suggesting that the signatures in question were probably forged. However, due to the poor quality of the documents in question and lack of sufficient specimen signatures of the authorised person to sign the questioned documents, a definite finding as to whether or not the signatures are forged could not be reached with certainty.
5. Should a further examination be required, do not hesitate to contact this office for assistance. Should no further examination be required, a sworn affidavit in respect of the above examination can be issued on request.
6. All exhibits are returned herewith sealed in an official South African Police Service evidence bag with serial number FSC-816714 and in an envelope with seal number SEJ 10 05792.

 : LIEUTENANT
 f-HEAD: FORENSIC SCIENCE LABORATORY
 n/ DIE HOOF: FORENSIESEWETENSKAPLABORATORIUM
 (C MAKGALWA)

/cm

ANNEXURE “HIK 42”



HIK 42 A101



Your digital forensics specialists

Our Ref: PRE101_1015

Your Ref: _____

17 March 2014

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

Dear Mr. Khuba

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

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

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

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

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

Yours sincerely

A van Staden
 Managing Director
PRECISION FORENSICS (PTY) LTD

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A handwritten signature in black ink, appearing to be the initials 'AM' or similar, written in a stylized, cursive manner.

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

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

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

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

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

~~When~~ I approached them, one of them introduced himself to me as the leader of the group and he ~~said~~ to me he is a Superintendent Ncube from the Homicide Unit in Hare⁸. He then requested me if they⁹ could not find a place and sit down and ~~discuss~~. I ~~then~~ took them to my office and set down for ~~discussion~~. We ~~then~~ went to my office¹⁰ together with his colleagues. Superintendent Ncube ~~said~~ to me that he is going to Pretoria to meet General Dramat¹⁶. He ~~said~~ to me maybe I knew about the Chief

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

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

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

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

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

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

⁷ Missing information.

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

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

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

¹¹ Missing time/information.

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

¹³ Missing time/information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁶ "Must" indicates a very strong statement.

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

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

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

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

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

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

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

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

The following day after the ⁴⁰ departure of Zimbabwean police I received a call from Captain Maluleke who is also known as "cowboy". ⁴¹ [REDACTED] when he called and introduced himself as cowboy and I asked who is cowboy and he said that he is⁴¹ Captain Maluleke and was with me at Paarl in Cape Town in 2005. When he said that he is Captain Maluleke⁴² I remembered very well who he was. Captain Maluleke asked me about where I was. I told him that I had already crossed the checkpoint and I am coming⁴³ to town. He ⁴⁴ [REDACTED] me to stop where I was and wait for him. After thirty minutes he came and was driving a sedan which I think⁴⁵ is a BMW.⁴⁶ He was with a male person⁴⁷ who was sited on the front passenger seat⁴⁸. The person moved to the back seat and I occupied the front passenger seat⁴⁹. I left my car next to a tree which is at the turn to Nancefield.⁵⁰

While I was on the front passenger seat⁵¹ heading to the border gate, he⁵³ ⁵² [REDACTED] me that the Zimbabwean police whom I assisted some weeks back were looking for suspects in connection with the

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

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

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

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

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

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

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

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

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

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

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

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

⁴⁶ Truthful people edit to take out unimportant information.

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

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

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

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

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

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

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

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

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

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

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

⁷⁶ No social introduction.

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death of police chief in Zimbabwe⁵⁴, and know they have found them. He ~~said~~ me that he was sent by his big bosses⁵⁵ to assist in deporting them because we do not have extradition agreement with Zimbabwe.⁵⁶ He ~~said~~ that since the Zimbabwe police entered the country there ~~has~~ had been busy trying to trace the suspect⁶⁰.

Captain Maluleke⁶¹ showed me the Home Affairs documents and ~~said~~ that they are⁶² already stamped. He ~~said~~ that the documents were stamped as a result of arrangement of National Home Affairs and his bosses.⁶³ While we were driving I realized that there were other BMW cars which were following us and I knew that it was a convoy. Captain Maluleke ~~said~~ me that the suspects⁶⁵ are in the rear vehicle. He ~~said~~ that that there are two suspects and the third is still not yet found. He ~~said~~ they will search for him until they find him⁶⁷. As the commander, the officials at the border gate opened the gate without asking any question or stopping (X)⁶⁹ on the way after they saw me in Captain Maluleke's vehicle⁶⁹.

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

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

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

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

⁵⁵ No social introduction – does not tell us who.

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

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

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

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

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

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

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

⁶³ No social introduction – does not tell us who.

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

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

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

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

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

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

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

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

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ANNEXURE “HIK 43”



HIK 43
Page 1 of 1

Fw: OUR CLIENT: ANWA DRAMAT / ALLEGATIONS SURROUNDING SO-CALLED
"ZIMBABWE RENDITION"

Innocent Khuba

to:

Matthews Sesoko

02/09/2015 01:37 PM

Hide Details

From: Innocent Khuba/Limpopo/IPID

To: Matthews Sesoko/North West/IPID@IPID

History: This message has been forwarded.

1 Attachment



doc10572320131024093456.pdf

----- Forwarded by Innocent Khuba/Limpopo/IPID on 2015/02/09 01:36 PM -----

"Washiela Davids" <washiela@jfrlaw.co.za>

From:

<IKhuba@ipid.gov.za>

To:

2013/10/24 09:33 AM

Date:

RE: OUR CLIENT: ANWA DRAMAT / ALLEGATIONS SURROUNDING SO-CALLED "ZIMBABWE RENDITION"

Subject:

Dear Mr IH Khuba

Please find attached correspondence and statement in respect of our client.

Regards,

Washiela Davids
Secretary to John Riley



Reg No: 2009/0126147/21

Tel : (021) 797 7116

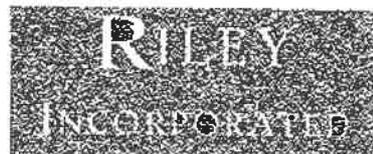
Fax : (086) 616 5729

Addr : 212 Rosmead Avenue, Wynberg, 7800

Web : www.jfrlaw.co.za

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Docex | Wynberg

Tel: (021) 797 7116 | Fax: (021) 797 1434

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OUR REF: JFR/MAT1144/lwr
YOUR REF:

24 October 2013

IH KHUBA
IPID

PER E-MAIL: IKhuba@ipid.gov.za

Dear Sirs

**RE: OUR CLIENT ANWA DRAMAT
ALLEGATIONS SURROUNDING SO-CALLED "ZIMBABWE RENDITION"**

We confirm that we act on behalf of Lt. General Anwa Dramat the Head of the DPCI and attach hereto a copy of his statement dated 23 October 2013 for your consideration and response.

Yours faithfully
RILEY INCORPORATED

DP
Per 
JOHN RILEY
Encl.

**CC: THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
ATTENTION: MR MXOLISI NXASANA**

PER E-MAIL: psmabango@npp.gov.za

DIRECTORS: JOHN FRED RILEY B.L.S.S. LL.B. MARKED BY : STEVEN MARKER A.F.P.O.C.

ASSOCIATES: CECILE ANS DARELS LL.B. LL.M. | CAROL COHEN BA. HON. LL.B. | KAY DELPORT BA. LL.B. | FARZANA KADER LL.B.

CANDIDATE ATTORNEYS: KELLY V. SUIF ESTERHOVEN LL.B. | RUTHA ALLIE P. COOMES

HT


IN RE: IPID INVESTIGATION

STATEMENT OF ANWA DRAMAT

I, the undersigned,

Anwa Dramat

hereby state as follows:

1. I am an adult male Lt. General and Head of the DPCI. I have elected to depose to the following statement. It is not my intention to be overly prolix in this statement insofar as I fully reserve my rights to deal with and comment on any aspect that may emerge at a later stage. I have however decided that it is of the utmost importance that I be transparent in this matter and that I set out my position comprehensively right from the outset.
2. On or about the 12th of September 2013 I was advised that I was being investigated in a matter surrounding a so-called "Zimbabwe rendition", whatever that may mean. I was advised by one Mr Khuba who I believe to be the Limpopo Acting Head of IPID that he was busy investigating the matter and that I was a suspect and that I had one week to obtain the necessary legal assistance.

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3. Pursuant to that and without burdening this statement with the content thereof I addressed correspondence to the Honourable National Commissioner of SAPS requesting legal assistance in the matter. Pursuant to this letter certain events took place and a legal representative from the State Attorney was appointed to represent me. This being one Mr Peter Seleka.
4. I have subsequently however engaged the services of Mr John Riley (my attorney) of Riley Incorporated of 212 Rosmead Avenue, Wynberg, Western Cape. I have also requested my attorney to instruct two counsel of my choice to represent me in this matter.
5. The teleological purpose of my current statement is to provide IPID with certain background information and to, right from the outset, set out where I intend to go with this matter and how I intend to deal with it.

MY PERSONAL BACKGROUND

6. I was born on the 16th of July 1968. Both my parents are alive. I have two brothers and one sister. I grew up in an area known as Bonteheuwel in the Western Cape.
7. From a very early age I became acutely aware of the injustices brought about by apartheid in South Africa. I saw many things that were wrong with the country, among other things, the severe impact of racial discrimination and the gross inequality that "non white" and black people were subjected to. I

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was further severely effected by police brutality, torture and detention without trial.

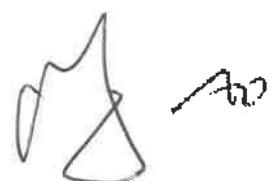
8. I completed my schooling at Spes Bona in Athlone. My intention as a young person was to enrol at the Technikon as I intended to pursue a career in engineering.
9. However I could not stand by passively and watch the injustices unfold in front of me. I became politically concientised at an early age. As a result I had to take certain decisions at a very young age and became accustomed to the idea that whatever decisions I took would ultimately lead to my death or long term incarceration in my quest to achieve a free and democratic South Africa. At an early age I became politically involved and joined the ANC in the armed struggle against the oppression that was pervasive in this country prior to 1994.
10. I was arrested in 1987, shortly after completing school. I was one of youngest detainees at the time and kept in custody awaiting trial under the Old "Terrorism Act". I was brought before the High Court in the Western Cape and was charged and convicted of, *inter alia*, sabotage. As a result of my beliefs and what I stood for I was sentenced to 22 years imprisonment. I was only required to serve twelve years imprisonment.
11. I was thereafter taken to Robben Island where I was imprisoned. I had made the decision to become involved in the ANC and the armed struggle because I

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wanted a better country where we had a Constitution where people would be treated equally and fairly, where everyone had the same opportunities and that the illegal apartheid system that was in place would cease to exist.

12. At a young age, and based on strong Islamic principles of fairness and equality of treatment, I made a decision that I would stand by my principles even at great cost to myself and my family who clearly suffered tremendously as a result of my incarceration.
13. I pause to mention that even those police officers who had previously investigated me, I had forgiven and I totally reconciled myself with the concept of a new South Africa, a new democracy and a better life for everyone. I was released from prison sometime after the release of President Nelson Mandela. After my release from prison I worked as a volunteer for the African National Congress at Bonteheuwel in the period leading up to the democratic elections of 1994. It was at that time that I was integrated into the South African Police services as a trainee constable.
14. My vision for the South African Police at that stage was that I would do everything I could to ensure that our country transformed into an equal and just society where everyone was treated fairly before the law.
15. My exposure in the police has involved working in crime intelligence, working in situations where there was existing and continued tensions between organised crime syndicates and underworld figures. In general I applied

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myself to learn as much as I could in order to be respected as the principled police officer which I believe I still am at present.

16. I have two minor children aged 18 and 11 respectively and I am married. I have throughout my life attempted to instill in them the values that I have always stood for and that I have sacrificed my freedom for, and that I hoped to achieve. I verily believe that my integrity and my commitment to a better South Africa has been displayed through various independent acts by myself and in the manner in which I have performed my extremely difficult task as a police man and in particular the present position that I hold.

AD MY APPROACH

17. At first glance having heard the wild allegations I thought that it would be proper to immediately attend on meeting with IPID and explain my situation. However, it soon became apparent to me that the newspapers knew more about the investigation against me than I did myself. It concerned me that an investigation of this nature would be out in the public domain before I was appraised of all the relevant facts, presented with cogent evidence or offered a proper opportunity to exercise my right of *audi alteram partem*.
18. I was accordingly shocked and dismayed when I was contacted by a journalist and advised by the journalist that the journalist knew about a meeting that had been scheduled between myself and IPID. At that stage I had not yet been appraised of the date, time or place of the meeting but the journalist had already been advised of this fact. It concerned me and it was self-evident that

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the only source where a journalist could have obtained this information must have been IPID itself.

19. A further issue which has caused me grave concern is that I have reliably learnt that the investigators from IPID, more specifically one Mr Khuba has advised a witness that he would not take an affidavit from this witness if this witness did not furnish him with a version that incriminated myself. If this is proved to be correct, the conduct of Mr Khuba, would in my respectful view amount to an attempt to defeat the ends of justice and further show that IPID has set upon a course of investigating this matter in a selective manner with the object of implicating me in the commission of the alleged offences irrespective of whether there are witnesses and or evidence which exculpates me from blame.

20. Good and sound police practice teaches that it is not for an investigator to tailor his investigation or dismiss exculpatory evidence when such evidence is presented. I intend to reserve my right to deal with this specific issue in the appropriate forum.

The least that I expect at this stage is that IPID conducts whatever investigation they are conducting in an objective manner as is required by the law.

AD INTEGRITY OF THE DPCI

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21. It is self-evident that my unit is tasked and seized with investigating various sensitive and high profile matters. I have no intention whatsoever to ventilate these investigations on paper but I can assure IPID and the National Director of Public Prosecutions that in the execution of my duties I have at all relevant times acted without fear or favour and transparently as I believe that I am required to. It is for this very reason that it is in the interests of justice that this matter be dealt with in terms of the trite rules of evidence and with the due deference and respect to the principles and values enshrined in our Constitution.

22. If it transpires that this investigation is merely a "*smear campaign*" to derail any investigations I have conducted or which I am in the process of conducting I will have no hesitation in ensuring that those that are behind it are brought to book and that they face the full might of the law.

23. Similarly I do not expect any special treatment whatsoever. I have no hesitation in averring that I will wish for this entire matter, if it needs to be proceeded with, to be dealt with expeditiously, in a court of law and subject to public scrutiny.

24. As an ordinary citizen and as Head of the DPCI I have a responsibility not only to my unit but also to the rule of law to ensure that nothing is done to compromise any of the investigations that my unit is currently busy with.

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25. I also specifically rely on the NDPP to appoint a senior advocate who has no vested interest in the outcome of the decision that is to be made as to whether sufficient grounds exists for charges to be brought against me or not. I am embarrassed to have to point this out, but I feel it necessary to emphasize this point strongly at this stage so that there can be no confusion later should an adverse decision be made on a case against me where there is no merit. I would certainly want to deal with this issue in the appropriate forum.

26. I therefore respectfully request 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 the decision-making process as to whether there is merit in pursuing a prosecution against me.

AD RIGHT TO AUDI ALTERAM PARTEM

27. I have taken some time to reflect on how I wish to deal with this particular aspect. My *prima facie* view is that I will do everything necessary to cooperate with a *bona fide* investigation if such an investigation exists. I will however under no circumstances legitimize any attempt, by any person(s), to discredit me through a "smear campaign" or by running a campaign through the print or other media, or leaking disinformation about the case to the media.

28. My position is therefore that if IPID is prepared to present me with a list of questions, together with a proper and transparent summary, of the merits and

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demerits against me, I will most certainly apply myself diligently and provide a comprehensive response to the matters that require my comment.

29. However, if the position is that I am to be cross-examined by ambush, my approach is that the matter be expedited as soon as possible. I can make myself available at any time should the intention be to arrest me, and I will respectfully request that if such an arrest is contemplated that the investigation be finalised and that the matter be enrolled in a court of law as a matter of urgency so that I can confront my accusers and subject myself to judicial scrutiny. In any event it is my respectful view that there is no reason why I should be arrested as there is no reason why I cannot be brought before court by way of a summons.
30. I would not want a situation where there is an expedited arrest and thereafter the State indicates that they need several months, if not years, to investigate the matter. Such a move will only serve to taint and or derail any current investigations, frustrate the rights of various complainants who have legitimate complaints that are being investigated by my unit and serve to sideline me from the work I have to complete.
31. I can respectfully point out that I am ready to go to trial today on any issue and accusation that will be levelled against me subject to me being provided with all the witness statements and evidentiary material whether of an incriminatory and / or exculpatory nature.

1/11
[Signature]
AD

AD RULES OF ENGAGEMENT

32. I wish to emphasize that I would expect IPID to respect the rule of law, the policies of transparency and to operate within the framework of the law. If it emerges that my communications have been interfered with, that my legal privilege has been breached in any way, or that witnesses have been threatened or tampered with, or disinformation leaked, I reserve all my rights and remedies against those responsible for such action.
33. Similarly I undertake, from my side, to respect the process and co-operate to the fullest extent.

CONCLUDING REMARKS

34. It is self-evident that there is no likelihood that I will not stand my trial. It is further self-evident that there is no likelihood that I will interfere with witnesses or tamper with evidence or undermine the proper functioning of the criminal justice system.
35. From the very limited and vague allegations that have been made, more specifically from the information that I have gleaned from the newspapers, I have no hesitation that I will be acquitted in any court of law, if prosecuted.
36. I wish, however, to emphasize that if the matter goes to court and the evidence emerges that this has been a stratagem to undermine legitimate investigations and to run "smear campaigns" against persons in my position

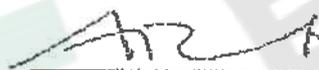
AD

AD

who have immense responsibilities towards the citizens of this country, it will be a turning point for our democracy. I will most certainly not rest until those who have attempted to malign me and run smear campaigns against me, are brought before the proper forums and dealt with appropriately in terms of the laws of the Republic.

37. I make this statement freely and voluntarily and respectfully request that it be treated confidentially and that, as a matter of urgency, IPID and/or the NDPP liaise with my instructing attorney.

DATED AT CAPE TOWN THIS 23RD DAY OF OCTOBER 2013.



ANWA DRAMAT



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ANNEXURE “HIK 44”



HIK 44

Page 1 of 2



Fw: OUR CLIENT LT. GENERAL A DRAMAT / DIEPSLOOT CAS 390/07/2012

Innocent Khuba

to:

Matthews Sesoko

04/22/2014 03:09 PM

Hide Details

From: Innocent Khuba/Limpopo/IPID

To: Matthews Sesoko/NorthWest/IPID@IPID

----- Forwarded by Innocent Khuba/Limpopo/IPID on 2014/04/22 03:08 PM -----

"Anthony Mosing (A)" <amosing@npa.gov.za>
 From: "IKhuba@ipid.gov.za" <IKhuba@ipid.gov.za>
 To: 2013/11/13 03:12 PM
 Date: RE: OUR CLIENT LT. GENERAL A DRAMAT / DIEPSLOOT CAS 390/07/2012
 Subject:

Noted. Has the questions been forwarded to him I assume. I thought that in his previous correspondence he indicated that he will not be making use of the State attorney's office any more. I will await your response thereto.

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

TEL: +27 128456366
 MOBILE: +27 847388076

From: IKhuba@ipid.gov.za [<mailto:IKhuba@ipid.gov.za>]

Sent: 13 November 2013 03:02 PM

To: MSesoko@ipid.gov.za; KMbeki@ipid.gov.za

Subject: Fw: OUR CLIENT LT. GENERAL A DRAMAT / DIEPSLOOT CAS 390/07/2012

----- Forwarded by Innocent Khuba/Limpopo/IPID on 2013/11/13 03:00 PM -----

From:	"Washiela Davids" <washielea@ifrlaw.co.za>
To:	<IKhuba@ipid.gov.za>
Date:	2013/11/12 04:00 PM
Subject:	RE: OUR CLIENT LT. GENERAL A DRAMAT / DIEPSLOOT CAS 390/07/2012

Dear Sir

Please find attached correspondence for your urgent attention.

Regards,

Washiela Davids
Secretary to John Riley



Reg No: 2009 / 012614 / 21

Tel : (021) 797 7110
Fax : (086) 616 5720
Addr : 212 Rosemead Avenue, Wynberg, 7800

Web : www.jflaw.co.za

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A handwritten signature in black ink, consisting of a stylized, cursive 'M' or similar character.

ANNEXURE “HIK 45”



HIK45 Page 1 of 1



Fw: OUR CLIENT LT. GENERAL A DRAMAT / DIEPSLOOT CAS 390/07/2012

Innocent Khuba

to:

Matthews Sesoko, Koekie Mbeki

11/13/2013 03:01 PM

Hide Details

From: Innocent Khuba/Limpopo/IPID

To: Matthews Sesoko/NorthWest/IPID@IPID, Koekie Mbeki/HeadOffice/IPID@IPID

1 Attachment



doc10978120131112161100.pdf

----- Forwarded by Innocent Khuba/Limpopo/IPID on 2013/11/13 03:00 PM -----

"Washiela Davids" <washIELA@jfrlaw.co.za>

From:

<IKhuba@ipid.gov.za>

To:

2013/11/12 04:00 PM

Date:

RE: OUR CLIENT LT. GENERAL A DRAMAT / DIEPSLOOT CAS 390/07/2012

Subject:

Dear Sir

Please find attached correspondence for your urgent attention.

Regards,

Washiela Davids
Secretary to John Riley

Reg No: 2009 / 012614 / 21

Tel : (021) 797 7116

Fax : (086) 616 5729

Addr : 212 Rosmead Avenue, Wynberg, 7800

Web : www.jfrlaw.co.za

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OUR REF: JFR/MAT11144/wd
YOUR REF:

12 November 2013

INNOCENT KHUBA
IPID
LIMPOPO

PER E-MAIL: IKhuba@ipid.gov.za

Dear Sir

**RE: OUR CLIENT LT. GENERAL A DRAMAT
DIEPSLOOT CAS 390/07/2012**

We refer to the above matter and our previous correspondence and advise that our client had made an application for legal representations in terms of SAPS Standing Order 109.

It has been brought to our attention via one of our counsel Adv J Nortje that SAPS have indicated that our client is not entitled to legal representation at this stage of the proceedings and that he should accordingly pay his own legal costs.

You will appreciate that we are quite taken aback and surprised by this approach as it is in conflict with the decision by SAPS to engage the State Attorney to represent our client. You will recall that Mr Seleké of the State Attorney previously represented our client.

Mr Seleké has since been transferred.

You will further appreciate that the nature and the gravity of the allegations are extremely serious and accordingly it is our view that it is particularly important that our client be entitled to legal representations at the State's expense at this stage.

We have accordingly been instructed to review the decision by SAPS to refuse our client the right to legal representation at the State's expense.

DIRECTORS: JOHN PAUL RILEY B.A. LL.B. LL.M. LL.D. & ADVOC. | STEVEN BARKER B.A. LL.B.

ASSOCIATES: DEBRA ANN DANIELS LL.B. LL.M. | CAROL DORREN BA. HON. LL.B. | KAY DELPORT BA. LL.B. | FARZANA KHODIER LL.B.

CANDIDATE ATTORNEYS: KELLY GUE ESTERHUISZKA LL.B. | IRISA ALLIE ROODHUIS

Handwritten initials and a signature mark.

-Page 2-

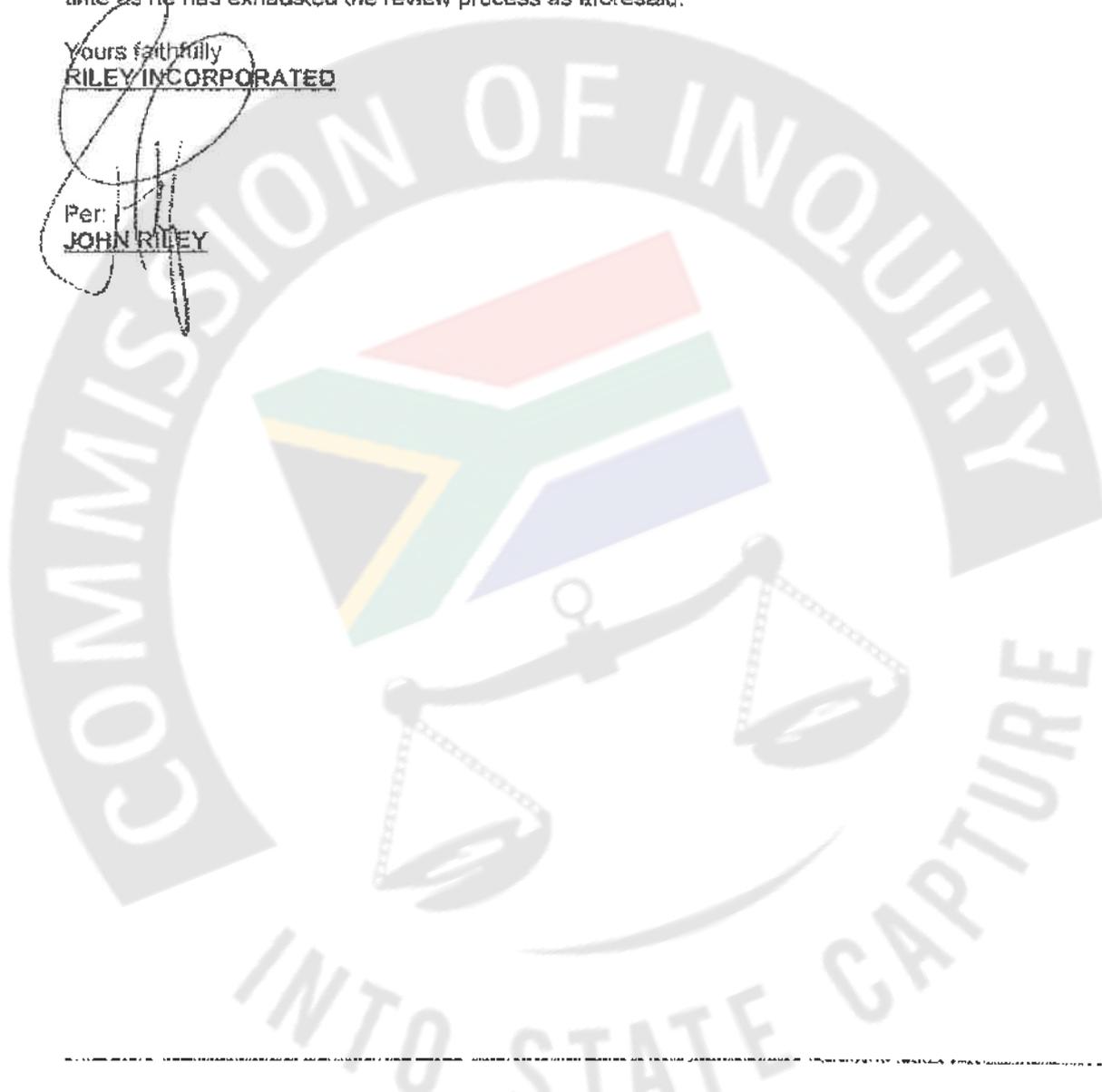
In the premises we require a reasonable period of time to bring the review application against SAPS decision to refuse our client the right to legal representation at the State's expense at this stage.

In the premises we must request that you allow our client the right to exhaust all remedies available to him in law.

Kindly confirm that you will allow our client an extension to respond to your questions until such time as he has exhausted the review process as aforesaid.

Yours faithfully
RILEY INCORPORATED

Per:
JOHN RILEY



DIRECTORS: JOHN FRED RILEY (CHAIRMAN) assisted by STEVEN BARKER (PROG)

ASSOCIATES: REGILY-ANN DANIELS (LEGAL) | CAROL JOHNSON BA HON (LIT) | KAY DELPORT BA CLS | FARZANA KACHIBELLE

CANDIDATE ATTORNEYS: KELLY-SAN ESTERHUIZEN (LIT) | RUMIA ALJIE HON (LIT)

Handwritten signatures and initials.

G.P.S. 002-0035

SAPS 3M
SAPD

SOUTH AFRICAN POLICE SERVICE



SUID-AFRIKAANSE POLISIEDIENS

DOCKET • DOSSIER

Station Stasie: PRETORIA-CENTRAL		CR No. MR No.	CAS No. MAS No. 2454/05/2015	Control Register No. Beheerregister No.	Case Register No. Sakeregister No. 14/464/2016
Indicate with X: Merk met X:	Case docket Saakdossier	Inquest GDO	Court number Hofnommer	Court Case Number Hofsaaknommer: A6/2016	
Investigator Ondersoeker: CAPT. M. HLATSHWAYO	Tel. No. 082 379 8587	Investigator Ondersoeker:	Tel. No.	Investigator Ondersoeker:	Tel. No.
Investigator Ondersoeker:	Tel. No.	Investigator Ondersoeker:	Tel. No.	Investigator Ondersoeker:	Tel. No.
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Investigator Ondersoeker:	Tel. No.	Investigator Ondersoeker:	Tel. No.	Investigator Ondersoeker:	Tel. No.
Date and time of offence/incident van tyd van misdryf/vooval: 2014/04/01 and 23/59 on 2014/11/30			or Period: Between 00/01 on 00/01		
Method used/Entrance gained/Circumstances of death Metode gebruik/Toegang verkry/Omstandighede van dood:			Date deceased Datum oorlede:		
Type of instrument used Tipe instrument gebruik:			Place Plek:		
Complainant (initials and surname) Klaer (voorletters en van):			Tel. No. (H):		
Complainant (initials and surname) Klaer (voorletters en van):			Tel. No. (W):		
Nature and description of offence Aard en beskrywing van misdryf		Nature of property/injuries Aard van eiendom/beserings		Value/Damage Waarde/Skade	Value recovered Waarde teruggevind
1. PERJURY BETWEEN ALT DEFEATING ENDS OF JUSTICE					
2. 2014-04-01-2014-11-30;					
3. GEOGRAPHIC BUILDING: C/O PAUL KRUGER AND MADIBA STR					
4. 114 MADIBA STR CITY FORUM BUILDING, PRETORIA					
Further offences - See A /Vir verdere misdrywe - sien A					
FINDING/RESULT OF TRIAL • BEVINDING/UITSLAG VAN VERHOOR					
Date of conviction/Finding Datum skuldig bevind/Bevinding:		COURT DATES HOFDATUMS		REASONS FOR DELAY REDES VIR UITSTEL	
OFFENCES CONVICTED OF AND SENTENCE or FINDING OF MAGISTRATE OORTREDINGS WAARAAN SKULDIG BEVIND EN VONNIS of LANDDROS SE BEVINDING CASE WITHDRAWN		16/03/2016		1st APPEARANCE	
SEE NOTE OF 2/11/2016		15/04/2016		DISCLOSURE	
		27/7/2016		DISCLOSURE	
		1-7/11/2016		TRIAL	
01/11/2016 Date/Datum		<i>[Signature]</i> Prosecutor/Aanklaer			
EXHIBITS • BEWYSSTUKKE					
Station/Place Stasie/Plek:		SAPS 13 No. SAPD 13 No.		SAPS 43 No. SAPD 43 No.	
DISPOSAL OF DOCKET and/or Exhibits BESKIKKING OOR DOSSIER en/of Bewysstukke		B/F Dates L/V Datums	Initials Paraaf	B/F Dates L/V Datums	Initials Paraaf
Remarks Opmerkinge					
Date/Datum		Officer/Station Commissioner/Commander Offisier/Stasiekommissaris/Bevelvoerder			



R1

**MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA**

Private Bag X9080, Cape Town 8000 Tel: 021 – 467 7010/21 Fax: 021 – 467 7033 Private Bag X463 PRETORIA, 0001, Tel: (012) 393 2800, Fax: (012) 393 2819/20

**ENQUIRIES: CATHY HENDRICKS (Chief of Staff) ph: 0825780391/0123932816
hendricksc@saps.gov.za**

The Acting Head of DPCI
General Ntlemeza
Republic of South Africa

08 May 2015

Dear General Ntlemeza

WERKSMANS IPID INVESTIGATION INTO THE ZIMBABWEAN RENDITIONS

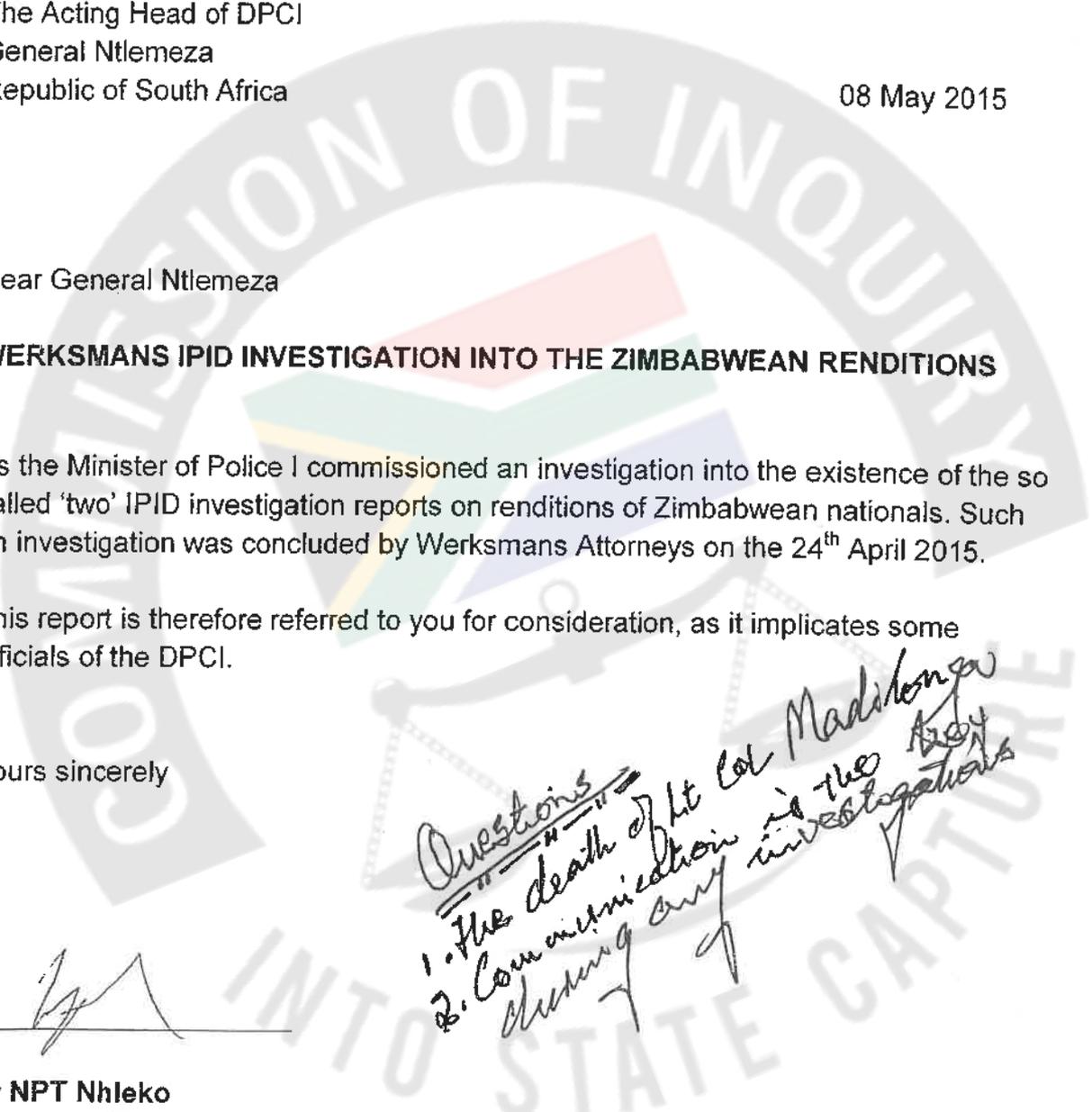
As the Minister of Police I commissioned an investigation into the existence of the so called 'two' IPID investigation reports on renditions of Zimbabwean nationals. Such an investigation was concluded by Werksmans Attorneys on the 24th April 2015.

This report is therefore referred to you for consideration, as it implicates some officials of the DPCI.

Yours sincerely

**Mr NPT Nhleko
Minister of Police**

Questions
1. The death of Lt Col Maditshengu
2. Communication in the Army
checking any investigations



A1

SWORN STATEMENT

Cariot Kayaletu Gwayi states under oath in English

1.

I am a Lieutenant Colonel in the South African Police Service, stationed at the Directorate for Priority Crime Investigation with offices situated at no. 1 Cresswell Street, House no. 1, Promat building in Silverton, Pretoria.

2.

My contact details are as follows:

Residential address: no. 7 Brunfelsia Road, Nahoon Valley in East London, 5241. Business address: no. 1 Cresswell Street, house no. 1, Promat building in Silverton Pretoria. Work telephone no. 012 846 4001, work fax no. 086 274 4527. Mobile no. 082 301 1625 and email: gwayick@saps.gov.za.

3.

I have been duly mandated to dispose to this affidavit by the Acting National Head DPCI, General Berning Ntlemeza in my capacity as the Office Manager in the Office of the National Head DPCI. My duties entail among other functions, dealing with the correspondence that needs the attention of the National Head or has been dealt with by the National Head DPCI.

4.

During the performance of my duties, I have on the 8th May 2015 received correspondence from the Ministry of Police as signed by the Honourable Minister of Police, Mr. NPT Nhleko to the effect of submission of the report compiled by the WERKSMANS IPID INVESTIGATION COMMISSION into Zimbabwean renditions.

5.

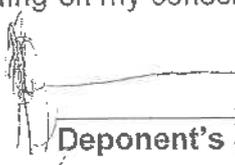
The report therefore elucidates some inconsistency relating to two reports associated to a single IPID investigation on the issue of Zimbabwean nationals that were subjected to rendition, thus giving rise to an investigation of **perjury**, **corruption** and **defeating the ends of justice** by either the IPID deponents that were interviewed, compilers of first and second IPID reports.

5.16.9.

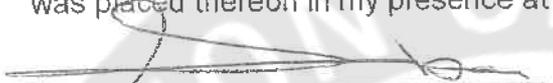
AY

6.

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


Lt Col CK Gwayi
Deponent's Signature

I certify that the abovementioned statement was taken by me and that the deponent acknowledged that he knows and understand the contents of this statement. This statement was sworn to before me and the deponent's signature was placed thereon in my presence at **Silverton** on the **18-06-2015** at **10:00**.


Signature of Commissioner of Oath

NYAMEKO XABA
218 Visagie Street
PRETORIA
SAPS BRIGADIER



SWORN STATEMENT

A1

CARIOT KAYALETHU GWAYI STATES UNDER OATH IN ENGLISH:

1.

I am a Lieutenant Colonel in the South African Police Service, stationed at the Directorate for Priority Crime Investigation with offices situated at No 1 Cresswell Street, House No 1 Promat Building in Silverton, Pretoria.

2.

My contact details are as follows:

Residential Address: No 7 Brunfelsia Road, Nahoon Valley in East London, 5241

Business Address: No 1 Cresswell Street, House No 1 Promat Building in Silverton, Pretoria

Work Telephone: 012 846 4001

Work Fax Number: 086 274 4527

Mobile number: 082 301 1625 (cell)

Email: gwayick@saps.gov.za

3.

I have been duly mandated to depose to this affidavit by the Acting National Head: DPCI, General Berning Ntlemeza in my capacity as the Office Manager in the Office of the National Head: DPCI. My duties entail among other functions, dealing with the correspondence that needs the attention of the National Head or has been dealt with, by the National Head: DPCI.

CKC

SWORN STATEMENT

A.1

CARIOT KAYALETHU GWAYI STATES UNDER OATH IN ENGLISH:

4.

During the performance of my duties, I have on the 8th of May 2015, received correspondence from the Ministry of Police as signed by the Honourable Minister of Police, Mr NPT Nhleko to the effect of submission of the submission of report compiled by the WERKSMANS IPID INVESTIGATION COMMISSION into Zimbabwean renditions.

5.

The report therefore elucidates some inconsistencies relating to two reports associated to a single IPID investigation on the issue of Zimbabwean nationals that were subjected to rendition, thus giving rise to an investigation of **perjury**, **corruption** and **defeating the ends** of justice by either the IPID deponents that were interviewed, compilers of first and second IPID reports

106.

I know and understand the contents of this declaration.

I have no objection to taking the prescribed oath.

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



DEPONENT'S SIGNATURE



Privaatsak/Private Bag X 1500

Verwysing Reference	23/1/1,
Navrae Enquiries	Maj General Ntlemeza
Telefoon Telephone	012 846 4200
Faksnommer Fax number	012 846 4418

OFFICE OF THE NATIONAL HEAD
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
PRETORIA

18 MARCH 2015

The National Director of Public Prosecutions **ATT: ADV S. MZINYATHI**
National Prosecuting Authority
VGM Building
SILVERTON

**REVIVAL OF WORKING RELATIONS AND COOPERATION IN DELAING WITH
SERIOUS ORGANISED AND CORRUPTION: NATIONAL PROSECUTING
AUTHORITY AND DIRECTORATE FOR PRIORITY CRIME INVESTIGATION (DPCI)**

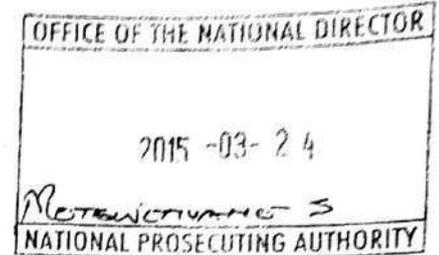
1. With reference to this subject matter, please be advised that in terms of the SAPS Amendment Act 10 of 2012, the National Head of the Directorate has a responsibility on all matters of National Priority like Seious Organized Crime and Serious Corruption of which the issue of illegal renditions falls within that ambid.
2. It is worth to mention that the Acting Head of the Directorate is uninndated with calls from concerned citizens of this country and the medla about the long aoutstanding issue of the illegal rendition of the Zimbabwean nationals which occurred during year 2010.
3. Although this matter was primarily handled and referred to your good office, by a sister counterpart in the JCPS Cluster, i.e. IPID it is with respect and great interest of this office to enquire as to when can this matter be decided upon so as to forge a way towards its finanlization.
4. Looking forward to receiving a speedy response so that the public interest can be curtailed to the accounting process.


MAJOR GENERAL
ACTING NATIONAL HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
BM NTLEMEZA

DATE: 2015/03/18



Privaatsak/Private Bag X 1500, SILVERTON



Verwysing Reference	
Navrae Enquiries	Maj General Ntlemeza
Telefoon Telephone	012 846 4200
Faksnommer Fax number	012 846 4418

OFFICE OF THE NATIONAL HEAD
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
PRETORIA

24 MARCH 2015

The National Director of Public Prosecutions
National Prosecuting Authority
PRETORIA

Dear National Director of Public Prosecutor

Re: **RIVIVAL OF WORKING RELATIONS AND CO-OPERATION IN DEALING WITH SERIOUS ORGANISED CRIME AND CORRUPTION**

- I refer to my letter dated 18 March 2015 addressed to the DPP for the North Gauteng, Adv S Mzinyathi, and his reply dated 19 March 2015.
- Kindly be advised that Hawks are now dealing with this matter. The reason is that senior IPID officials that dealt with this matter are the subject of investigations for allegedly acting in a manner that unduly favors the suspects.
- In the circumstances it would not be in the interest of justice that they continue to be part of this case, hence the Hawks' involvement though the matter was initially dealt with by IPID.
- We understand that the DPP has made his recommendations in this matter which he forwarded to you with the docket on 13 March 2015, as he states in his correspondence referred to above. We understand the recommendations to be a decision on whether or not to prosecute.
- We kindly request that you furnish us with our case docket, as well as the copy of the correspondence addressed to you by the DPP setting out his decision, for our consideration and possible implementation.

RIVALRY OF WORKING RELATIONS AND CO-OPERATION IN DEALING WITH SERIOUS ORGANISED CRIME AND CORRUPTION

6. While we respect the processes of the NPA, it is unclear to us to why was the docket handed to the NDPP in this matter as prosecutorial decisions are made by the Directors of Public Prosecutions, nor why did the DPP decided not to inform us about his decision when it is clear that he has made it.
7. We would appreciate if we may get the docket and the DPP decision at your earliest convenience but not later than the close of business on Wednesday, 25 March 2015.

Kind regards


ACTING NATIONAL HEAD, DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
B M NTLEMEZA

Major General

DATE: 2015 03 24





MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA

Private Bag X463 PRETORIA 0001. Tel: (012) 303 2800, Fax: (012) 393 2619/20 - Private Bag X9080 CAPE TOWN 8000, Tel: (021) 467 7021, Fax: (021) 467 7033

The Honourable TM Masutha MP
Minister of Justice and Correctional Services
510 5th Floor 120 Plein street Building
Parliament
Cape Town



Dear Colleague

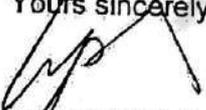
INVESTIGATION INTO THE ZIMBABWEAN RENDITIONS

I have commissioned an independent investigation by Werkmans Attorneys into the illegal rendition of Zimbabwean nationals by members of the DPCI and the existence of the two conflicting reports from IPID.

I believe there are officials within the NPA who can shed light on the existence of these reports.

Minister Masutha, I request your authority to permit said officials to cooperate, of their own will with the investigation by Werkmans Attorneys.

Yours sincerely


Mr NPT Nhleko

Minister of Police

17/03/2015



MINISTER
JUSTICE AND CORRECTIONAL SERVICES
REPUBLIC OF SOUTH AFRICA

Private Bag X 276, Pretoria, 0001, Tel: (012) 406 4669; Fax: (012) 406 4680
Private Bag X 256, Cape Town, 8000, Tel: (021) 467 1700, Fax: (021) 467 1730

Ref: 3/36/1/24 (COS)
Enq: X1700
Email: Ministry@justice.gov.za

Mr Nkosinathi Nhleko, MP
Minister of Police
Private Bag X94
PRETORIA
0001

Dear Colleague,

RE: INVESTIGATION INTO THE ZIMBABWEAN RENDITIONS

The above matter refers.

This serves as acknowledgement of the correspondence dated 17 March 2015 wherein the Honourable Minister requested my authority to permit officials within the NPA to cooperate with the investigation into the Zimbabwean renditions and shed more light on the existence of the two conflicting reports from IPID.

I have since communicated the matter with the National Director of Public Prosecutions and directed that the officials to be identified by the investigating team be permitted to cooperate with the investigation.

Yours sincerely

T M Masutha MP, (Adv)
Minister of Justice and Correctional Services

Date: 20/03/2015



**MINISTER
JUSTICE AND CORRECTIONAL SERVICES
REPUBLIC OF SOUTH AFRICA**

Private Bag X 276, Pretoria, 0001, Tel: (012) 406 4669; Fax: (012) 406 4680
Private Bag X 256, Cape Town, 8000, Tel: (021) 467 1700, Fax: (021) 467 1730

Ref: 3/19/1 (COS)
Enq: X1700
Email: Ministry@justice.gov.za

Adv M Nxasana
National Prosecuting Authority
Private Bag X752
PRETORIA
0001

Dear Adv Nxasana

**RE: REQUEST FROM MINISTER OF POLICE ON INVESTIGATION INTO THE
ZIMBABWEAN RENDITIONS**

The above matter refers.

I have received a request from the Minister of Police for my authority to permit officials within the NPA to cooperate with the investigation into the Zimbabwean renditions, as the Honourable Minister believes that there are officials who can shed more light on the matter and the existence of the two conflicting reports from IPID.

I hereby direct that the said officials to be identified by the investigating team, be permitted to cooperate with the aforementioned investigation by the Minister of Police.

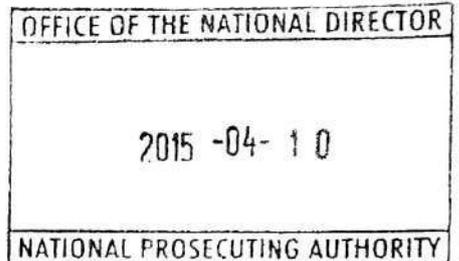
Yours sincerely


T M Masutha, MP (Adv)
Minister of Justice and Correctional Services

Date: 26/02/2015



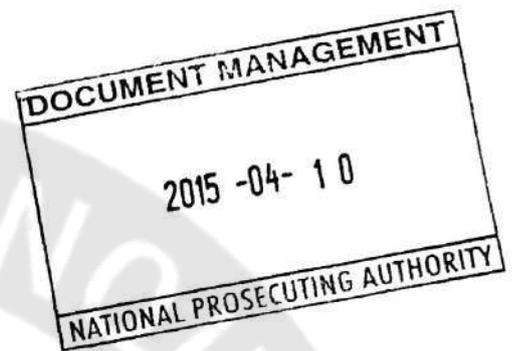
MINISTER
JUSTICE AND CORRECTIONAL SERVICES
REPUBLIC OF SOUTH AFRICA



Private Bag X 276, Pretoria, 0001, Tel: (012) 406 4669; Fax: (012) 406 4680
Private Bag X 256, Cape Town, 8000, Tel: (021) 467 1700, Fax: (021) 467 1730

Ref: 3/19/1 (COS)
Enq: X1700
Email: Ministry@justice.gov.za

Adv M Nxasana
National Prosecuting Authority
Private Bag X752
PRETORIA
0001



Dear Adv Nxasana

RE: REQUEST FROM MINISTER OF POLICE ON INVESTIGATION INTO THE ZIMBABWEAN RENDITIONS

The above matter refers.

I have received a request from the Minister of Police for my authority to permit officials within the NPA to cooperate with the investigation into the Zimbabwean renditions, as the Honourable Minister believes that there are officials who can shed more light on the matter and the existence of the two conflicting reports from IPID.

I hereby direct that the said officials to be identified by the investigating team, be permitted to cooperate with the aforementioned investigation by the Minister of Police.

Yours sincerely

T M Masutha, MP (Adv)
Minister of Justice and Correctional Services

Date: 26/03/2015

RENDITION REPORT BY THE REFERENCE GROUP



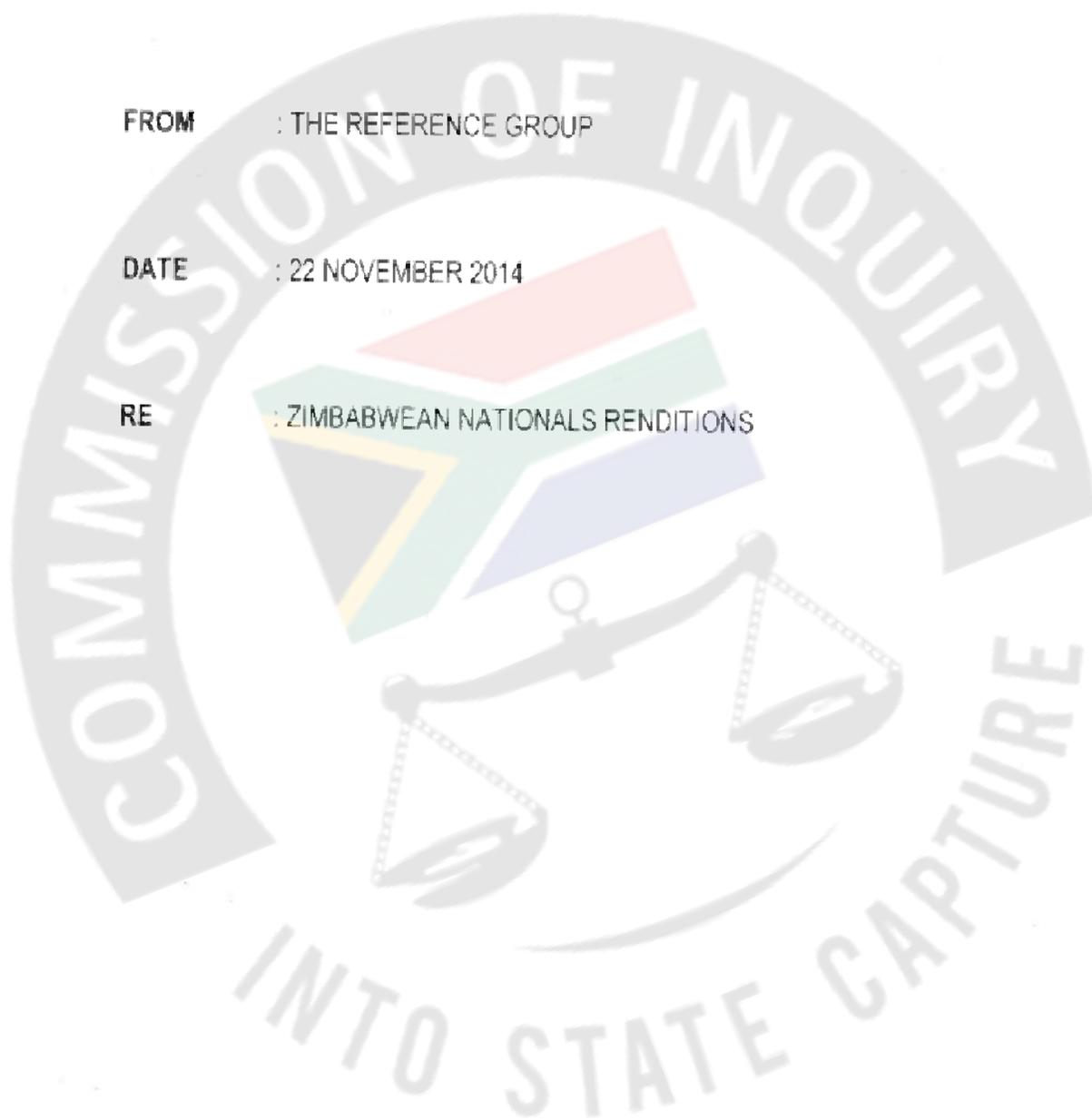
CONFIDENTIAL REPORT

TO : THE MINISTER OF POLICE

FROM : THE REFERENCE GROUP

DATE : 22 NOVEMBER 2014

RE : ZIMBABWEAN NATIONALS RENDITIONS



Purpose

1. The purpose of the report is to advise the Ministry on good governance procedures and inter-governmental protocols, national legislation and the legality of the deportation of Zimbabwean nationals by the Directorate for Priority Crime Investigation.

The Directorate for Priority Crime Investigation (DPCI)

2. The DPCI was established in terms of section 17A/r/wCof the South African Police Service Act 68 of 1995 (SAPS Act). The Directorate is responsible for preventing, combating and investigating national priority offences, in particular serious organised crime, serious commercial crime and serious corruption matters.
3. The Directorate is headed by a National Head who is appointed by the Minister of Police in terms of section 17C (2) of the SAPS Act. The National Head shall manage and direct the Directorate. The Directorate has provincial offices headed by provincial heads.
4. The arrests and deportations of the Zimbabwean nationals were effected in a joint operation by members of the DPCI from Head Office and the Gauteng Provincial Office.
5. In this regard, Lt General Dramat is the National Head of the Directorate and, Maj General Sibiya is the Gauteng provincial Head of the Directorate.

Renditions

6. In November 2010, Supt Ncube of Zimbabwe Police, with his entourage, entered South Africa to meet with Lt General Dramat. The purpose of the meeting was to get assistance in tracing Zimbabwean nationals who had killed a police colonel in Zimbabwe, Bulawayo district. The Border police allowed Supt Ncube with his team to enter South Africa, on confirmation by Lt General Dramat.
7. On 5 November 2010, a meeting was held between the Zimbabwean police and Lt General Dramat – see page 16 par 5.2 of the IPID progress report. Success report dated 04/02/2014. 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 ref: 3/12/2010 and Zimbabwe (Bulawayo CR 348/09/2010, witness Dumisani Nkosi; E Ndeya Zimbabwe National and others."

"The report was signed by Col Leonie Verster. Par A1 of the Report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at the DPCI offices about the nationals who shot and killed one of their senior officers. Paragraph 3 states that Capt Maluleke was tasked to trace and arrest the said murderers. The report also mentions the arrest of Gordon Dube and further appreciates the assistance from TRT members and members of Crime Intelligence."
8. Another success report dated 11/11/2013. The report is addressed to Deputy National Commissioner DPCI, enquiries: Capt Maluleke, signatory PJ Selundu, "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 Vundla eNdeya and Shepard Chuma.

9. On 5 November 2010, an operation by Capt Maluleke, Zimbabwean police and members of DPCI Gauteng, was conducted in Diepsloot, Gauteng where the following Zimbabwean nationals were arrested and tortured.
 1. Shepard Chuma
 2. Maqhawe Sibanda
 3. Nelson Ndlovu
 4. Witness Ndeya
10. They were taken to Soweto, in search of John Nyoni, and later detained at Orlando police station as illegal immigrants instead of suspects in a murder investigation.
11. On 8 November 2010, these four suspects were booked out of the cells by Capt Maluleke whereafter, Maqhawe Sibanda and Nelson Ndlovu were released, however, Shepard Chuma and Witness Ndeya were taken to Beit Bridge by Capt Maluleke and his companions where they were handed to Zimbabwean police across the border.
12. Shepard Chuma and Witness Ndeya were further tortured by Zimbabwean police and starved for eleven (11) days. Shepard Chuma was released after eleven days, however, Witness Ndeya was killed by Zimbabwean police.
13. On 23 November 2010, Prichard Chuma was arrested in Diepsloot. He was wanted for the murder of the Zimbabwean Colonel as well. Prichard Chuma was detained in Alexandra for murder. He was booked out from Alexandra Police Station and taken to Beit Bridge and handed over to Community Service Centre. That was the last time Prichard Chuma was heard of.
14. In January 2011, John Nyoni was arrested by members of Crime Intelligence, liaising with Capt Maluleke. John Nyoni was taken to Silverton Police Station. On the way he

complained that he was in Zimbabwe two weeks ago to bury some people he committed the crime with and also knew that they were after him. Johnson was later taken to DPCI offices for a photo shoot with police and thereafter booked in Moot Police Station. Johnson Nyoni was handed over to Capt Maluleke who handed him over to Zimbabwean police at Beit Bridge. He was killed in the hands of Zimbabwean police in Zimbabwe.

15. Members of Crime Intelligence, DPCI and Zimbabwean police took a joint photo shoot with the suspect Johnson Nyoni.
16. In January 2012, Gordon Dube was arrested in possession of the fire arm suspected to be belonging to the murdered Zimbabwean Colonel. Gordon Dube was handed over to Capt Maluleke who, in turn handed him over to Zimbabwean police whilst he had a pending case in South Africa.
17. It is not known what happened to him in Zimbabwe and he has not been heard of since the handing over (investigation).

Witnesses to the arrests

18. The progress report from IPID compiled by Mr Khuba and the report to the Minister from Crime Intelligence state that Major General Sibiya participated in the arrests that took place on 05/11/2010.
19. Shepherd Chuma states that Major General Sibiya was present on 05/11/2010 when they were arrested. Chuma says Sibiya is the one who gave instructions for them to be detained at Orlando police station. Maqhawe Sibanda corroborates Chuma in that Major General Sibiya was present when the arrest was effected.

20. The following police officials state that Major General Sibiya was present in the operations conducted on 05/11/2010 and 23/11/2010. Petros Jawuke, Desmond Campbell and Alfred Ndobe state that Major General Sibiya took part in the assault of the suspects.

Interviews

21. On 22/11/2014, Lt Col Maluleke was interviewed by a member of the Reference Group. He was confronted with the following questions:

21.1 Why did the DPCI not follow extradition procedures when deporting the Zimbabwean nationals wanted for the murder of the Zimbabwean police officer? He denied that he had any knowledge about the murder of a police officer in Zimbabwe. He alleged that he arrested the suspects for robberies committed in South Africa, and decided to deport them when they could not be linked with the crimes.

21.1.1 This explanation cannot be true, given that the success reports stating clearly, that the suspects were wanted for the murder committed in Zimbabwe.

21.1.2 Furthermore, the briefing to the members involved in the operation was that the suspects were wanted for the murder of a police officer and that the alleged offence was committed in Zimbabwe.

21.1.3 IPID investigator retrieved emails from his computer where he was finding out from the Zimbabwean police as to how they travelled home and stating that he is still tracing the remaining suspects.

21.2 He was asked whether or not his boss, Lt General Dramat knew about the operation. Lt Col Maluleke stated that, he was the one in charge of the operation and Lt General Dramat did not know anything.

21.2.1 This cannot be true because when Zimbabwean authorities entered South Africa they were coming to Lt General Dramat and he allowed them into the country. Furthermore, on 05/11/2010, Lt General Dramat had a meeting with the Zimbabwean authorities and thereafter the operation began. The success report from Col Voster states that Capt Maluleke was tasked to assist in tracing the Zimbabwean fugitives following the said meeting.

21.3 Lt Col Maluleke was asked about the involvement of Major General Sibiya in the operation. His response was that, the police officials implicating General Sibiya are lying. They are falsely implicating him deliberately because, Major General Sibiya arrested their boss, Lt General Mdluli. However, civilian witnesses are also implicating General Sibiya. Furthermore, he was in constant contact with the members during the operations. He sent a number of SMSs to Lt General Dramat during the operation. The contents of the SMSs is currently unknown. The investigation did not traverse the contents of the SMSs.

22. On 10/11/2014, Mr Khuba, the officer in charge of the investigation, was interviewed. During the interview, it became clear that he was supportive of the conspiracy theory against Lt General Dramat and despite the abundant evidence explaining his involvement. He has also accepted that police officials implicating General Sibiya are deliberately misdirecting the investigation process.

Home Affairs Officials

23. The investigating officer obtained statements from Home Affairs officials in Soweto and Beit Bridge. They all state that the deportations were illegal and unprocedural. Lt General Dramat misled Parliament when a question was asked about the renditions. In a formal response to parliamentary question he said the deportation was done by Home Affairs, well knowing that the said response was false.

Zimbabwean national rendition to South Africa: Bongani Moyo

24. Bongani Moyo, a Zimbabwean national, escaped from custody in South Africa and went back to Zimbabwe. Capt Maluleke conducted an operation with Zimbabwe police in Zimbabwe. Bongani Moyo was arrested and renditioned to South Africa where he stood trial and consequently sentenced.

Analysis of the IPID Report and Crime Intelligence Report

25.1 The following Zimbabwean nationals were illegally deported to Zimbabwe, where they were tortured and some were killed by the Zimbabwean police Homicide Unit:

- i. Shepard Chuma
- ii. Maqhawe Sibanda
- iii. Nelson Ndlovu
- iv. Witness Ndeya
- v. Prichard Chuma
- vi. Johnson Nyoni
- vii. Gudi Dube

25.2 The individuals in roman figures (i) to (iii) survived the ordeal and are witnesses in this matter.

25.3 Witness Ndeya and Johnson Nyoni were killed by the Zimbabwean police, and members of the DPCI are accomplices in this inhuman act against human life.

25.4 Prichard Chuma and Gudi Dube were handed to Zimbabwe police and disappeared in their hands. All seven of them were wanted in Zimbabwe for the murder of a police officer.

26. There is enough evidence to show before any tribunal that, Lt General Dramat participated in the rendition activities in the following form:

26.1 He allowed Zimbabwean police into the country;

26.2 On 05/11/2011, he had a meeting with the Zimbabwean police;

26.3 He committed government resources into the operation;

26.4 He congratulated officers for arresting Johnson Nyoni and advised them to keep it secret;

26.5 He continuously received updates and success reports on the operations.

26.6 He had a reason to mislead Parliament, because the operations were illegal, under his instructions.

27. The allegation that Major General Sibiya was involved cannot be dismissed simply on the alleged conspiracy theory.

27.1 The Zimbabwean nationals who survived say that he was involved in the operation.

27.2 Police officers who were in the operation from DPCI state that he was commanding the operation.

27.3 There is communication between himself, Capt Maluleke during the operations and furthermore, he was sending SMSs in the process to Lt General Dramat. The contents of the SMSs need to be investigated.

27.4 Whether or not the civilian witnesses and police officials are falsely implicating Major General Sibiya need to be tested in a formal tribunal/enquiry, where the presiding officer will make credibility findings on all parties involved.

27.5 The cellular phones used by Lt General Dramat, Cpt Maluleke, Maj General Sibiya, W/O Makoa during the operation need to be located and be sent to SAPS TSU for downloading.

28. Home Affairs officials deny any involvement in the deportation processes, and alleged that the deportation papers that were used in this instance, were no longer used by Home Affairs. This assertion makes the deportations illegal and demonstrates ill-treatment of foreign nationals by a South African law enforcement agency, the DPCI.

29. It is common cause that the DPCI and Zimbabwean Police Homicide Unit decided to exchange fugitives between themselves without following legal protocols and procedures. The investigations by IPID and CI focussed on criminal liability and not on the administrative responsibility of DPCI Generals in the Republic of South Africa, whereas international instruments were contravened.

Statement of Law

30. Rendition is an illegal act of kidnapping and transfer of criminal suspects or prisoners from one country to another, without following international and national legal protocols and procedures between the countries involved.

31. Transferring criminal suspects and prisoners between two independent states is governed by mutual legal assistance in criminal matters and extradition treaties between two independent states.

32. In this matter, the two countries involved are the Republic of South Africa and the Republic of Zimbabwe, who are both members of the Sothern African Development

Community at African sub- Regional level. Furthermore the two countries are members of the African Union at continental level.

33. The Republic of South Africa and the Republic of Zimbabwe have no extradition treaty. Their legal co-operation in criminal matters is complemented by the SADC Protocols on extradition adopted on 3/10/2002 and mutual legal assistance in criminal matters adopted on 3/10/2002. These protocols are applicable in conjunction with National legislations, on extradition, Act No 67 of 1962 and International Co-operation in Criminal Matters Act 75 of 1996.

34. The SADC Protocols on extradition provide that the desired factor is to offer SADC co-operation in the prevention and suppression of cross-border crimes amongst the SADC states.

34.1. Article 2 of the Protocol mandates South Africa and Zimbabwe to extradite to each other any person, subject to article 4, in accordance with the provisions of this protocol and their domestic laws.

34.2. Article 4 of the protocol provides for mandatory procedures for refusal to extradite; if the subject of the extradition would be subjected by the requesting state to torture or cruel, inhuman or degrading treatment or punishment.

34.3. Article 5 of the protocol provides that the requesting state should provide assurance that the death penalty shall not be imposed; if imposed, will not be carried out.

35. SADC Protocol on mutual legal assistance on criminal matters; article 2 provides that mutual legal assistance be given by the requested state in respect of investigations; prosecutions or proceedings in the requesting state in a criminal matter which includes locating or identifying persons.

36. Zimbabwe, being a member of SADC, falls under the designated states in terms of section 2(1)(b) of the South African Extradition Act 67 of 1962.

36.1. In terms of section 4 of the Extradition Act, all extradition requests must be made to the Minister of Justice by a person recognised by the Minister as a diplomatic or consular representative of that state or by any Minister of that State through diplomatic channels; existing between the Republic of South Africa and the State.

36.2. A magistrate shall in terms of section 5 issue a warrant upon receipt of a notification from the Minister of Justice that a request to surrender such a person has been made. And thereafter hold an enquiry in terms of section 9, in order to determine as to whether or not the arrested person must be deported. Once a magistrate decides in terms of section 10 that the subject of enquiry should be committed for surrender s/he shall forthwith forward to the Ministry a copy of the record of the proceedings together with a report as s/he may deem fit. A decision to surrender/commit a person by a magistrate is appealable, in terms of section 13 of the Act.

36.3. The Minister of Justice is empowered in terms of section 11 of the Act to decide, whether or not to surrender the arrested person (fugitive), who is the subject of the extradition to the requesting state. The Minister may refuse to surrender a person if s/he has pending proceedings in the Republic or there are reasonable grounds to believe that, an unjust, unreasonable or too severe a punishment will be imposed to the person concerned or if the person concerned will be prosecuted or punished or prejudiced at his or her trial in the foreign State.

36.4.1. In deciding whether or not a fugitive is to be surrendered, the Minister shall take into account, whether the person will be subjected to cruel, inhuman or degrading punishment in the hands of the requesting state. The underlying values of the constitution are that, the Republic of South Africa has an obligation to protect the right of life of everyone and shall not be party to the imposition of cruel, inhumane or degrading punishment. (Mohamed V President of the RSA; Society for the Abolition of the Death Penalty in SA intervening 2001 (2) SACR 66 CC).

36.4.2. South African authorities have a constitutional obligation to seek assurance from any requesting state which might impose cruel, inhumane and degrading punishment, that such will not be imposed. (*Minister of Home Affairs and others vs Tshoba and others* 2012 (5) SA 467.CC.

36.4.3. Therefore if the Zimbabwean authorities had followed extradition protocols and procedures, the Minister of Justice, would have been assured, that, none of the fugitives will be subjected to torture, cruel, inhumane or any degrading punishment. The Minister was not afforded this opportunity because of the disguised extradition and consequently the people who tortured, shattered and killed.

37. Gudi Dube was deported to Zimbabwe; whilst there were pending cases against him in Weinberg Police Station and appearing in court. Therefore the Minister of Justice would have refused to surrender him, if the extradition procedures were followed.

38. The Deported Zimbabwean nationals would have the opportunity to test the available evidence against them, before the Magistrate if an enquiry was held in terms of section 9 of the Extradition Act, and appeal the decision to extradite them, if necessary but, this opportunity was not afforded to them, instead they were illegally deported.

39. South Africa has ratified the UN Convention Against Torture and Cruel, Inhuman and degrading treatment or punishment dated 10/12/1984.

39.1. Article 3 of the Convention provides that no state party shall expel, return or extradite a person to another state, where there are substantial grounds for believing that he would be in danger of being subjected to torture. In so determining the competent country shall take into account the existence in the state concerned; of a constant culture of gross flagrant or mass violation of human rights. To this end the Minister of Justice would have taken into account, the allegations of torture against Zimbabwean police, which were before the South African police and National Prosecuting Authority of South

Africa. These allegations matured to court litigation proceedings by Southern African Human Rights Litigation ...; Zimbabwe Exiles forum and others vs National Commissioner of the South African Police Service.

40. The Republic of South Africa enacted the Prevention and Combating of Torture of Persons Act 13 of 2013. The acts of torture against Zimbabwean nationals were committed in 2010/2011 and this act has no retrospective effect, nonetheless South Africa is bound by the UN Convention Against Torture, other cruel, Inhuman or Degrading Treatment or Punishment.

Unlawful deportation

41. Department of Home Affairs officials allege that between the period of 20/09/2010 to 31/12/2010, there was a ministerial moratorium on deportation of illegal Zimbabweans in the country. The moratorium was called, Dispensation for Zimbabwean project (DZP). There is no Zimbabwean who was supposed to be deported during this period. Therefore the deportations were unlawful and in contravention of the Ministerial directive.

Disguised extradition

42.1. There is overwhelming evidence that the Zimbabwean nationals deported by DPCI were wanted for the murder of a Police Colonel in Zimbabwe. Instead of following the extradition protocols, the DPCI and Zimbabwean Police, disguised their extradition, in the form of a deportation. Disguised extradition clearly aims to circumvent the more lengthy procedures and safeguards of extradition proceedings.

42.2. For deportation to qualify as unlawful disguised extradition there must be a link between the deportation and pending criminal investigations in the in the fugitive's country of origin. (Pyle extradition; Politics; human rights; (2001) 146)

(Jeebhaid and others V Minister of Home Affairs and others 2009 (51 SA 54 SCA).

43. The unlawful deportations and disguised extraditions constitute a crime against humanity in terms of the Implementation of the Rome Statute of the International Crimes Courts Act 27 of 2002; because they amount to "enforce disappearances".

44. The DPCI, under the management of Lt General Dramat and, Major General Sibiya, failed to observe the SADC protocol on extradition and mutual legal assistance. The Directorate further failed as a law enforcement agency to comply with the extradition Act 67 of 1962.

45.1. The DPCI, under the management of Lt General Dramat and, Major General Sibiya unlawfully deported the Zimbabwean nationals; and executed disguised extradition of Zimbabwean nationals who were wanted for criminal activities in Zimbabwe.

45.2. Lt General Dramat misled the Minister of Police and Parliament in a formal response to a parliamentary question; where he said the deportations were done by home affairs, well knowing that the said response was false.

46. The DPCI kidnapped the Zimbabwean nationals, and defeated the ends of justice in that, the arrested persons were not brought before a court of law for the adjudication of their extradition.

47. The Directorate forged the Home Affairs deportation documents, which in itself, was an act of defeating the course of justice and crime of forgery.

48. In terms of section 17DA of the South African Service Act, the Minister may provisionally suspend the National Head of the DPCI from his or her office pending an enquiry into his or her fitness to hold office or for misconduct.

49. The participation of the National Head on the renditions, requires an enquiry into both his fitness to hold office and acts of misconduct.

50. It must be noted that Capt Maluleke, who is at the centre of the renditions, has subsequently been promoted to the rank of Lt Colonel within the DPCI, whilst the rendition investigations are still in progress, which symbolises an act of impunity from the National Head.

51. The National Head can also be removed from office through a vote of at least two-thirds majority in the National Assembly (section 17DA 14 of the SAPS Act).

52. In law, the two Generals are responsible for the acts of the DPCI officers even if they did not participate in the rendition process but were aware that, such activities were taking place. Their responsibility comes from the international doctrine of command responsibility. "As long as a supervisor has effective control over subordinates, to the extent that he can prevent them from committing crimes, or punish them after they committed the crimes, he would be held responsible for the commission of the crimes if he failed to exercise such abilities of control." *Prosecutor v Zenjil De Lalic, Ldravko Musil, Hazim Delic, Esad Landzo (appeals Chamber) IT. 56-21A (ICH) at 198.*

Recommendations

53 It is recommended that the Minister of Police, should consider provisionally suspending Lt General Dramat as the National Head of the Directorate for Priority Crime Investigation, pending investigations on few outstanding aspects and the composition/constituting of an enquiry into his fitness to hold office on the following basis; That, Lt General Dramat and DPCI officers, acting under his management, supervision, and/or control and/or guidance and/or instructions;

53.1 Undermined the legislative authority of the Minister of Justice and the South African judiciary to make a determination and adjudication on the extradition of the Zimbabwean nationals who were suspected of murder and robbery committed in Zimbabwe by unlawfully deporting the Zimbabweans.

53.2 The DPCI failed to comply with South African Mutual Legal Assistance Act and Extradition Act 67 of 1962 read with SADC protocols on mutual legal assistance on criminal matters and extradition.

53.3 Bringing the international image of Republic of South Africa into disrepute by contravening the SADC protocols on extradition, mutual and legal assistance and the United Nations Convention on torture by being co-perpetrators and accomplice on torture and murder of Zimbabwean nationals, committed by DPCI officers and Zimbabwean police.

53.4 Committing criminal law offences, including:

- i. Kidnapping;
- ii. Defeating the ends of justice;
- iii. Forgery/fraud,

As a co-conspirator and accomplice in the commission of the said common law offences.

53.5 Misleading the Minister of Police and Parliament by stating that the Department of Home Affairs deported the Zimbabwean nationals, well knowing that it was the DPCI under his management which renditioned the Zimbabwean nationals for their alleged criminal offences.

53.6. Bringing the international image of the Republic of South Africa into disrepute by executing unlawful deportations, disguised extradition and enforced human disappearances.

54. The Minister of Police should consider issuing the directive in terms of section 207 (2) of the Constitution, to the DPCI Head/ National Commissioner, that Major General Sibiya and Lt Colonel Maluleke, be suspended pending internal investigations on their involvement in the renditions, contraventions of SADC protocols and national legislation on extraditions, mutual legal assistance and common law offences of kidnapping, defeating the ends of justice and, fraud/ forgery.

55. The source documents are as follows:

- i. IPID progress report.
- ii. CI report to Minister.
- iii. Response to parliamentary questions.
- iv. SADC protocols on extraditions and mutual legal assistance Acts.
- v. National legislation on extradition and mutual legal assistance on criminal matters.
- vi. UN Convention on torture.

APPOINTMENTS





MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA

Private Bag X463 PRETORIA 0001, Telephone (012) 393 2800, Fax (012) 393 2819/20, Private Bag X9080 CAPE TOWN 8000, Tel (021) 467 7021, Fax (021) 467 7033

Our Ref: Ms R Fourie

Adv M Kruger
66 Clair Avenue
Manor Gardens
DURBAN

Dear Adv Kruger

**EXTENSION OF APPOINTMENT AS REFERENCE GROUP MEMBER AND
CONVENOR**

Your initial appointment to the Reference Group was for a period of three months with effect from 1 October 2014 with the possibility of a further extension based on the progress made.

Given the complexity of the matters being dealt with by the Reference Group, it has been deemed necessary to extend its life-span by an additional three months. As per the initial terms of agreement, you will still be required to periodically submit reports on specific matters within your scope of consideration. Furthermore, while a comprehensive final report will have to be tabled no later than 31 March 2015, you are hereby requested to submit a preliminary comprehensive report before 31 December 2014.

Your continued availability to execute the important tasks that are entrusted to the Reference Group is appreciated.

Kind regards,

Mr N P T NHLEKO
MINISTER OF POLICE

Date: 19/12/14



**MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA**

Private Bag 2463 PRETORIA 0001, Telephone (012) 393 2800, Fax (012) 393 2818/26, Private Bag 29080 CAPE TOWN 8000, Tel (021) 467 7021, Fax (021) 467 7033

Our Ref: Me R Fourie

Adv. Khulekani Raymond Mathenjwa
Stand No 713
Struben Ridge Estate
CONSTANTIA KLOOF
1709

Dear Adv Mathenjwa

EXTENSION OF APPOINTMENT AS MEMBER OF THE REFERENCE GROUP

Your initial appointment to the Reference Group was for a period of three months with effect from 1 October 2014, with the possibility of a further extension based on the progress made.

Given the complexity of the matters being dealt with by the Reference Group, it has been deemed necessary to extend its life-span by an additional three months. As per the initial terms of agreement, you will still be required to periodically submit reports on specific matters within your scope of consideration. Furthermore, while a comprehensive final report by the Reference Group will have to be tabled no later than 31 March 2015, you are hereby requested to contribute to ensuring that a preliminary comprehensive report is submitted before 31 December 2014.

Your continued availability to execute the important tasks that are entrusted to the Reference Group is appreciated.

Kind regards,



Mr N P T NHLEKO
MINISTER OF POLICE
Date: 19/12/14



MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA

Private Bag X463 PRETORIA 0001, Telephone (012) 393 2800, Fax (012) 393 2819/20, Private Bag X3060 CAPE TOWN 8000, Tel (021) 467 7021, Fax (021) 467 7033

Our Ref: Ms R Fourie

Mr Sibusiso Radebe
No. 07 Colombia Drive, Waterfall
PO Box 2047, Linkhills
3652

Dear Mr Radebe

EXTENSION OF APPOINTMENT AS MEMBER OF THE REFERENCE GROUP

Your initial appointment to the Reference Group was for a period of three months with effect from 1 October 2014, with the possibility of a further extension based on the progress made.

Given the complexity of the matters being dealt with by the Reference Group, it has been deemed necessary to extend its life-span by an additional three months. As per the initial terms of agreement, you will still be required to periodically submit reports on specific matters within your scope of consideration. Furthermore, while a comprehensive final report by the Reference Group will have to be tabled no later than 31 March 2015, you are hereby requested to contribute to ensuring that a preliminary comprehensive report is submitted before 31 December 2014.

Your continued availability to execute the important tasks that are entrusted to the Reference Group is appreciated.

Kind regards,


Mr N P Z NHLEKO
MINISTER OF POLICE

Date: 19/12/14



MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA

Private Bag 7463 PRETORIA 0001, Telephone (012) 393 2800, Fax (012) 393 2818/20, Private Bag 79080 CAPE TOWN 8000, Tel (021) 467 7021, Fax (021) 467 7033

Our Ref: Ms R Fourie

Adv. Mahlodi Muofhe
19 Rooiels Street
Sharonlea
Northriding
21581

Dear Adv Muofhe

EXTENSION OF APPOINTMENT AS MEMBER OF THE REFERENCE GROUP

Your initial appointment to the Reference Group was for a period of three months with effect from 1 October 2014, with the possibility of a further extension based on the progress made.

Given the complexity of the matters being dealt with by the Reference Group, it has been deemed necessary to extend its life-span by an additional three months. As per the initial terms of agreement, you will still be required to periodically submit reports on specific matters within your scope of consideration. Furthermore, while a comprehensive final report by the Reference Group will have to be tabled no later than 31 March 2015, you are hereby requested to contribute to ensuring that a preliminary comprehensive report is submitted before 31 December 2014.

Your continued availability to execute the important tasks that are entrusted to the Reference Group is appreciated.

Kind regards,


Mr N P T NHLEKO
MINISTER OF POLICE

Date: 19/12/14



**MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA**

Private Bag X483 PRETORIA 0001, Telephone (012) 363 2800, Fax (012) 363 2818/20, Private Bag X5060 CAPE TOWN 8000, Tel (021) 467 7021, Fax (021) 467 7033

Our Ref: Ms R Fourie

Mr Zwile Zulu
37 Beech Road
Glen-Anil
4051

Dear Mr Zulu

EXTENSION OF APPOINTMENT AS MEMBER OF THE REFERENCE GROUP

Your initial appointment to the Reference Group was for a period of three months with effect from 1 October 2014, with the possibility of a further extension based on the progress made.

Given the complexity of the matters being dealt with by the Reference Group, it has been deemed necessary to extend its life-span by an additional three months. As per the initial terms of agreement, you will still be required to periodically submit reports on specific matters within your scope of consideration. Furthermore, while a comprehensive final report by the Reference Group will have to be tabled no later than 31 March 2015, you are hereby requested to contribute to ensuring that a preliminary comprehensive report is submitted before 31 December 2014.

Your continued availability to execute the important tasks that are entrusted to the Reference Group is appreciated.

Kind regards,


Mr N P T NHLEKO
MINISTER OF POLICE

Date: 19/12/14



**MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA**

Private Bag 4453 PRETORIA 0001, Telephone (012) 393 2800, Fax (012) 393 2819/20, Private Bag 79090 CAPE TOWN 8000, Tel (021) 467 7021, Fax (021) 467 7033

Our Ref: Ms R Fourie

Mr Thulani Mkhwanazi
544 Moleko Road
Lamontville
Durban

Dear Mr Mkhwanazi

EXTENSION OF APPOINTMENT AS ASSISTANT DIRECTOR: SPECIAL PROJECTS

The three (3) month contract as Assistant Director: Special Projects in the Office of the Secretary of Police, which commenced on 1 October 2014, is hereby being extended by a further three (3) months.

Given the complexity of the matters being dealt with by the Reference Group, it has been deemed necessary to extend its life-span by an additional three months.

Your continued availability to provide administrative support towards the effective conclusion of the important tasks that are entrusted to the Reference Group is appreciated.

Kind regards,



Mr N P T NHLEKO
MINISTER OF POLICE

Date: 19/12/14



MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA

Private Bag X463 PRETORIA 0001, Telephone (012) 393 2600, Fax (012) 393 2618/20, Private Bag X9080 CAPE TOWN 8000, Tel (021) 467 7021, Fax (021) 467 7033

Advocate TM Masutha, MP
Minister of Justice and Correctional Services
Private Bag X276
PRETORIA, 0001

Dear Minister Masutha

REQUEST FOR EXTENSION OF AVAILABILITY OF ADV MATHENJWA

I wish to express my sincere appreciation for the support displayed by your good self by permitting Adv Mathenjwa to serve on a Reference Group in the Ministry of Police.

Due to the complexity of the matters being dealt with by the Reference Group it had been deemed necessary to extend its life-span by an additional three months. An extension of the period of his availability until 31 March 2015 is therefore requested.

I trust that my request will receive your favourable consideration.

Kind regards,


Mr N P T NHLEKO
MINISTER OF POLICE

Date: 19/12/14



**MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA**

Private Bag X463 PRETORIA 0001, Telephone (012) 393 2800, Fax (012) 393 2819/20, Private Bag X9080 CAPE TOWN 8000, Tel (021) 467 7021, Fax (021) 467 7033

Ms B F Scott, MPL
MEC for Finance – KwaZulu Natal
Treasury House
145 Chief Albert Luthuli Street
Pietermaritzburg
3201

Dear MEC Scott

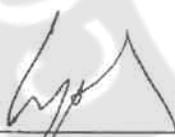
REQUEST FOR EXTENSION OF AVAILABILITY OF ADV M KRUGER

I wish to express my sincere appreciation for the support displayed by your good self by permitting Adv Kruger to serve on and convene a Reference Group in the Ministry of Police.

Due to the complexity of matters being dealt with by the Reference Group it had been deemed necessary to extend its life-span by an additional three months. An extension of the period of her availability until 31 March 2015 is therefore requested.

I trust that my request will receive your favourable consideration.

Kind regards,


Mr N P T NHLEKO
MINISTER OF POLICE

Date: 19/12/14



**MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA**

Private Bag X463 PRETORIA 0001, Telephone (012) 383 2800, Fax (012) 383 2818/20, Private Bag X9080 CAPE TOWN 8000, Tel (021) 467 7021 Fax (021) 467 7033

Mr S Mchunu
The Premier
Moses Mabhida Building
300 Langalibalele Street
Pietermaritzburg
KwaZulu-Natal

Dear Premier

**REQUEST FOR EXTENSIONS OF SECONDMENT PERIODS OF MR SR RADEBE
AND MS KP NTULI**

I wish to express my sincere appreciation for the support displayed by your good self and your office through the Director-General by seconding Mr SR Radebe to serve on a Reference Group in the Ministry of Police, and Ms KP Ntuli to provide crucial administrative and research assistance.

Due to the complexity of the matters being dealt with by the Reference Group it had been deemed necessary to extend its life-span by an additional three months. An extension of the period of secondment until 31 March 2015 is therefore requested.

I trust that my request will receive your favourable consideration.

Kind regards,



MR N P T NHLEKO
MINISTER OF POLICE

Date: 19/12/14



**MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA**

Private Bag 2463 PRETORIA 0001, Telephone (012) 393 2900, Fax (012) 393 2819/20, Private Bag 29080 CAPE TOWN 8000, Tel (021) 467 7021, Fax (021) 467 7033

Your Ref:

Our Ref: Ms R Fourie

Adv. Margaret Kruger

DURBAN

Dear Adv Kruger

APPOINTMENT AS CHAIRPERSON AND CONVENOR OF THE MINISTERIAL TASK TEAM

It gives me pleasure to inform you that I have appointed you as the Chairperson and Convener of the Ministerial Task Team for a period of six months with effect from the 1 October 2014. The Task Team has the following Terms of Reference –

- Interrogating and reviewing legal and disciplinary prescripts that impact on the issues indicated above;
- Interrogating and reviewing good corporate governance issues;
- Advising the Minister on appropriate measures to resolve and finalise the issues in order to create stability within SAPS;
- Providing advice on legal and constitutional matters as well as other advice arising out any recommendations from any legal body or institution that require the attention of the Minister;
- Providing both written and oral legal opinion(s) and written report(s) to the Minister after conducting necessary research; and

- Any other matter that may be referred to the Task Team that may have an impact on the Minister's powers and duties or policy that will promote the objectives of the Department of Police.

In addition to the above, the Task Team will, in relation to operational matters –

- Gather all necessary background information and material in relation to each of the identified matters;
- Invite inputs on the specific issues from police management, affected individuals and any other affected parties within the South African Police Service;
- Interview relevant person/s who may provide any information in connection with any matter and /or all processes that are relevant in each circumstance;
- Examine any written material, documents or articles that are relevant to each specific matter;
- Conduct research and analysis of the legal or regulatory environment pertaining to any of these matters;
- Interrogate, analyse applicable pieces of legislation, prescripts, policies and relevant principles of corporate governance and human resource management; and
- Compile and submit a report with recommendations in relation to each matter to the Minister of Police.

The Task Team is given six (6) months to conclude its work and provide me with a written report with recommendations.

May I take this opportunity in congratulating you on your appointment and in wishing you well in executing the important tasks that are entrusted to the Task Team.

Kind regards,

Mr N P T NHLEKO, MP
MINISTER OF POLICE
Date:



**MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA**

Private Bag X463 PRETORIA 0001, Telephone (012) 393 2800, Fax (012) 393 2819/20, Private Bag 29080 CAPE TOWN 8000, Tel (021) 467 7021, Fax (021) 467 7033

Your Ref:

Our Ref: Ms R Fourie

Mr Zwile Zulu

DURBAN

Dear Mr Zulu

APPOINTMENT AS MEMBER OF THE MINISTERIAL TASK TEAM

It gives me pleasure to inform you that I have appointed you as a member of the Ministerial Task Team for a period of six months with effect from the 1 October 2014. The Task Team has the following Terms of Reference –

- Interrogating and reviewing legal and disciplinary prescripts that impact on the issues indicated above;
- Interrogating and reviewing good corporate governance issues;
- Advising the Minister on appropriate measures to resolve and finalise the issues in order to create stability within SAPS;
- Providing advice on legal and constitutional matters as well as other advice arising out any recommendations from any legal body or institution that require the attention of the Minister;
- Providing both written and oral legal opinion(s) and written report(s) to the Minister after conducting necessary research; and

- Any other matter that may be referred to the Task Team that may have an impact on the Minister's powers and duties or policy that will promote the objectives of the Department of Police.

In addition to the above, the Task Team will, in relation to operational matters –

- Gather all necessary background information and material in relation to each of the identified matters;
- Invite inputs on the specific issues from police management, affected individuals and any other affected parties within the South African Police Service;
- Interview relevant person/s who may provide any information in connection with any matter and /or all processes that are relevant in each circumstance;
- Examine any written material, documents or articles that are relevant to each specific matter;
- Conduct research and analysis of the legal or regulatory environment pertaining to any of these matters;
- Interrogate, analyse applicable pieces of legislation, prescripts, policies and relevant principles of corporate governance and human resource management; and
- Compile and submit a report with recommendations in relation to each matter to the Minister of Police.

The Task Team is given six (6) months to conclude its work and provide me with a written report with recommendations.

May I take this opportunity in congratulating you on your appointment and in wishing you well in executing the important tasks that are entrusted to the Task Team.

Kind regards,

Mr N P T NHLEKO, MP
MINISTER OF POLICE
Date:



2 Protea Road, Corner Riley, Bedfordview, 2008 Tel: (011) 450 2284/1641 Fax : (011) 450 1566
PO BOX 61238, Marshalltown, 2107 Email Address: info@mabundainc.co.za DOCEX 424 JHB

08 November 2018

Mr. Nkosinathi Philwayinkosi Nhleko
12 A Coucal Cover Road
Birdswood
Richards Bay
Kwa-Zulu Natal

Dear Mr. Nleko,

RE: JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE:IN RE MINISTER PRAVIN GORDHAN/MR NKOSINATHI NLEKO

1. We refer to the above matter.
2. We confirm that we are the Attorneys of record for the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State.
3. We email herewith a notice in terms of rule 3.3 of the Commission rules, a statement and annexures for your attention.
4. We further attach the Commission rules and terms of reference for your ease of reference.
5. We look forward to your co-operation with the Commission.

Yours Faithfully.

Director: *Pritzman Busani Mabunda*: B Proc (UDW), LLB (Wits), LLM (Labour Law) UNIN), MPhil (Medical Law and Ethics) (UP), Dip. Advanced Banking (RAU), Dip in Criminal Justice and Forensic Auditing (RAU), Certificate in Sports Law (UCT), Certificate in Admin & Const Law (UCT).

Assisted by: *Dewald Leonard Viljoen*: B Proc (RAU), LLM (International Law) (UJ), *S'fiso Molongoana*: LLB (UNIZULU), LLM (Labour Law) (UNISA), *David Matome Mogale*: B Proc (VISTA), *Hlangiwe Pamela Goba*: LLB (UP).



ATTORNEYS AT LAW

2 Protea Road, Corner Riley, Bedfordview, 2008 Tel: (011) 450 2284/1641 Fax : (011) 450 1566
PO BOX 61238, Marshalltown, 2107 Email Address: Info@mabundainc.co.za DOCEX 424 JHB

Mabunda Incorporated

A handwritten signature in black ink, appearing to read 'Mabunda', written over a horizontal line.

MR PB MABUNDA

PER EMAIL: cultureschool@indoni.co.za



Director: **Pritzman Busani Mabunda**: B Proc (UDW), LLB (Wits), LLM (Labour Law) UNIN, MPhil (Medical Law and Ethics) (UP),
Dip. Advanced Banking (RAU), Dip in Criminal Justice and Forensic Auditing (RAU),
Certificate in Sports Law (UCT), Certificate in Admin & Const Law (UCT).

Assisted by: **Dewald Leonard Viljoen**: B Proc (RAU), LLM (International Law) (UJ); **S'iso Molongoana**: LLB (UNIZULU),
LLM (Labour Law) (UNISA), **David Matome Mogale**: B Proc (VISTA), **Hlangiwe Pamela Goba**: LLB (UP).



2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel: (010) 214-0651
Email:
inquiries@sastatecapture.org.za
Website:
www.sastatecapture.org.za

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

NOTICE IN TERMS OF RULE 3.3

TO : Mr. Nkosinathi Philwayinkosi Nhleko
AT : 12 A Coucal Cover Road
Birdswood
Richards Bay
Kwa-Zulu Natal

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

1 On the 19th of November 2018 at 10h00, the Commission's Legal Team intends to present the evidence of Mr Pravin Jamnadas Gordhan ("Mr Gordhan") at its hearing held at 4th floor, Hill on Empire, 16 Empire Road, Parktown, Johannesburg. The evidence in question implicates you or may implicate you in unlawful, illegal or improper conduct in the respects set out below.

2 We draw your attention to paragraph 111, wherein your name is mentioned.

3 At this stage, the Commission has taken a view that the aforesaid paragraph does not implicate you.

4 It may be that when the witness testifies, he may in elaborating his statement, implicate you.

5 To that extent, you are at liberty to approach the Chairperson, in terms of Rule 3.8 to 3.10 of the Rules of the Commission, for the Chairperson to make directions in order for you to be granted leave to cross-examine or to lead your own evidence and/or to lead evidence of the witness(es) of your choice in order to deal with any part in the witness's statement which may implicate you.

6 If you wish to:

- 6.1 give evidence yourself;
- 6.2 call any witness to give evidence on your behalf; or
- 6.3 cross-examine the witness

then you must apply, within twelve (12) calendar days of this notice, in writing to the Commission for leave to do so.

- 7 An application referred to in paragraph 6 above must be submitted to the Secretary of the Commission. The application must be submitted with a statement from you in which you respond to the witness's statement in so far as it implicates you. The statement must identify what parts of the witness statement are disputed or denied and the grounds on which they are disputed or denied.
- 8 In the event that you believe that you have not been given a reasonable time from the issuance of this notice to the date on which the witness is to give evidence as set out above and you are prejudiced thereby, you may apply to the Commission in writing for such order as will ensure that you are not seriously prejudiced.

DATED at Schamberg on this 7th day of November 2018.



Dr K. De Wee

Secretary

Judicial Commission of Inquiry into Allegations of
State Capture, Corruption and Fraud
in the Public Sector including Organs of State



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 17 Empire Road,
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 2193
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**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
 CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

NOTICE IN TERMS OF RULE 3.3

TO : MINISTER NKOSINATHI NHLEKO
EMAIL : nnhleko@parliament.gov.za

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

- 1 The Commission’s Legal Team intends to present the evidence of Mr Johan Booysen (“**Mr Booysen**”) at its hearing held at 4th Floor, Hill on Empire, 16 Empire Road, Parktown, Johannesburg. The presentation of his evidence is scheduled to commence on Monday, 15 April 2019 or so soon thereafter as his evidence may be heard. The evidence in question implicates, or may implicate you in unlawful, illegal or improper conduct in the respects set out below.
- 2 The allegations in the evidence of Mr Booysen implicates or may implicate you in, *inter alia*, the following respects:
 - 2.1 You improperly and/or unlawfully sought to-
 - 2.1.1 unduly interfere in the investigative independence of the National Prosecuting Authority (“**NPA**”), the Directorate for Priority Crime

Investigation (“**DPCI**”) commonly known as the HAWKS and/or the South African Police Services (“**SAPS**”);

2.1.2 unduly decline and/or delay and/or obstruct recommended prosecutions;

2.1.3 participate in the undue persecution of officials of the NPA, the Independent Police Investigative Directorate (“**IPID**”) and/or the DPCI; and

2.1.4 destabilize the NPA, the DPCI and/or the SAPS.

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

3 The relevant portion of the statement of Mr Booyesen which implicate, or may implicate, you in the above allegations is annexed hereto marked “**A**”. Your attention is drawn to paragraphs 103-104, 150 and 167 of his statement and the annexures referred to therein, if any.

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

5 If you wish to:

5.1 give evidence yourself;

5.2 call any witness to give evidence on your behalf; or

5.3 cross-examine the witness

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

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

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



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



AFFIDAVIT

I the undersigned,

JOHAN WESSEL BOOYSEN

do hereby state under oath that:

1.

I am an adult male South African citizen residing in Pretoria, Gauteng Province.

2.

All facts stated herein are, unless the context indicates otherwise, within my own personal knowledge and are to the best of my belief both true and correct.

3.

I will attempt to keep my submission brief in order to avoid prolixity and to unnecessarily burden the Commission. I will seek to highlight key aspects, events and *dramatis personae*. Should it become necessary I will provide additional facts.

MY POLICE CAREER AND QUALIFICATIONS

4.

I was a career policeman having joined the South African Police in 1976. I was an officer before our democracy in 1995 and was part of the transformation process from a Police Force to a Police Service. I regard my integration into the new Police Service, including my promotion to the ranks of Colonel, Brigadier and Major-General subsequent to the democratic dispensation in South Africa, as one of my

101.

I have registered a criminal case against Maema for perjury and fraud at the Silverton Police Station vide CAS 156-6-2016, in regard to a prosecution memorandum to the then NDPP Abrahams, in which he was dishonest and misrepresented evidence to persuade Abrahams to authorise our prosecution. I have detailed the falsehoods succinctly in my two complainant statements, copies of which are attached as **Annexure "JWB 17."** The investigation is being conducted by Lieutenant Colonel Pharasa ("Pharasa") from the HAWKS. Pharasa has informed me that the docket has been submitted to the Public Prosecutor for decision. I have also reported Maema's conduct to the General Council for the Bar.

102.

I am also aware that Van Loggenberg is the subject of prosecutions by Maema. Maema did this in collaboration with NDPP prosecutors Pretorius and Sibongile Mzinyathi (Mzinyathi). Van Loggenberg filed a formal complaint to the then NDPP, Abrahams because Maema lied under oath pursuant to an application Van Loggenberg had brought pertaining to his prosecution. Van Loggenberg also informed Abrahams how Pretorius and Mzinyathi had lied in the same application.

103.

Maema was also the prosecutor in the aborted so-called 'Rendition' saga when members from the Independent Police Investigative Directorate ("IPID") including the Executive Director, McBride, were prosecuted for obstructing the course of justice. They were prosecuted because they updated a report to the Minister of Police, Nathi Nhleko ("Nhleko"), which evidently did not fit in with Nhleko's plans to get rid of Dramat who was the Head of the HAWKS at the time.

104.

Nhleko suspended McBride and Maema took up the criminal prosecution. The Constitutional Court held that McBride's suspension was unlawful and criminal charges were eventually withdrawn against McBride and his co-accused. By then certain investigations McBride had undertaken had suffered a setback. Maema and Nhleko's actions, in my view, constitute a criminal offence of defeating the ends of justice.

105.

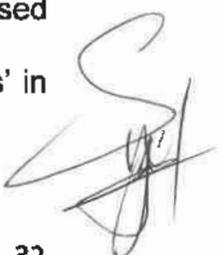
The suspensions of McBride, Dramat and myself were held to be unlawful by the courts, whilst the others did not challenge their suspensions. Consequent to these persecutions, various HAWKS and SARS investigations were compromised.

106.

Maema previously publicly took responsibility in the media for interfering with a political sensitive prosecution in the Brett Kebble ("Kebble") case, as well as the prosecution of former Crime Intelligence Head, Mphego. He replaced Nel and Andrea Johnson in the Kebble case for no apparent reason. Agliotti was not surprisingly acquitted for the murder of Kebble. Mphego was charged for defeating the ends of justice after he allegedly interfered with a witness (Agliotti) in the Selebi case. I understand that the case against him did not proceed after he made representations to the NDPP .

107.

It cannot be said that it is a coincidence that Maema happens to be involved in the prosecution in all three matters. Furthermore, it is my understanding that he is based at the DPP office in Mmabatho, but is designated to conduct these 'prosecutions' in



150.

This investigation had another unsavoury aftermath. In a preliminary report to Nhleko, it became public knowledge, that IPID concluded there was a *prima facie* case against Dramat and Sibiya. After further investigations by McBride, McBride advised Nhleko that the investigations now revealed that they were not implicated in the rendition of Zimbabweans. For reasons, best known to Nhleko, he suspended McBride for 'changing' the report. When I asked Khuba later, why he had forwarded the docket to the NPA before all the investigations were concluded, Khuba told me that Mosing had requested a report on the investigation. (*Mosing, as I indicated earlier in this submission, was instrumental in withdrawing racketeering charges against Mike Mabuyakhulu and Peggy Nkonyeni. He also met with Minister Mthethwa when the plan to arrest me was conceived*). The inference I draw from this is that Ntlemeza, Mdluli or Minister Nhleko wanted Dramat to be dealt with expeditiously so as to pave the way for Ntlemeza's appointment.

151.

The strategy was obvious. To neutralize Dramat, Sibiya and others such as Roelofse and myself and therefore directly impacting the sensitive investigations we were all dealing with, they invented false charges against some of us. Dramat was suspended and replaced with Ntlemeza who is an Mdluli collaborator. Ntlemeza wasted no time to take control over the sensitive investigations by driving out those involved with the investigations or directly interfering with investigative processes.

152.

Ntlemeza destroyed the HAWKS. He immediately took charge of all processes relating to promotions. I challenged him once in a management meeting in

Cape Town. I told her that I will be available to sign and commission the statement, but I have not heard from anyone in this regard.

167.

THE APPOINTMENT OF NTLEMEZA AS HEAD OF THE HAWKS

The following week three other candidates and I had to present ourselves for interviews at Minister Nhleko's office at Parliament in Cape Town. The secretary was Major-General Matakata from the HAWKS. Ntlemeza, who was not present on the day of the interviews, was ultimately appointed as National Head of the HAWKS. I do not know if he was interviewed and if he was, why he was treated differently to the rest of the candidates.

168.

One of the first things Ntlemeza did after his permanent appointment, was to suspend me unlawfully based on a false allegation of fraud concerning a performance incentive. I took the decision by Ntlemeza to suspend me on review. The High Court in Durban declared my suspension unlawful and I was awarded a punitive cost order.

169.

In the judgement of review, Justice Van Zyl found no evidence that I could be implicated in wrongdoing. He commented as follow, "A strong suggestion arises that there is an ongoing move, possibly even a campaign to unseat the applicant." Booyesen.) [Emphasis added by me].

170.

I am aware of instances after Zikhali was appointed that Ntlemeza started ostracising HAWKS members that were perceived to be associated with me. One such member

230.10. *"It will take South Africa's criminal-justice sector years to recover from the disruptive impact of the Zuma era, during which good men were booted from their jobs for doing the right thing. The chilling impact this had on prosecutors and police officers is immeasurable. Those who were willing to bend the rules and apply two sets of rules, one for Zuma and his cronies and another for the rest of us, thrived".* Adriaan Basson & Pieter du Toit. In their book *"Enemy of the People"* page 95.

230.11. I was interviewed by researchers for *"State Capacity Research Project* titled *"Betrayal of the Promise: How South Africa is being stolen"* published in May 2017. I have read the report. The chapter dealing with *"Securing a Loyal Intelligence and Security Apparatus"*, [pages 19 and 20] accurately chronicles some of the events I have described above. Pages 50 to 52 under the heading *"Investigations and prosecutions"* are also relevant. I attach an extract from this report as **Annexure "JWB 29."**

230.12. I have titled a book which I co-wrote with journalist Jessica Pitchford *"Blood on their Hands"* I sincerely believe that those who allowed themselves, for whatever reason, to become part of the captured factions at the NPA and in Law enforcement have done our country a grave disservice. They have blood on their hands.

231.

I know and understand the contents of this declaration.

I have no objection to take the prescribed Oath.

I consider the oath to be binding on my conscience.

JOHAN WESSE LBOY SEN

JWB-071

I certify that the deponent who acknowledges that he knows and understands the contents of this affidavit; that it is the truth to the best of his knowledge and belief and that he has no objection to taking the prescribed oath and regards the same as binding on the deponent's conscience and the administration of the oath complied with the Regulations contained in Government Gazette No. R1258 of 21 July 1972, as amended. This affidavit is signed and sworn to before me at Centurion on this the 2nd Day of April 2019 at 14:32



COMMISSIONER OF OATHS

EX OFFICIO:

FULL NAMES:

JEAN JACQUES MARAIS

PHYSICAL ADDRESS:

CNR JEAN AVENUEOLIFANTHOUTBOEKH CENTURION

DESIGNATION:

Colonel



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

NOTICE IN TERMS OF RULE 3.3

TO : MINISTER NKOSINATHI PHIWAYINKOSI NHLEKO

**AT : 312 SANFORD ROAD
WATERKLOOF
0181**

CELL : 066 086 2678 / 076 010 7601

EMAIL : nnhleko@parliament.gov.za

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

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

- 2.1.1 unduly interfere in the investigative independence of the National Prosecuting Authority (“NPA”), the Independent Police Investigative Directorate (“IPID”) and/or the Directorate for Priority Crime Investigation (“DPCI”) commonly known as the HAWKS;
 - 2.1.2 unduly delay and/or decline recommended prosecutions;
 - 2.1.3 participate in the undue persecution of officials of the NPA, IPID and/or the DPCI; and
 - 2.1.4 destabilize the NPA, IPID and/or the DPCI.
- 2.2 In acting as set out above, you allegedly sought to enable the state capture of the criminal justice system.
- 3 The relevant portions of the statement of Mr McBride which implicate, or may implicate, you in the above allegations are annexed hereto marked “A”. Your attention is drawn to paragraphs 16-30, 34-48, 53, 55, 56, 58, 60, 61, 72-77, 131, 135, 138 and 139 of his statement and the annexures referred to therein, if any.
- 4 Due to the fact that you are implicated or may be implicated by the evidence of Mr McBride, you are entitled to attend the hearing at which that evidence is being presented. You are also entitled to be assisted by a legal representative of your choice when that evidence is presented. The full statement of Mr McBride will be uploaded on the Commission’s website (www.sastatecapture.org.za) as soon as he concludes his evidence. The transcript will be uploaded daily.
- 5 If you wish to:
 - 5.1 give evidence yourself;
 - 5.2 call any witness to give evidence on your behalf; or
 - 5.3 cross-examine the witness

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

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

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



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



AFFIDAVIT
ROBERT JOHN MCBRIDE

I, the undersigned

ROBERT JOHN MCBRIDE

do hereby make oath and state:

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

The Independent Police Investigative Directorate

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

Legislative mandate

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

 MP

of prosecutions that should have proceeded to finality by now.

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

Appointment and Conflict with the Minister of Police

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

A handwritten signature in black ink, consisting of a stylized, cursive name, followed by the initials "MP" written in a simple, blocky font.

20. Additional investigations were undertaken, which included the analysis of the phone records of the two Generals. At the time I received the briefing from the Provincial Head: Limpopo, Mr Innocent Khuba ("Khuba") the reports on the analysis of the phone records and related matters were still outstanding. Once received, these reports established conclusively that the two implicated persons, Generals Dramat and Sibiya could not have been involved in the unlawful deportation of the affected Zimbabwean nationals.
21. In consequence, on 18 March 2014 IPID issued a final report to the NDPP on this matter which effectively exonerated Dramat and Sibiya. The findings and recommendations in this report were based on a thorough review of all available evidence and additional evidence gathered by IPID.
22. The final IPID report that I issued later contradicted the position of the then Minister of Police, Nkosinathi Thamsanqa Phiywayinkosi Nhleko ("Nhleko"), who stated that IPID recommended that Dramat and Sibiya be criminally charged with kidnapping and defeating the ends of justice.
23. This statement by the Minister was wrong, and was obviously based on the provisional and not the final report by IPID on this matter. The provisional report prepared by Mr Khuba did not consider all the evidence in its totality, as there were material reports relevant to investigation that were outstanding. In any event that report was only signed by Mr Khuba. In terms of IPID regulations and standing operational procedure, all final reports must be countersigned by the investigator, supervisor and the approving authority, prior to referring the case file to the NPA.
24. I publically contradicted this statement by the Minister and clarified that Dramat and Sibiya had been exonerated by the IPID investigation. The Minister thereafter accused me of fraudulently altering the IPID report in defence of Dramat and Sibiya and subsequently suspended me on 25 March 2015.
25. What followed is fully traversed in my founding affidavits and replying affidavits



with annexures filed in the High Court, Labour Court and the Constitutional Court to challenge my unlawful suspension. See attached affidavits marked Annexures E to G.

26. The Constitutional Court found the actions of the Minister to be unlawful and unconstitutional and set them aside. See Annexure H.
27. Before I was suspended, I had written to the Chairperson of the Portfolio Committee on Police, Mr Francois Beukman ("Beukman"), asking that I be allowed to clarify and account to the Portfolio Committee on media reports about the "two contradicting reports". Beukman rejected this offer, citing the *sub-judice* rule. This was a concern to me given the fact that the doctrine of separation of powers compels him to hold the Executive and IPID to account. It is noteworthy that some members of the Portfolio Committee on Police held a meeting with the then Minister of Police, Nhleko where my removal from office and that of Dramat were discussed. The next day, Nhleko, made a presentation to the entire portfolio committee to start a process to remove Dramat. See Annexure J.
28. I believe this was another incident where an oversight body failed to carry out its Constitutional duty but was rather swayed by political considerations.
29. I include in my criticism of the manner in which Nhleko suspended me and appointed Kgamanyane, the investigation and recommendation of Werksmans who were appointed to look into and report on the deportation of the Zimbabwean nationals. I refer to this investigation in Annexure G which is the record of proceedings in the Constitutional Court matter that led to my reinstatement as Executive Director at IPID. This report is flawed in material respects. In addition Nhleko's conduct with regards to the commissioning of this report ultimately led to the dismissal of Sesoko and Khuba. I deal with this evidence in detail below.
30. In context, Khuba reported having received multiple calls from Nhleko's Personal Assistant asking him to meet with Nhleko for a face to face meeting. Nhleko himself

Handwritten signature and initials "MP" in black ink.

called Khuba promising him that the Ministry would cover his travelling costs to Cape Town on a weekend so that I would not find out about it. These were the actions of a government minister who was willing to use any means, including subterfuge to capture the criminal justice system. Nhleko would later go to Parliament to perpetuate the same lies.

Charged with Fraud and Defeating the Ends of Justice

31. On 15 March 2016, I together with Sesoko and Khuba were charged with Fraud and Defeating the Ends of Justice arising solely out of the recommendations of the Werksmans report.
32. I knew that these charges were politically motivated and unsustainable. They had been trumped up as an additional layer of threats and intimidation to interfere with the independence of police oversight. Our charging coincided with our presentation of this matter in the High Court in the second half of 2015. The judgement that was delivered in December 2015 was that my unilateral suspension and disciplinary action was unlawful and unconstitutional. This order was confirmed by the Constitutional Court in September 2016. It bears mentioning that on the eve of us going to argue the matter in the Constitutional Court we were charged criminally.
33. In the relation to the same criminal charges on 1 November 2016, the prosecutor Sello Maema ("Maema") told the Pretoria Magistrate's Court, *"After consultations ... it has been apparent to the state that a prosecution would no longer be viable and we withdraw all charges"*. I knew that this was inevitable as there had never been a basis for charges against us. Our prosecution was politically inspired and malicious. Furthermore, it was probably unlawful. Maema was one of a group of prosecutors who were selected to undertake political prosecutions.

Werksman's Report

34. I pause to reflect on the events that preceded the Werksmans report which was

 MP

commissioned by Nhleko in or about January 2015. This report which I maintain was materially flawed was used by Nhleko to legitimise his unlawful actions. I also take issue with the conduct of Sandile July ("July"), who compiled the said report.

35. Nhleko appointed Werksmans to investigate the "two reports" which he falsely alleged he had been given by IPID. IPID only gave Nhleko one report. The report compiled by Khuba had been given to the NPA. That is the only place where Nhleko could have obtained that report from.
36. Several attempts were made by July to interview IPID National Head of Investigations, Mr Sesoko and IPID Lead Investigator, Khuba. Khuba was contacted by July and Khuba indicated his willingness to cooperate but asked that the request be sent via email and be directed to me – he also provided the relevant email addresses. Interestingly, when the email was sent, Khuba's and Sesoko's email addresses were typed correctly but mine was not. The email meant for me was sent to `rmcbride@ipid.co.za` instead of `rmcbride@ipid.gov.za`. Sesoko picked up on what he thought had been an error and alerted Werksmans. The next time they sent the email to `rmcbrde@ipid.gov.za` (leaving out the "i" in mcbride). One is left with no other conclusion than that Werksmans was in cahoots with Nhleko to conduct a sham investigation that would enable Nhleko to get rid of myself and Dramat by hook or by crook.
37. Mr Israel Kgamanyane ("Kgamanyane"), who was the IPID's Free State Provincial Head at the time, was appointed to act as Executive Director in my absence (due to my suspension).
38. After his appointment, Kgamanyane instructed Sesoko and Khuba to attend interviews at Werksmans.
39. Thereafter Werksmans produced a report which was strongly contested by me, Khuba and Sesoko. Nevertheless, the report was leaked to the Sunday Times (Stephan Hofstatter and Mzilikazi wa Afrika) and the Sunday Independent (Solly



MP

Maphumulo). The Sunday Times and Sunday Independent ran a series of false stories to prop up Nhleko's false narrative to discredit us publicly.

40. The Werksmans report was the only evidence against me, Khuba and Sesoko.
41. On 21 May 2015, Khuba and Sesoko were suspended by Kgamanyane on the instructions of the Minister of Police for allegedly altering the IPID's Progress Report into the Rendition Investigation, dated 22 January 2015 ("the first report") with me.
42. However, it should be noted that I did not even know about the existence of the report that was supposedly altered as it predated my appointment as IPID Executive Director.
43. A critique of the Werksmans report was filed with my papers when I challenged my unlawful suspension in the High Court. (See Annexure G).
44. It later transpired that the author of this report claimed that his report was hearsay and apparently not legally sustainable. It should be noted that the author of this report, Sandile July was later quoted by Maema in court in November 2016 as having threatened to challenge his subpoena in the High Court on the basis that his report was hearsay and he could not stand by it in a court of law. In view of this it seems to me that this report, which cost the taxpayers over R1,3 million was intended only to be used as an instrument to get rid of me, Khuba, Sesoko, Dramat and Sibiya. The Werksmans report is annexed as Annexure K.
45. Bizarrely, Nhleko later tried to get the IPID to pay between R6 million and R9 million in legal costs incurred by him in his unlawful and unconstitutional attempt to remove me as IPID Executive Director. The entire rendition saga cost the state R17 million, according to a reply to a parliamentary question put to him in 2017.
46. On 21 May 2015, Khuba and Sesoko were suspended by Kgamanyane on the instructions of the Minister for allegedly altering the IPID's Progress Report into the



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

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

Suspensions, transfers and dismissals

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

A handwritten signature in black ink, appearing to be 'MP', is located at the bottom right of the page. The signature is stylized and somewhat abstract.

51. Sesoko was subsequently wrongly dismissed by Advocate Mxolisi Zondo ("Zondo"), who presided over General Sibiya's disciplinary hearing, without having presented his case. He had requested a postponement owing to illness but Zondo rejected his medical certificate and dismissed him in absentia. In his written ruling, Zondo concedes that it would have been fair to hear Sesoko's version of events. He however bizarrely dismisses him with immediate effect, without allowing him to state his defence, because the medical certificate submitted by Sesoko's counsel was from a general practitioner and not from a specialist. Furthermore, Sesoko's dismissal was based on hearsay evidence of a single witness. Written reasons for the ruling by Zondo are annexed hereto as Annexure L.
52. Sesoko was also criminally charged with Khuba and me for fraud and defeating the ends of justice. The criminal charges were withdrawn on 01 November 2016. Upon my return to office in 2016, a settlement was reached with Sesoko's attorneys to reinstate him to his former position.
53. Upon my return to office, I discovered that there were allegations that of the manipulation of cases to artificially inflate the performance of the IPID in my absence. Kgamanyane even went to Parliament and reported that performance was much better in the absence of the suspended and transferred IPID officials. However, this was a blatant lie which was told to make him look good. Nhleko awarded him a bonus for good performance. Other senior managers did not get a performance bonus.
54. Upon my return to office in 2016, a settlement was reached with Sesoko's attorneys to reinstate him to his former position within IPID.
55. Khuba was the lead investigator into allegations that some Zimbabweans were unlawfully handed over to Zimbabwean police, resulting in them being killed. He was suspended on 21 May 2015 on allegations of altering the investigation report into Zimbabwe 'renditions' with myself and Sesoko. During his suspension, he was told that he was suspended on the Minister's instructions. Khuba deposed to an



affidavit which was submitted in my Constitutional Court case.

56. Prior to his dismissal, Khuba was approached by Werksmans, the Minister's Personal Assistant and the Minister himself who wanted to interview him and get him to implicate me. When he failed to implicate me and Sesoko, disciplinary charges were brought against him. After six months of suspension, Khuba reached a plea bargain deal and was given a final written warning. Within a week, Khuba was summarily dismissed after he refused to falsely implicate me and Sesoko. Upon his refusal, he was dismissed with immediate effect.
57. After Khuba was dismissed, he was approached by officers from the Hawks and promised his job back on condition he made a false statement saying that I had forced him to change the rendition report. Khuba recorded this approach by a Colonel MS Mahlangu, who is heard imploring Khuba to make a false statement to empower General Mthandazo Beming Ntsemeza ("Ntsemeza"). In the recording, Colonel Mahlangu further says Khuba would be restored to his position if he made such a statement. (See Recording 1 to be handed up as Exhibit "U1"). A copy of the transcript is annexed hereto marked Annexure M. The recording will be made available to the Commission at the Chairman's discretion.
58. Well before my appointment as IPID Executive Director, Ntsemeza himself had told Khuba in November 2013 while he was doing the rendition investigation that it was the only thing holding up his move to the DPCI. The following year on 6 December 2014 Ntsemeza told Khuba to watch the media as there was going to be a 'hit on Dramat'. On the same Dramat received a "notice of the intention to suspend" from Nhleko.
59. Khuba has since been restored to his position through an order of the Labour Court. The criminal charges against Khuba, Sesoko and myself were withdrawn on 01 November 2016.
60. Felicia Ntshangase ("Ntshangase") is the Gauteng Provincial Head who was



suspended on 8 July 2015 by Kgamanyane. Five days after my suspension Nhleko addressed IPID management and made disparaging remarks about the judiciary. Ntshangase made an affidavit about this. She was suspended on allegations of nepotism for recommending the appointments of 3 officials in her office. However, the decision to appoint said officials was made by Mr Kgamanyane. The Public Service Commission later cleared Ntshangase of wrongdoing and recommended action against Kgamanyane instead.

61. Nomkhosi Netsianda ("Netsianda") is the Head of Corporate Services. She was suspended on 19 August 2015 on allegations of leaking information to the media. The leaked information concerned the appointment of the Deputy Minister's daughter to a Deputy Director: Investigation post in the Free State, where Kgamanyane was the Provincial Head. Ms Netsianda advised against the appointment of the Deputy Minister's daughter. The documentation and her written notes ended up in a City Press report. The Public Service Commission ("PSC") later found that the Deputy Minister's daughter did not have the experience required for the post. Netsianda was also charged for conducting herself in a disgraceful manner by raising her voice during the Audit Committee meeting, where the funding of the IPID's case challenging Nhleko's interference with the IPID's independence was discussed. The disciplinary case against Netsianda was driven by the chairperson of the Audit Committee.
62. Netsianda's position was advertised in May 2016 and Molefe Matsomela was subsequently appointed on a six-month contract. The post was not vacant. In addition, Matsomela's security screening was done before the post was advertised, clearly indicating that advertisement and interviews were just a formality and that the post was earmarked for Matsomela. During his tenure, the so-called restructuring at IPID proceeded at pace and some people were transferred to more than one position. Matsomela never came back to work upon my return to office and he resigned thereafter. Since Matsomela's appointment was irregular, the IPID has instituted a process to recover the fruitless and wasteful



was permanently transferred to Deputy Director: Corporate Services in Gauteng Province effective 1 August 2016 as a result of restructuring. She was seen to be a stumbling block to procurement. She also left IPID shortly after being transferred.

72. Lindokuhle Ngongo ("Ngongo") was the Chief Financial Officer ("CFO"). She was transferred to Gauteng as the Provincial Head to head investigations. She was perceived to be a stumbling block to Kgamanyane's plans for procurement. She was also opposed to the IPID paying for legal costs incurred by the Minister of Police (Nhleko). She has since left the IPID.
73. Mamodishe Molope ("Molope") is the Chief Director: Compliance Monitoring and Compliance Management. She was transferred to Mpumalanga as Provincial Head to lead investigations, as part of restructuring.
74. Several other junior staff members were also transferred from their positions as a result of "restructuring" sanctioned by the former Minister of Police, Nkosinathi Nhleko.
75. The impact of the instability that was occasioned by these transfers is noted in the report of the Auditor General dated 31 March 2016. The report is annexed as Annexure N.

Return to office

76. I returned to office on 19 October 2016 and on 20 October 2016 I requested Kgamanyane for a handover report. He was quite petulant and refused to give me such a report. In a letter dated 27 October 2016 he stated that all activities local and international trips were undertaken with the approval by his supervisor. Both the letter and his response are annexed as Annexure P.
77. He never returned to work and was irregularly transferred by Nhleko to the DPCI. He was accepted by former Hawks Head, Mthandazo Ntlembeza and appointed to the DPCI structure in the Free State. I had no say in Kgamanyane's transfer, which

The role of Hogan Lovells

131. Hogan Lovells allowed itself to be used to hollow out public institutions, especially the IPID and the DPCI. This firm was used to get rid of people in the IPID and the DPCI. There are common figures in the tainted disciplinary processes with fabricated charges against Sesoko, Khuba, Sibya and myself. In particular the conduct of legal professionals who deliberately carried out the nefarious agenda of politicians (Minister Nhleko) are to be censored.

Crimes against the State (CATS) Unit

132. DPCI has a specialised investigation unit for terrorism and related crimes. The unit is called "Crimes against the State Unit". As its name suggests this unit investigates very serious matters. For inexplicable reasons the fraud and defeating the ends of justice case which arose from the rendition case in which Sesoko, Khuba and I were charged, was investigated by this investigation group. Perhaps this was to add gravitas to the allegations against us. The charges were however eventually (and inevitably) withdrawn as there was never any basis for an investigation against us, much less an actual prosecution. I question why this unit was charged with the investigation against us.
133. I can only conclude that this unit was used to pursue a political agenda and to target individuals within the criminal justice cluster who stood up against state capture. The Unit was headed by Brigadier Nyameka Xaba (then Colonel) who reported to Ntlemeza. The same unit investigated other fabricated cases against Minister Pravin Gordhan, the so-called Rogue Unit and seems to have taken instructions or worked with SARS Commissioner Tom Moyane ("Moyane"). This can be seen from the incident involving SARS Legal Advisor Vlok Symington, who was prevented from leaving a boardroom until he handed back a document on the instructions of Moyane.

Handwritten signature and initials, possibly 'MP', in black ink.

134. Furthermore, cases investigated by this Unit are assigned to Priority Crimes Litigation Unit (PCLU) of the NPA. Prosecutors attached to the PCLU have been involved in many of the malicious prosecution cases which I have referred to in this statement, including the prosecutions of Glynnis Breytenbach and Pravin Gordhan.

Leon Mbangwa – Police Minister’s Nhleko’s Chief of Staff

135. Lionel Moyo aka Leon Mbangwa was employed by Minister Nhleko as his Chief of Staff. This appointment was completely irregular in that Mbangwa is a convicted criminal and illegal immigrant. He does not hold a legitimate South African Identity Book/Card. He was previously convicted and sentenced to four years imprisonment for using a fraudulent ID. Upon his appointment Mbangwa’s security, screening was processed through IPID by Kgamanyane to State Security Agency to avoid detection. This begs the question: Why would a government minister want an illegal immigrant as his Chief of Staff?
136. In this regard we refer to the letter from Kgamanyane to the State Security Agency dated 22 February 2016 as recorded in Annexure X, and the State Security Agency response dated 3 March 2016 to Kgamanyane as recorded in Annexure Y. In addition find my letter to the State Security Agency dated 25 October 2016 bringing their attention to this possible threat to National Security, as recorded in Annexure Z.
137. This is another incident which demonstrates the political capture of IPID. The fact that IPID involved itself irregularly in Mbangwa’s security screening and provided a false clearance flies in the face of IPID’s constitutional mandate and demonstrates the political control the Minister established over the IPID.



Reference Group

138. In October 2014, the Minister of Police, Nkosinathi Nhleko established a reference group to *"...deal with issues of human resources, suspensions... the state of crime intelligence, administrative queries and perception of SAPS."* At the time, the Minister said the ministry would use the work done by the reference group to *"...turnaround the image of the police and build public confidence in the service."* Surprisingly the reference group was comprised of public officials and included State Advocate Raymond Mathenjwa ("Mathenjwa") from the NPA.
139. Mathenjwa was one of the prosecutors involved in untoward decisions concerning IPID cases. Later (in his position of adviser on the Reference Group reporting to the Minister) he aggressively demanded sight of the case file into the rendition's investigation. This was clearly beyond the scope of the reference group as announced by Nhleko. Further, this was an undesirable situation as Mathenjwa was a senior prosecutor who was involved in deciding other matters referred to the NPA by the IPID. At the time, IPID had already referred the rendition docket to the National Director of Public Prosecutions for a decision on prosecution. That neither Mathenjwa nor the Minister saw the clear conflict of interest which could compromise the IPID's independence suggests that there was some ulterior purpose to the establishment of the reference group.

Portfolio Committee on Police

140. During the period of my suspension, IPID staff who were under attack by Kgamanyane directed correspondence to the Portfolio Committee on Police ("PCP") reporting the wholesale transfers and new appointments in IPID. No response was ever received. I too wrote to the chairperson of the committee alerting him to these concerning events. I never received a response from him.

Handwritten signature and initials, possibly 'MP'.

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

I know and understand the contents of this declaration.

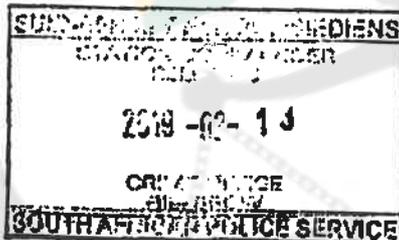
I have no objection to taking the prescribed oath.

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

Robert John McBride MP

ROBERT JOHN McBRIDE

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



Molokela Phineas Rapike
09206193
w/o
COMMISSIONER OF OATHS

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

NOTICE IN TERMS OF RULE 3.3

TO : MINISTER NKOSINATHI PHIWAYINKOSI NHLEKO
CELL : 066 086 268 / 076 010 7601
EMAIL : nnhleko@parliament.gov.za

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

- 1 The Commission’s Legal Team intends to present the evidence of Mr Matthews Sesoko (“**Sesoko**”) at its hearing held at 4th Floor, Hill on Empire, 16 Empire Road, Parktown, Johannesburg. The presentation of Sesoko’s evidence will commence on **23 September 2019**, or so soon thereafter as his evidence may be heard. In the event of a change of date, it will be announced on the Commission’s website (www.sastatecapture.org.za) and in the media. The evidence in question implicates or may implicate you in unlawful, illegal or improper conduct in the respects set out below.
- 2 The allegations set out in the evidence of Sesoko implicate or may implicate you in, *inter alia*, allegedly participating in various acts of corruption, bribery, fraud, money laundering and/or tax evasion.
- 3 The relevant portions of the statement of Sesoko which implicate or may implicate you in the above allegations is annexed hereto marked “A”. Your attention is drawn to **paragraphs 24 to 27, 31 to 32, 36 and 57 to 58** and **Annexure “MS3”** of his statement.

4 In summary, it is averred that:

4.1 You were complicit in a scheme to improperly implicate Generals Dramat and Sibiya in the unlawful rendition of Zimbabwe nationals back to Zimbabwe, after which, they were unlawfully killed;

4.2 In October 2014, you, in your capacity as the Minister of Police, (who had replaced Minister Nathi Mthethwa) established a 'reference group' to advise you on issues involving the SAP;

4.3 This group comprised both of private and public officials and included State Advocate Raymond Mathenjwa ("**Mathenjwa**") from the NPA, who was also part of a team of Advocates at the NPA who targeted General Booysen, Glynnis Breytenbach, the so-called SARS rogue unit, Pravin Gordan and several other prominent persons who had refused to cooperate with the agendas of those involved in state capture;

4.4 Around November 2014, Advocate Mathenjwa (together with several other advisors in the reference group reporting to the you) consulted Mr McBride, Sesoko and Mr Khuba on several matters involving the police, including the rendition matter;

4.5 After this meeting, Mr Khuba informed Sesoko that he received a telephone call from Advocate Mathenjwa who demanded sight of the docket in the rendition investigation;

4.6 Mr Khuba refused, as the reference group was not entitled to the docket and Mr Khuba referred Advocate Mathenjwa to Mr McBride;

- 4.7 A few days later, Mr McBride received a letter from you requesting the docket. After discussion, Mr McBride and Sesoko decided to send the docket, together with their report that they had sent to Mr Nxasana at the NPA recommending that no charges be brought against Generals Sibiya and Dramat, to you, at the same time, diplomatically informing you that Advocate Mathenjwa was not properly entitled to view the docket, believing that you ‘would do the right thing’ and adhere to their recommendations;
- 4.8 To their surprise, however, in December 2014, you suspended General Anwa Dramat, ostensibly on the basis of the IPID report, full knowing that this was not their recommendation;
- 4.9 It turned out that you suspended General Dramat on the basis of the interim report which Mr Khuba had sent to Advocate Mosing;
- 4.10 This report had not been sent to you by IPID, and it is not known how you came to be in possession of this prior report;
- 4.11 In February 2015, you appointed Werksmans Attorneys (“**Werksmans**”) to investigate the existence of the two reports;
- 4.12 In March 2015 you suspended Mr McBride, and thereafter appointed Mr Israel Kgamanyane (“**Mr Kgamanyane**“) as the acting Executive Director at IPID;
- 4.13 After his appointment, Mr Kgamanyane instructed Sesoko and Mr Khuba to attend an interview with Werksmans in relation to the ‘Minister’s investigation;’
- 4.14 On 11 May 2015 Mr Kgamanyane called Sesoko to a meeting at which he handed Sesoko a ‘Notice of Intended Suspension’;

- 4.15 In that meeting, and from Sesoko discussions with him, it was clear that Mr Kgamanyane was acting on your instructions to suspend Sesoko;
- 4.16 Mr Kgamanyane wanted to know about two specific investigations i.e. the Mr Visham Panday (“**Mr Panday**”) matter and the General Jan Mabula Team (“**the Mabula Team**”) from North West;
- 4.17 The Panday matter related to allegations of corruption, fraud and bribery in Kwa Zulu Natal where General Booysen had been investigating Mr Panday, a local businessman;
- 4.18 The North West team matter was an investigation where General Mabula and the Mabula Team were being investigated for torture and murder;
- 4.19 Sesoko also established that there was an investigation that was conducted by SAPS against Mr Kgamanyane regarding allegations of corruption and contravention of the Public Finance Management Act (“**PFMA**”). The investigation against Mr Kgamanyane was taken over by IPID, after he unlawfully transferred to the DPCI with the assistance of General Ntlemeza and yourself, and after it was established that SAPS had not conducted any investigation on the matter, after the case was opened with them;
- 4.20 When Mr McBride was reinstated, Mr Kgamanyane was to be redeployed to his former position of Provincial head: Free State. However, he took leave and during the period that he took leave, you and General Ntlemeza facilitated his transfer to the DPCI;
- 4.21 Mr McBride objected to this because there was a criminal investigation against him with disciplinary charges pending;

- 4.22 You and General Ntlemeza ignored Mr McBride's concern and proceeded with the transfer arrangements.
- 5 Due to the fact that you are implicated or may be implicated by the evidence of Sesoko, you are entitled to attend the hearing at which that evidence is being presented. You are also entitled to be assisted by a legal representative of your choice when that evidence is presented. The full statement of Sesoko will be uploaded on the Commission's website as soon as he concludes his evidence. The transcript will be uploaded daily.
- 6 If you wish to:
- 6.1 give evidence yourself;
 - 6.2 call any witness to give evidence on your behalf; or
 - 6.3 cross-examine the witness
- then you must apply, within fourteen (14) calendar days of this notice, in writing to the Commission for leave to do so.
- 7 An application referred to in paragraph 6 above must be submitted to the Secretary of the Commission. The application must be submitted with a statement from you in which you respond to the witness' statement insofar as it implicates you. The statement must identify what parts of the witness statement are disputed or denied and the grounds on which they are disputed or denied.
- 8 In the event that you believe that you have not been given a reasonable time from the issuance of this notice to the date on which the witness is to give evidence as set out above and you are prejudiced thereby, you may apply to the Commission in writing for such order as will ensure that you are not seriously prejudiced.
- 9 Please take note that even if you do not make an application under Rule 3.4:
- 9.1 in terms of Rule 3.10, the Chairperson may, at any time, direct you to respond in writing to the allegations against you or to answer (in writing) questions arising from the statement; and

- 9.2 in terms of Regulation 10(6) of the Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State GN 105 of 9 February 2018 published in Government Gazette 41436, as amended, the Chairperson may direct you to appear before the Commission to give evidence which has a bearing on a matter being investigated.
- 10 The extracts of the witness statement provided to you are confidential. Your attention is drawn to Regulations 11(3) and 12(2)(c) governing the Commission, which make it a criminal offence for anyone to disseminate or publish, without the written permission of the Chairperson, any document (which includes witnesses' statements) submitted to the Commission by any person in connection with the Commission's inquiry.
- 11 Any response, affidavit or statement in regard to this notice must be sent to Advocate André Lamprecht, Ms Shannon van Vuuren and Mr Warren Redcliffe at secretary@commissionsc.org.za.

DATED AT PARKTOWN ON THIS 10th DAY OF SEPTEMBER 2019



MS K B SHABALALA
Acting Secretary
Judicial Commission of Inquiry into Allegations
of State Capture, Corruption and Fraud
in the Public Sector including Organs of State

SWORN AFFIDAVIT

I, the undersigned,

MATTHEWS SESOKO

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 the National Head of Investigation in the Independent Police Investigative Directorate ("IPID") which is situated at 114 Madiba Street, Pretoria. I am responsible for all Provincial and National investigations of the Directorate. I report directly to the Executive Director.
- A. **My employment with the Independent Complaints Directorate ("ICD") and IPID**
3. I was suspended on 21 May 2015 and thereafter, I was criminally charged and dismissed from my position as the National Head of Investigations for IPID on 16 August 2016.
4. On 23 November 2016 I was reinstated to my present position at IPID.
5. The background to this matter is as follows:

Matthews Sesoko

PS

debated what findings could reliably and sustainably be made on the available evidence.

21. In finalising the report and presenting it to Mr 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.
22. On 18 March 2014 we finalised the report, in which we recommended that no charges be brought against either General Dramat or General Sibiya, as there was no credible evidence to support any charges against them, which was sent to Mr McBride for his approval. Mr McBride made some grammatical changes, and after we had corrected the report, Mr Khuba and I signed the report and then re-submitted it to McBride for his approval.
23. On 14 April 2014, Mr McBride approved the report and the report was duly submitted to the National Director of Public Prosecutions (“NDPP”) who at that stage was Mr Mxolisi Nxasana (“Mr Nxasana”).

C. The reference Group

24. In October 2014, the Minister of Police, Nkosinathi Nhleko (“Minister Nhleko”) (who had since replaced Minister Nathi Mthethwa) established a ‘reference group’ to advise him on issues involving the SAP. This group comprised both of private and public officials and included State Advocate Raymond Mathenjwa (“Mathenjwa”) from the NPA, who was also part of a team of Advocates at the NPA who targeted General Booyesen, Glynnis Breytenbach, the so-called SARS

- rogue unit, Pravin Goordan and several other prominent persons who had refused to cooperate with the agendas of those involved in state capture.
25. Around November 2014, Advocate Mathenjwa (together with several other advisors in the Reference Group reporting to the Minister) consulted Mr McBride, me and Mr Khuba on several matters involving the police, including the rendition matter. After this meeting, Mr Khuba informed me that he received a telephone call from Advocate Mathenjwa who demanded sight of the docket in the rendition investigation. Mr Khuba rightly refused, as the reference group was not entitled to the docket and Mr Khuba referred Advocate Mathejwa to Mr McBride.
26. A few days later, Mr McBride received a letter from the Minister requesting the docket. After discussion, Mr McBride and I decided to send the docket with our report that we had sent to the NDPP, Mr Nxasana, to the Minister, at the same time, diplomatically informing him that he was not properly entitled to view the docket, believing that the Minister 'would do the right thing' and adhere to our recommendations.
27. To our surprise, however, in December 2014, Minister Nhleko suspended General Anwa Dramat, ostensibly on the basis of the IPID report, full knowing that this was not our recommendation. It turned out that he Minister suspended General Dramat on the basis of the interim report which Mr Khuba had sent to Advocate Mosing. This report had not been sent to the Minister by us, and it is not known how the Minister came to be in possession of this prior report.
28. When contacted by the media for comment, Mr McBride denied that the suspension of Dramat had been based on an IPID report as we had found no

evidence to *prima facie* support any wrongdoing on the part of Generals Dramat and Sibiya.

29. In January 2015, Mr Dlamini, the National Spokesperson for IPID, alerted Mr McBride and I to a media enquiry by a journalist, Mr Mzilikazi wa Afrika of the Sunday Times about a Rendition Report signed by Mr Khuba (what was later referred to as the 'first report' in the charge sheet when we were later charged).
30. Neither Mr McBride nor I were aware of such a report, because as I have said, Mr Khuba did not send me the report which he had sent to Advocate Mosing, which was apparently relied upon. Upon learning about this report, I called Mr Khuba to clarify the existence of such report. Mr Khuba explained to me how the first report came about and the fact that he was pressured by Advocate Mosing to sign the report and send it to him before the investigation had been concluded.

D. Werksmans

31. In February 2015, the Minister appointed Werksmans Attorneys ("Werksmans") to investigate the existence of the two reports.
32. In March 2015 the Minister suspended Mr McBride, and thereafter appointed Mr Israel Kgamanyane ("Mr Kgamanyane") as the acting Executive Director at IPID. At the time Mr Kgamanyane was the Provincial Head for Free State Province and he was reporting to me. After his appointment Mr Kgamanyane instructed me and Mr Khuba to attend an interview with Werksmans in relation to the 'Minister's investigation'.
33. At the interview with Werksmans, led by an attorney from Werksmans, Mr Sandile July ("Mr July"), I enquired as to the status of their investigation in as far

as it related to me, and whether I was being investigated for any misconduct or criminal offence. I was informed that I was not being investigated for any offence or misconduct. I then agreed to participate in the interview on that basis. The interview was recorded and transcribed. I attach a copy of the transcript marked **Annexure "MS 1."**

34. Around 24 April 2015, Werksmans released a report on their findings and to my surprise, recommended that Mr Khuba, Mr McBride and myself be charged with defeating the ends of justice for allegedly altering the so-called *first report*. A copy of the report is attached, marked **Annexure "MS 2."** This was despite Werksmans undertaking that I was not being investigated for any crime or misconduct.
35. We first learned about the Werksmans report and the fact that we were implicated when it was leaked and reported on by the Sunday Times journalist Mzilikazi wa Afrika and Hoffstatter. These are the self-same journalists who were fed information about the so-called SARS rogue unit, and investigation into the activities of General Johan Booysen ("**General Booysen**") and his so-called Cato Manor hit squad.
36. On 11 May 2015 Mr Kgamanyane called me to a meeting where he handed me a 'Notice of Intended Suspension'. In that meeting, and from my discussions with him, it was clear that he was acting on the instruction of Minister Nhleko to suspend me. Mr Kgamanyane wanted to know about two specific investigations i.e. the Mr Visham Panday ("**Mr Panday**") matter and the General Jan Mabula Team ("**the Mabula Team**") from North West, (see Page 10 and 11 in the transcribed minutes). The Panday matter related to allegations of corruption,

fraud and bribery in Kwa Zulu Natal where General Booysen had been investigating Mr Panday, a local businessman. The North West team matter was an investigation where General Mabula and the Mabula Team were being investigated for torture and murder. A copy of the transcript of the suspension meeting is attached, marked **Annexure "MS 3."**

E. My suspension and my disciplinary hearing

37. On 21 May 2015 Mr Kgamanyane suspended Mr Khuba and me. Disciplinary proceedings were instituted against Mr Khuba and me for the alleged altering of the First Report that was signed by Mr Khuba, and which I had nothing to do with.

38. On 7 July 2015 I was served with a Notice to attend a disciplinary enquiry. The letter was signed by Mr Kgamanyane. In the letter he stated that:

"4. I have appointed Advocate William Mokhari SC together with Advocate Thembeke Ngcukaitobi and Hogan Lovells Attorneys as initiators and pro forma prosecutors.

5. I have appointed Advocate Patrick Ngutshana as an independent Chairperson of the Enquiry.

A copy of the Notice is attached hereto, marked **Annexure "MS 4."**

39. The Charge Sheet was dated 6 July 2015 and signed by "Hogan Lovells Attorneys: Initiators and pro-forma Prosecutors". Although the charges were levelled against Mr Khuba and me, Mr McBride was cited as also having been complicit in the altering of the report, as is clear from an extract from the charge sheet, as indicated below:

55. The case attracted a lot of media attention. I was in church when the leaked Werksmans report was published in the Sunday Times. When I turned on my phone after the service, I found numerous missed calls from concerned family and friends asking how it was possible that I could be implicated in any wrongdoing. This was particularly as I am known to be a man of integrity and honesty. It has taken me a very long time to try and redeem my reputation and good name.

G. Investigations: Mr Kgamanyane, General Phahlane and the Mabula Team

56. On 23 November 2016, I was reinstated after my legal team reached a settlement with IPID. Upon my return, I established that no investigation had been conducted on the murder and torture cases involving the Mabula Team, despite the former Acting Executive Director, Mr Kgamanyane having asked me about the case when he was suspending me. I also found that the Executive Director Mr McBride had appointed a team to investigate allegations of corruption against former Acting National Commissioner Khomotso Phahlane ("**General Phahlane**").

57. I also established that there was an investigation that was conducted by SAPS against Mr Kgamanyane regarding allegations of corruption and contravention of the Public Finance Management Act ("**PFMA**"). The investigation against Mr Kgamanyane was taken over by IPID, after he unlawfully transferred to the DPCI with the assistance of General Ntlembeza and former Minister Nhleko, and after it was established that SAPS had not conducted any investigation on the matter, after the case was opened with them.

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58. By way of explanation, when Mr McBride was reinstated, Mr Kgamanyane was to be redeployed to his former position of Provincial head: Free State. However, he took leave and during the period that he took leave, General Ntlemenza and Minister Nhleko facilitated his transfer to the DPCI. Mr McBride objected to this because there was a criminal investigation against him with disciplinary charges pending. Minister Nhleko and General Ntlemenza ignored Mr McBride's concern and proceeded with the transfer arrangements.

59. I took over the management of all the high profile cases that were being investigated by the National Specialised Investigating Team ("NSIT"). When the investigation against General Phahlane was progressing, and we started making head way, we were met with interference and counter investigation by General Phahlane and the Mabula Team.

60. Two cases of defeating the ends of justice were opened and investigated against General Phahlane and the Mabula Team. In both cases the NPA declined to prosecute, in the face of overwhelming evidence and in circumstances, which in our view, showed bias on the part of the prosecutors who were taking these decisions. The case against former AED, Mr Kgamanyane, suffered the same fate.

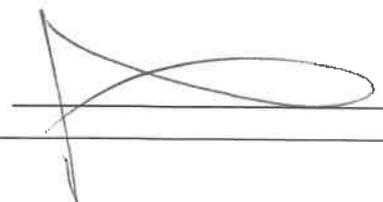
61. We directed numerous correspondence to the NPA and the former NDPP Advocate Shaun Abrahams ("**Advocate Abrahams**") about how our cases were being handled by the NPA concerning the Mabula Team and the bias of some of the prosecutors. The NDPP did nothing to assist us, which emboldened the Mabula Team to continue to interfere with our investigations, going to extent of

67. Our requests were refused on the grounds that the documents required by us were "classified". This, even though documents we requested from them had nothing to do with state secrets. All we required were procurement documents that would prove the endemic corruption with regard to the SSA. Even when the IGI advised the SAPS that these documents must be provided to IPID as they do not pose any security threat, the SAPS refused to do so.
68. IPID was forced to apply for a subpoena in terms of Section 205 of Act 51 of 1977 (the Criminal Procedure Act) to obtain compliance. Our subpoena was, however, challenged by the SAPS in court. IPID has opposed the challenge and has brought a counter application to force the SAPS to declassify all the documents or any information in their possession that is needed for investigation purposes, unless it can be established that it does not compromise the security of the state.
69. The matter is due to be heard in court at the end of July 2019. To date the SAPS (CI) has remained un-cooperative, and this obviously impacts negatively on IPID's investigations.
70. These further facts serve to confirm, not only the capture of the NPA, but also that of the SAPS in order to shield criminal and corrupt officials from prosecution.

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.



MATHEWS SESOKO

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was sworn to before me and the deponent's signature was placed thereon in my presence at Johannesburg on this the 16 day of July 2019, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

SOUTH AFRICAN POLICE SERVICE
VISPO 1
2019 -07- 16
PRETORIA CENTRAL
SOUTH AFRICAN POLICE SERVICE

Alexander J. Co

COMMISSIONER OF OATHS

FULL NAMES:

D. M. SEPANDA

DESIGNATION:

J. Colleen

ADDRESS:

137 Pretorius Str
Pretoria

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MS3

SUSPENSION MEETING

HELD AT: IPID HEAD OFFICE

DATE: 2015-05-11

PRESENT:

1. Mr Kgamanyane (Employer/IPID)
2. Mr Matthews Sesoko (Employee)



VERBIS TYPING & TRANSCRIPTION SERVICES
25 GRUNG ROAD, SELECTION PARK
SPRINGS 1559
TEL: (011) 812-2226 FAX: 086 5112359 CELL: 083 5665750

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SOUND FILE NAME: Suspension Meeting

MR SESOKO: (Indistinct) ten minutes earlier.

MR KGAMANYANE: Okay.

MR SESOKO: You never indicated that.

MR KGAMANYANE: The letters of notice.

MR SESOKO: Okay. Notice of suspension?

MR KGAMANYANE: Uhm.

MR SESOKO: Okay.

MR KGAMANYANE: We must get them by today. So as the
10 (inaudible) Chief the sooner (inaudible). Because it has been hanging
there and... (inaudible) they have been hanging for... for some time.

MR SESOKO: Uhm.

MR KGAMANYANE: That is (inaudible).

MR SESOKO: (Inaudible) or after explaining my notice suspension.

MR KGAMANYANE: (Inaudible) do that (inaudible) talk to him
because you still have to respond and go through the report and
consult.

MR SESOKO: Of course.

MR KGAMANYANE: You can still cancel it.

20 MR SESOKO: I have to cancel that, there is no way (inaudible), I do
not know what time you are giving me to respond.

MR KGAMANYANE: Uhm, it is up until Thursday.

MR SESOKO: But that becomes... so I have got 48 hours.

MR KGAMANYANE: *Dina le dipreparation tsa* (They have
preparations for) Cape Town in disarray.

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MR SESOKO: Obviously you will cancel it, you know.

MR KGAMANYANE: Uhm.

MR SESOKO: I understand your position because probably obviously you are being instructed to give us this notice of suspension and... I do not expect to get a different outcome after that, no matter what representation (inaudible)... (intervenes)

MR KGAMANYANE: Because... (intervenes)

MR SESOKO: I make.

MR KGAMANYANE: This thing *e tshwana le* (is like) as when *ho tshwanetswe ho khonfemiwe hore* (must be confirmed that) your a
10 police officer and they could say that before *reka ho khonfema* (before we confirm you) go and arrest your father. So, it is a difficult one, a very, very difficult one.

MR SESOKO: Uhm.

MR KGAMANYANE: Uhm.

MR SESOKO: No, you can just give me and I will, I will go and (inaudible).

MR KGAMANYANE: Uhm.

MR SESOKO: I still had, I have 15 days in this financial year.

20 MR KGAMANYANE: (Inaudible).

MR SESOKO: (Inaudible).

MR KGAMANYANE: Okay.

MR SESOKO: So...

MR KGAMANYANE: (Inaudible) so that *ba kgone ho patela*. (they are able to pay)

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MR SESOKO: *Kene ke so kenye diforomo tsa teng (I have not submitted the forms yet). So, I can fill in the forms before ke tsamaya (I leave).*

MR KGAMANYANE: Okay.

MR SESOKO: Maybe *mphe (give me) until, mphe matsatsi (give some days) a up until Wednesday (inaudible), I do more consultation (inaudible) respond to that. I do not know (inaudible) decision may, will follow (inaudible) almost immediate. Only (inaudible) the rest of the week.*

10 MR KGAMANYANE: (Inaudible) the rest of the week because (inaudible) *nthwena ke, ke (this thing is, its) Wednesday.*

MR SESOKO: Uhm, (inaudible) tomorrow.

MR KGAMANYANE: (Inaudible)?

MR SESOKO: Uhm.

MR KGAMANYANE: (Inaudible) he has not (inaudible) to me, *ke ne ke batla honna teng (I wanted to be present) as and when, it is up to (inaudible) ko (at) government. We will just find out from (inaudible), ja, but whatever the response the is date ke di (it is) 13 but I was thinking hore (that) you will only, act on them on Monday.*

20 MR SESOKO: Uhm.

MR KGAMANYANE: If whatever the decision, because if *keya (I go to) Cape Town, ketfo ya (I will go to) Cape Town ka (on) Wednesday I will be (inaudible) ka Labone (on Thursday) then by (inaudible) on Friday ke (is) Good Friday. So, the response you can still respond ka (on) Wednesday but...*

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MR SESOKO: Ja, okay, I will just fill in the form for...

MR KGAMANYANE: For five days.

MR SESOKO: For five days (inaudible)... (intervenes)

MR KGAMANYANE: (Inaudible).

MR SESOKO: (Inaudible) to Friday. And we will see the response but I, but I do not see it going any other way.

MR KGAMANYANE: No, no problem (inaudible)... (intervenes)

MR SESOKO: You know (inaudible) *akere (not so)?*

MR KGAMANYANE: [Laughs], (inaudible) sometimes *eba di* (it has) 10 formalities (inaudible).

MR SESOKO: *Eya (yes)*, I know for a fact that (inaudible) so... and after that report *e tswile (was released)* it was clear what was going to happen.

MR KGAMANYANE: Uhm. It was just a matter of time.

MR SESOKO: Uhm.

MR KGAMANYANE: Okay.

MR SESOKO: So... No, it is fine I will just fill in the forms.

MR KGAMANYANE: *Ke utlwa bare ba mo file ditshatshes (I heard that he has been served with chargers) last week ka di (on the), ka* 20 *Labone (on Thursday).*

MR SESOKO: Aow.

MR KGAMANYANE: Notice.

MR SESOKO: Okay.

MR KGAMANYANE: *Bare hearing etlo ba ka (It said that the hearing will be in) January.*

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MR SESOKO: Next week?

MR KGAMANYANE: Uhm.

MR SESOKO: Okay.

MR KGAMANYANE: I do not know (inaudible).

MR SESOKO: Uhm. Okay, *le rona re tshwanetse hore re e prephere (we must also prepare) ourselves legal representation. I suppose it is the same as Khuba. If this is coming to me then it is obvious it is going to, for all those people who signed... (intervenes)*

MR KGAMANYANE: Who signed (inaudible)... (intervenes)

10 MR SESOKO: The final report... (intervenes)

MR KGAMANYANE: Uhm.

MR SESOKO: Ja. So it is not something that it is, it is... it is really surprising, we have always thought, you know, because I would imagine from a legal point of view when you take action against McBride *hore (that), ka (with the) report and then we have two other people who signed the report... (intervenes)*

MR KGAMANYANE: *Ke yona ntwé ke ba botsa yona le (that is what I asked them) last week (inaudible)... (intervenes)*

MR SESOKO: (Inaudible) do that... (intervenes)

20 MR KGAMANYANE: (Inaudible) *bare (they say) there is no way because etla nna ntho ya hore (it will mean that) all this discriminatory or etla nna ntho ye ekareng ba targetile yena fela (it would seem as if they targeted him alone). You see?*

MR SESOKO: Uhm. So, ja. (Inaudible) the right, I wonder if we should also expect to be arrested.

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MR KGAMANYANE: [Laughs].

MR SESOKO: For defeating the ends of justice.

MR KGAMANYANE: No, criminally they have not moved, I do not know but they have not moved.

MR SESOKO: We will see.

MR KGAMANYANE: But even if *baya ho e etsa (they do)* they will still take it to the DPP.

MR SESOKO: (Inaudible).

MR KGAMANYANE: Uhm. I do not think nto ya (*the question of*)
10 arrest its out of (intervenes)

MR SESOKO: Well, Gerrie Nel baile ba arresta (*they arrested*) you know.

MR KGAMANYANE: There would not be...

MR SESOKO 2: They arrested Gerrie Nel... (intervenes)

MR KGAMANYANE: (Inaudible)... (intervenes)

MR SESOKO: A senior advocate in the NDPP they arrested him the charges were withdrawn and then... (intervenes)

MR KGAMANYANE: *Bo Kgadi ne bare (Kgadi and others were saying)* (inaudible).

20 MR SESOKO: He sued the State and they paid him because...

MR KGAMANYANE: Uhm.

MR SESOKO: You never know these things, but I will see.

MR KGAMANYANE: Uhm.

MR SESOKO: I will see. I will see.

MR KGAMANYANE: Okay.

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MR SESOKO: *Nna* (myself) as long as re itse gore (we know that) we, we acted within the parameters of the law.

MR KGAMANYANE: (Inaudible), that will mean one of them if whatever decision, do you have anyone in mind to stand in?

MR SESOKO: I would rather not...

MR KGAMANYANE: [Laughs].

MR SESOKO: Advise you on that because I would rather you take that decision.

MR KGAMANYANE: Uhm.

10 MR SESOKO: Uhm. I would rather you take that decision (inaudible).

MR KGAMANYANE: Okay. No, let us cross that bridge when we arrive at it.

[Knock at the door].

MR KGAMANYANE: Come in.

[Female speaking in background]

MR SESOKO: Maureen can you please help me with the leave form?

MS MAUREEN: A leave form?

MR SESOKO: Yes.

MS MAUREEN: Just one?

20 MR SESOKO: Ja, just one.

MS MAUREEN: Okay.

MR KGAMANYANE: (Inaudible). *O tlike ko kae* (where in Mpumalange is he coming from) Mpumalanga?

MR SESOKO: (Inaudible) Protea.

MR KGAMANYANE: Oh Protea.

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MR SESOKO: Uhm.

MR KGAMANYANE: Okay. So, Maureen *ha a tsena (did not go there)* (inaudible)?

MR SESOKO: Ja, (inaudible).

MR KGAMANYANE: (Inaudible).

MR SESOKO: (Inaudible).

MR KGAMANYANE: So (Inaudible).

MR SESOKO: Ja.

MR KGAMANYANE: (Inaudible) that you sent us.

10 MR SESOKO: Uh-uh. *Kene kere vele ke ya leboha (I was saying I am indeed thankful)* (inaudible) *ba mo signele hore ba mofe (they should sign in order to give him/her)* (inaudible).

MR KGAMANYANE: (Inaudible).

MR SESOKO: Uhm.

MR KGAMANYANE: (Inaudible).

MR SESOKO: Obviously... (intervenes)

MR KGAMANYANE: *O kare Simon o na le call (apparently there is a call for Simon)* (inaudible) answer somebody (inaudible).

MR SESOKO: Uhm.

20 MR KGAMANYANE: So Possibly it will be via Simon (inaudible).

MR SESOKO: Uhm. We can do this thing (inaudible). I will just (inaudible) in my office (inaudible).

MR KGAMANYANE: Which one is that?

MR SESOKO: I do not know (inaudible) I just received this one.

MR KGAMANYANE: Okay. (Inaudible).

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MR SESOKO: Uhm?

MR KGAMANYANE: (Inaudible).

MR SESOKO: Uhm. (Inaudible).

[Inaudible, transcription not possible]

[Knock on door]

MR KGAMANYANE: Come in.

[Inaudible, transcription not possible]

MR KGAMANYANE: (Inaudible)...

MR SESOKO: Wednesday.

10 FEMALE SPEAKER: Wednesday.

MR KGAMANYANE: Yes. (Inaudible) I want to make (inaudible).

MR SESOKO: Radebe.

MR KGAMANYANE: Uh-uh. (Inaudible), report o e signile akare (He signed the report, not so)?

MR SESOKO: Ha a, ke ke ke bua le yena (No, I was talking to him) (inaudible) today so o itse (he said) eight 08:00 tomorrow morning because team a e berekang le yona e na le information e baneng ba ilo e kereya (the team he is working with had information they were going to get) (inaudible).

20 MR KGAMANYANE: Ke ya Mpumalanga le yona (is it that of Mpumalanga as well) ?

MR SESOKO: Le (and) Radebe?

MR KGAMANYANE: Uhm.

MR SESOKO: (Inaudible).

MR KGAMANYANE: Ke case yako kae hante (which case is that)?

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MR SESOKO: *Ke ya mo (that of) Gauteng.*

MR KGAMANYANE: Okay.

MR SESOKO: (Inaudible).

MR KGAMANYANE: Okay. Uhm.

MR SESOKO: *Ke e feng ya (which one is that of) Mpumalanga.*

MR KGAMANYANE: Oh, I wanted to ask you *ka ya maburu ale a (regarding those whites) Booyesen.*

MR SESOKO: *Ya maburu (the whites) a Booyesen re ne re so (we had not appointed a team yet) appoint a team*

10 MR KGAMANYANE: (Inaudible).

MR SESOKO: The discussions that that we had (inaudible)... (intervenes)

MR KGAMANYANE: *Oa hopola hore ba (you remember that) (inaudible).*

MR SESOKO: *Eya, hore (yes, that) we need to get someone ka hore bale ba (because the others) (inaudible) it would not be wise (inaudible) but we did agree hore (that) we will get people from outside the province to (inaudible).*

MR KGAMANYANE: (Inaudible) *ha ke tsebe hore (I don't know) how did he handle that one e le neng le mofile yona (that you gave him)*
20 (inaudible) *tsa (in) KZN?*

MR SESOKO: Uhm... No, (inaudible).

MR KGAMANYANE: Because what I say is (inaudible) *habana mosebetsi (they have no work) there ke ne ke nahana hore ae etse le (I was thinking that he should do it with) (inaudible) le Isaacs (inaudible) those guys.*

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MR SESOKO: Uhm.

MR KGAMANYANE: But *bare o ne a kupile hore otla feta mo wena kaosane (they say he had requested to pass here) because o (you will be in) North West so that o mofe yona (in order to give him) because ke boletse le yena ke le (I spoke to him in) Kimberly, o mofe yona but ka kereya hore o...* (Give him but I discovered that) (intervenes)

MR SESOKO: *Ke (is it) North West.*

MR KGAMANYANE: Yes.

10 MR SESOKO: Okay.

MR KGAMANYANE: (Inaudible) then at the end we recommend that ke approve.

MR SESOKO: Okay. *A kere (isn't) (inaudible) e ko (it is at) North West mara (but).*

MR KGAMANYANE: *Yona Matter oo (the same matter)?*

MR SESOKO: *Eya (yes), e (at) North West (inaudible).*

MR KGAMANYANE: *E ko (it is with) Mosimanegape?*

MR SESOKO: (Inaudible). *So, e ne ele (it was)...* (intervenes)

MR KGAMANYANE: (Inaudible) North West (inaudible)... (intervenes)

20 MR SESOKO: *E ne ele, ko (it was in) North West ha kaba botsa hore (I did not ask them) (inaudible) mara o ka mmotsa (but you can ask him).*

MR KGAMANYANE: (Inaudible).

MR SESOKO: *Ja, because e ne ele taba tsa hore (it's just a matter that) once we decided on the team (inaudible).*

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MR KGAMANYANE: Okay.

MR SESOKO: The team.

MR KGAMANYANE: No, it is fine.

MR SESOKO: Uhm.

MR KGAMANYANE: (Inaudible).

MR SESOKO: Uhm, that is still fine.

MR KGAMANYANE: *Ke wisha hore (I wish that) this project e ba tlatlang ka yona (they are brining) (inaudible). Ke wona fela mmereko o leng outstanding wa lona (Is that the only work outstanding you*
10 *have)?*

MR SESOKO: No, *hona le nngwe le yona ye re neng re so e (there is another one we have not yet) (inaudible) re kreile (obtained) an affidavit. (Inaudible) going to the office (inaudible).*

MR KGAMANYANE: Okay. Okay.

MR SESOKO: (Inaudible) on my desk. So, *le yona ene ele (it was only) one of those o neng ore hae boele morao (you said you will not) (inaudible) will have to see, we were hoping hore (that) by now the (inaudible)... (intervenes)*

MR KGAMANYANE: *Ke ne ke ntse (inaudible) signa (I was busy*
20 *signing), ke signa... (I was signing) (intervenes)*

MR SESOKO: (Inaudible).

MR KGAMANYANE: *Ja, ke bone ntho ya hao mo... (I saw your things here) (intervenes)*

MR SESOKO: *E thomile (it has begun).*

MR KGAMANYANE: *Yaha Baloi (That of Baloyi)?*

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MR SESOKO: Eya. (yes)

MR SESOKO: I am not sure *hore ho etsahalang (what is happening)*.

MR SESOKO: *Bare baya ka ((inaudible)*.

MR KGAMANYANE: *Ho tla tlhaya ka hore (it will depend on that)*
(inaudible) *bae isitse (they took it to) Witbank.*

MR SESOKO: Okay.

MR KGAMANYANE: (Inaudible).

MR SESOKO: Okay.

MR KGAMANYANE: Yes, (inaudible).

10 MR SESOKO: Okay. No, if *ele panel e decidileng jwalo (it is the panel that has made that decision)* then (inaudible).

MR KGAMANYANE: Uhm.

MR SESOKO: Because I know *kene ke pusha (I was pushing)* this thing, apparently *ntho ena e ile ya tswa (this thing was issued)*, there is one weakness *e tshwanetse e ye (it should go)* (inaudible). *Ho ile ha tswa (an order was issued) order.*

MR KGAMANYANE: Uhm.

20 MR SESOKO: Ja, *ka hore re ne re entse (because we did)* (inaudible) for competency *kadi test tsa batho bana (with these people's tests)*. *Ba yetsa order balo efa nthwena, balo (they made an order and gave it to)* (inaudible) but they do not inform us. So, (inaudible).

MR KGAMANYANE: So, *beba sa le informi (they did not inform you)?*

MR SESOKO: Eya (yes), and it is not like it is not the only procurement *e ba etsang jwalo ba ntshang di order be ba sa informi*

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(that they did like that where they issued orders without informing) end user. So, they need to develop a process where immediately *ho issuer di order ba informe di* (on issuing the order they inform) end user immediately so that *ba kgone ho followa* (they are able to follow) the service provider. So, *bona ho isiwa di order ko bona kwa* (they issue orders on their own) but they do not inform the end user. So, *le yona ya nthwena* (inaudible) *bae intshitse* (also in this instance they issued) but (inaudible) but they did not inform us. So, *ha re ntse re followa up hore hante ho etsahalang ka* (while we follow precisely what is happening) this thing in terms of *hore kgale ba ntshitse* (that they have long issued) order.

MR KGAMANYANE: I do not know *hore ba etsang ka yona* (what are they doing with it) (inaudible). *Ka (In) May o ya court nou ke ilo* (he is going to court, now I am going) (inaudible) *Bare no* (they said no) (inaudible) *haya patelwa* (I was not paid for). *Ha ke founela TWF bare no haba kereyi order* (when I called TWF they said they can't find the order).

MR SESOKO: Uhm.

MR KGAMANYANE: (Inaudible).

20 MR SESOKO: Uhm.

MR KGAMANYANE: *Hare founela, ha ke founela Maureen ke re a ba founela ke hona ba ishawang* (when I called, when I called Maureen to phone them it was only then that they issued the order) order TWF *ya teng. Ke re fela* (now) how do you explain?

MR SESOKO: Hey.

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M SESOKO

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MR KGAMANYANE: And you do blame TWF because you cannot really blame TWF.

MR SESOKO: *Eya, because ha se problem ya bona yeo (Yes, because it is not their problem).*

MR KGAMANYANE: Hi...

MR SESOKO: So...

MR KGAMANYANE: (Inaudible).

MR SESOKO: Ja, but what do I do about the other days?

MR KGAMANYANE: Which ones? Oh *tsele (those)*.

10 MR SESOKO: *Re tlo di forfeita (we will forfeit them)*.

MR KGAMANYANE: No, let us talk about, no, let us talk about them, *ka, ha re kopane (on, let's meet) set it up Friday or ka (on) Monday.*

MR SESOKO: Okay.

MR KGAMANYANE: Because I can just still put (inaudible) *ke utlwe nyana league re decline.*

MR SESOKO: Okay.

MR KGAMANYANE: (Inaudible) *be re ba tlotla e patela ka (they say they will pay in) June.*

MR SESOKO: All right.

20 MR KGAMANYANE: Ja.

MR SESOKO: It is fine. *Kana ke di (is it the)15?*

MR KGAMANYANE: Ja. (Inaudible) *kaosane (Tomorrow).*

MR SESOKO: (Inaudible).

MR KGAMANYANE: Okay.

MR SESOKO: *Ha ke itse hore o teng Boitumelo na ka hore ke utlwa*

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nyana hore, nee maan earlier ha ke founela ba re ngwana hae (I don't know whether Boitumelo is present, I only heard that, no earlier when I phoned I learnt that her child) (inaudible). But probably she would be back tomorrow. So (inaudible)... (intervenes)

MR KGAMANYANE: It is fine (inaudible).

MR SESOKO: And then (inaudible)... (intervenes)

MR KGAMANYANE: That is why *ke batla ho mitana le (I want to meet)*, we are still keeping company.

MR SESOKO: Ja, then we will go to the office *re kreye (and get)* that
10 other (inaudible) he had not done anything... (intervenes)

MR KGAMANYANE: All right.

MR SESOKO: (Inaudible) and then we can decide *hore (that)* (inaudible).

MR KGAMANYANE: Uhm. (Inaudible) *o suspendilwe (He is suspended)* already, you are not yet suspended. [Laughs].

MR SESOKO: [Laughs].

MR KGAMANYANE: *Ha o se o bolela ka (You talk as in)* in the future as if you are already out *hona yanong (presently)*.

MR SESOKO: *Mara (But)* Kgamanyane it is, (inaudible) be realistic
20 about the situation. (Inaudible) you need to prepare yourself *hore (that)* how do you ducks in a row in our absence, you know, because you know that is inevitable, you know.

MR KGAMANYANE: Uhm.

MR SESOKO: You know. So...

MR KGAMANYANE: This one (inaudible).

OdeS.

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MR SESOKO: It is... (intervenes)

MR KGAMANYANE: *Kea dibona tse dingwe ha ele (I see all the others but) this one yona (especially) hey.*

MR SESOKO: It is the reality of a situation we find ourselves in, you have to deal with it. So, once this thing is gone through its processes and...

MR KGAMANYANE: (Inaudible).

MR SESOKO: Uhm.

MR KGAMANYANE: Okay.

10 MR SESOKO: Uhm.

MR SESOKO: And fortunately this time it is (inaudible).

MR KGAMANYANE: (Inaudible).

MR SESOKO: So, we cannot say no, (inaudible).

MR KGAMANYANE: I will be following you. [Laughs].

MR SESOKO: You cannot say now, you must take instructions. Ja.

[Knock on the door].

MR KGAMANYANE: Come in.

FEMALE SPEAKER: (Inaudible).

20 MR SESOKO: Oh, hi, hi, morning (inaudible). So (inaudible). All right.

MR KGAMANYANE: (Inaudible).

FEMALE SPEAKER: (Inaudible) finished? Oh, oh okay, so everything is fine?

MR KGAMANYANE: Everything is fine, yes.

UNKNOWN FEMALE: All right. Do you want me to (inaudible).

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ADDRESS

[End of Sound File].



OMS

P

TRANSCRIBER'S NOTE

PARTIES Kgamanyane IPID v Sesoko, M
CASE NUMBER Suspension Meeting
MR KGAMANYANE Mr Kgamanyane
TRANSCRIBER T Bapela

REASON FOR REPORT

Some words/phrases were inaudible due to the following reasons:

1. At times, the parties' words were mumbled and not enunciated fully.
2. The meeting was typed *verbatim*, therefore, incorrect tenses, verbs, pronoun usage and grammar as evidenced by the parties have not been corrected.
3. Unfamiliar words and names of which the spelling could not be confirmed have been typed phonetically.
4. The audio is inaudible as a result of background noise and parties seemingly speaking too soft.

TK Bapela
TRANSCRIBER

19 February 2016

VERBIS TYPING & TRANSCRIPTION SERVICES
25 GRUNG ROAD, SELECTION PARK
SPRINGS 1559
TEL: (011) 812-2226 FAX: 086 5112359 CELL: 083 5665750

OVLS.

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CERTIFICATE OF VERACITY

We, the undersigned, hereby certify that **as far as it is audible**, the foregoing is a true and correct translation/transcript of the digitally recorded meeting between

MR KGAMANYANE (IPID) Employer

and

MR SESOKO, MATTHEWS Employee

FORUM OF ORIGIN : Suspension Meeting
TRANSCRIBER : Mr Bapela
TRANSLATOR : Mr Moleko
DATE COMPLETED : 14 March 2016
NUMBER OF PAGES : 20

TRANSCRIBER/TRANSLATOR :

pp

VERBIS TYPING & TRANSCRIPTION SERVICES
 25 GRUNG ROAD, SELECTION PARK
 SPRINGS 1559
 TEL: (011) 812-2226 FAX: 086 5112359 CELL: 083 5665750

Odes

P



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

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

NOTICE IN TERMS OF RULE 3.3

TO : MIN NKOSINATHI PHIWAYINKOSI NTHLEKO
CELL : 066 086 2678 / 076 010 7601
EMAIL : nnhleko@parliament.gov.za

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

- 1 The Commission’s Legal Team intends to present the evidence of Mr Humbulani Innocent Mr Khuba (“**Mr Khuba**”) at its hearing held at 4th Floor, Hill on Empire, 16 Empire Road, Parktown, Johannesburg. The presentation of Mr Khuba’s evidence will commence on **25 September 2019**, or so soon thereafter as his evidence may be heard. In the event of a change of date, it will be announced on the Commission’s website (www.sastatecapture.org.za) and in the media. The evidence in question implicates or may implicate you in unlawful, illegal or improper conduct in the respects set out below.
- 2 The allegations set out in the evidence of Mr Khuba implicate or may implicate you in, *inter alia*, allegedly participating in various acts of corruption, bribery, fraud, money laundering and/or tax evasion.

3 The relevant portions of the statement of Mr Khuba which implicate or may implicate you in the above allegations is annexed hereto marked “A”. Your attention is drawn to **paragraphs 81 to 88** of his statement read with **Annexures “HIK13” and “HIK14”**.

4 In summary it is averred that:

4.1 You were complicit in a scheme to unlawfully implicate Generals Dramat and Sibiya in the unlawful rendition of Zimbabwe nationals by the SAP back to Zimbabwe, after which they were killed and/or in the unlawful charges brought against Mr Khuba, Mr Sesoko and Mr McBride who refused to co-operate with those involved in the aforementioned scheme;

4.2 Shortly before Mr McBride’s suspension in March 2015, your personal assistant telephoned Mr Khuba, when you were the Minister of Police who informed him that you wished to see him;

4.3 He informed her that he required permission from the Executive Director at IPID, Mr McBride, before he could do so;

4.4 However, she called again and told Mr Khuba that you wanted him to fly to Cape Town over the weekend and that you would cover the cost;

4.5 Mr Khuba explained that it would make no difference whether the meeting took place during office hours or over the weekend because, as long as the meeting related to IPID business, the Executive Director had to know about it.

4.6 On the following day, you telephoned Mr Khuba and told him to co-operate with Worksmans’ Attorney’s (“**Worksmans**”) regarding the January and March 2014 reports which he had prepared concerning the unlawful rendition of the Zimbabweans.

- 4.7 Mr Khuba was later requested by Mr Israel Kgamanyane (“**Mr Kgamanyane**”) who had been appointed the acting Executive Director at IPID after the suspension of Mr McBride, to go to ‘Duma Nokwe Chambers’ at Sandton in Johannesburg to meet Advocate William Mokhari SC (“**Mokhari**”);
- 4.8 He attended at Werksmans where Advocate Mokhari requested him to make a confirmatory affidavit in support of the Minister (yourself) in a departmental case against Mr McBride;
- 4.9 Mr Khuba refused and told him that if he deposed to the confirmatory affidavit in support of the Minister (yourself), he would be lying. He then excused Mr Khuba, telling him that he could go back to my office at IPID.
- 4.10 Hereafter Mr Khuba attended further interviews at Werksmans regarding the existence of the alleged two reports, who assured him that the information gathered would not be used against him, either in a departmental or criminal investigation;
- 4.11 However, this was not the case as he was later suspended and charged based on the recommendations made by Werksmans in the report compiled by Sandile July, dated 24 April 2015. A copy of the Werksmans report is attached hereto, marked **Annexure “HIK13”**.
- 4.12 On 21 May 2015 Mr Khuba received a letter of precautionary suspension signed by Mr Kgamanyane;
- 4.13 The letter was served on him by Ms Netsianda, Chief Director Corporate Services. She telephoned him to inform him that the Minister (you) wanted him to receive the suspension letter on that same day and she drove all the way from

Pretoria to Polokwane (some 300 km) where he was, in order to serve the letter on him;

4.14 The call between Ms Netsianda and Mr Khuba was recorded and later transcribed. A copy of the transcription is annexed hereto and marked **Annexure “HIK14”**.

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

6 If you wish to:

6.1 give evidence yourself;

6.2 call any witness to give evidence on your behalf; or

6.3 cross-examine the witness

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

7 An application referred to in paragraph 6 above must be submitted to the Secretary of the Commission. The application must be submitted with a statement from you in which you respond to the witness’ statement insofar as it implicates you. The statement must identify what parts of the witness statement are disputed or denied and the grounds on which they are disputed or denied.

8 In the event that you believe that you have not been given a reasonable time from the issuance of this notice to the date on which the witness is to give evidence as set out above and you are prejudiced thereby, you may apply to the Commission in writing for such order as will ensure that you are not seriously prejudiced.

- 9 Please take note that even if you do not make an application under Rule 3.4:
- 9.1 in terms of Rule 3.10, the Chairperson may, at any time, direct you to respond in writing to the allegations against you or to answer (in writing) questions arising from the statement; and
- 9.2 in terms of Regulation 10(6) of the Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State GN 105 of 9 February 2018 published in Government Gazette 41436, as amended, the Chairperson may direct you to appear before the Commission to give evidence which has a bearing on a matter being investigated.
- 10 The extracts of the witness statement provided to you are confidential. Your attention is drawn to Regulations 11(3) and 12(2)(c) governing the Commission, which make it a criminal offence for anyone to disseminate or publish, without the written permission of the Chairperson, any document (which includes witnesses' statements) submitted to the Commission by any person in connection with the Commission's inquiry.
- 11 Any response, affidavit or statement in regard to this notice must be sent to Advocate André Lamprecht, Ms Shannon van Vuuren and Mr Warren Redcliffe at secretary@commissionsc.org.za.

DATED AT PARKTOWN ON THIS 12th DAY OF SEPTEMBER 2019



MS K B SHABALALA
Acting Secretary
Judicial Commission of Inquiry into Allegations
of State Capture, Corruption and Fraud
in the Public Sector including Organs of State

SWORN AFFIDAVIT

I, the undersigned,

HUMBULANI INNOCENT KHUBA

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

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

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

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

The final recommendations was as follows:

8. "RECOMMENDATION"

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

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

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

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

E. Werksmans

83. I was later requested by Mr Israel Kgamanyane ("Mr Kgamanyane") who had now been appointed the acting Executive Director at IPID after the suspension of Mr McBride, to go to 'Duma Nokwe Chambers' at Sandton in Johannesburg to meet Advocate William Mokhari SC ("Mokhari"). In the morning I attended at Werksmans chambers as instructed. Advocate Mokhari requested me to make a confirmatory affidavit in support of the Minister (Minister Nhleko) in a departmental case against Mr McBride. I refused and told him that if I deposed to the confirmatory affidavit in support of the Minister, I would be lying. He then excused me, telling me that I could go back to my office at IPID. Our meeting lasted less than three minutes.

84. I was also called to three interviews at Werksmans regarding the existence of the two reports prepared by me referred to above. At the commencement of these interviews with Werksmans, I was assured that the information gathered would not be used against me, either in a departmental or criminal investigation. However, this was not the case as I was later suspended and charged based on the recommendations made by Werksmans in the report compiled by Sandile July, dated 24 April 2015. A copy of the Werksmans report is attached hereto, marked Annexure "HIK 13."

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

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

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

F. Reference Group

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

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

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

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

I know and understand the contents of this statement.

I have no objection on taking the prescribed Oath.

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

Humbulani Innocent Khuba

HUMBULANI INNOCENT KHUBA

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was sworn to before me and the deponent's signature was placed thereon in my presence at Johannesburg on this the 16 day of July 2019, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

M/S

H

Samuel M. Mafome
0131

COMMISSIONER OF OATHS

FULL NAMES:

Samuel Mafume Mafome

DESIGNATION:

137 Pretorius Street

ADDRESS:

P.O. Central SAPS



M-S

111



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

25 March 2020

To: Mr Nhleko

Per email: ndumiso@voyi.co.za / amanda@voyi.co.za

And to: Mr McBride

Per email: rjmcbride63@gmail.com

APPLICATION FOR LEAVE TO ADDUCE EVIDENCE AND TO CROSS-EXAMINE

Applicant: Mr Nkosinathi Phiwayinkosi Thamsanqa Nhleko

Witness implicating the applicant: Mr Robert McBride

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

1.1. Chairperson's decision:

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

Yours sincerely



Ms KB SHABALALA

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



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

SWORN STATEMENT BY NKOSINATHI
PHIWAYINKOSI THAMSANQA NHLEKO RE: KHUBA ALLEGATIONS

I, the undersigned,

NKOSINATHI PHIWAYINKOSI THAMSANQA NHLEKO

do hereby make oath and state that:

1. I am an adult male person and I am the former Minister of Police and I was later also appointed Minister of Public Works, the position I occupied until the cabinet reshuffle by the current President of the Republic in 2018.
2. On 23 July 2020, my legal representatives had a pre-hearing meeting with the evidence leaders of the Commission. The purpose of the pre-hearing meeting was to discuss outstanding matters relevant to my testimony to be given at the Commission on 27 July 2020.
3. It emerged during the pre-hearing meeting that Mr Innocent Khuba ("Mr Khuba") has made certain allegations which the evidence leaders brought to my legal representatives' attention. The allegations may or may not implicate me in allegations of state capture. Since I am to give evidence before the commission on 27 July 2020, it was considered convenient that I deposed to an affidavit dealing



with the allegations by Mr Khuba. This is so that when I testify, I answer and deal with all allegations against me in one sitting as opposed to doing that in a piecemeal fashion.

4. I, however, state for the record that I did not receive the requisite notice from the commission alerting me to allegations against me by Mr Khuba. Be that as it may, I deal with the allegations in this affidavit.

5. I am advised that Mr Khuba gave evidence before the commission on 26 and 27 September 2019. My legal representatives and I have considered the transcripts of Mr Khuba's testimony on those dates and concluded that the part of the evidence he gave that is worth responding to is the following, that:

5.1 I wanted to meet with him in Cape Town; and

5.2 I took a decision to suspend him and insisted that he be served with a suspension letter on 21, May 2015.

CAPE TOWN MEETING

6. The evidence of Mr Khuba before the commission on this aspect is as follows:

"MR HUMBULANI INNOCENT KHUBA: I received a call from the personal assistant to the Minister. It was Minister Nhleko and she made it clear that she is the personal assistant of the Minister and she told me that the Minister wanted to meet me personally. I then requested to know what was that about – she just gave me a highlight to say it was about Rendition. Then I indicated – I informed her that I would need permission from the Executive Director Mr McBride and I cannot be able to just go and meet with the Minister. Then she suggested and that was I think on the subsequent call. She suggested and said to me the Minister would want to meet with you in Cape Town over



the weekend. They will arrange transportation and McBride will never know. Then on Sunday you will be back and then on Monday you will be able to report for duty. Now I indicated to her that it does not matter it is over the weekend because if I come that I will be discussing issues pertaining to the department and the Accounting Officer must know.

CHAIRPERSON: And what was her response to that?

MR HUMBULANI INNOCENT KHUBA: No she indicated to me that she will talk to the Minister again.

CHAIRPERSON: Hm

MR HUMBULANI INNOCENT KHUBA: That is when on the following day I received a call from the Minister himself.

CHAIRPERSON: Hm

....

CHAIRPERSON: So you received a call from the Minister himself Mr Nhleko?

MR HUMBULANI INNOCENT KHUBA: Yes.

CHAIRPERSON: Yes and what – what did he say in the telephone call?

MR HUMBULANI INNOCENT KHUBA: His call lasted very – it might be less than – not even a minute. He just said I want you to cooperate with Werksmans. And then I said okay and then he terminated the call.

CHAIRPERSON: Oh. At this stage had you been - had Werksmans been in touch with you at that stage?

MR HUMBULANI INNOCENT KHUBA: Yes.

CHAIRPERSON: They had been in touch with you.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: But had you had an interview with them already, or not yet?

MR HUMBULANI INNOCENT KHUBA: No I had not yet had the interview with them.

CHAIRPERSON: The call must – he must have made the call because you kept on saying that you would need Mr McBride's permission.

MR HUMBULANI INNOCENT KHUBA: That is correct, but I need to indicate clearly chairperson that it is not the Minister himself who proposed Cape Town. It is the PA saying the Minister wants to meet me with – with me in Cape Town.

....



CHAIRPERSON: Yes, no, no, I understand that completely, but obviously she was conveying to you what the Minister had ask her because she was the PA's Minister and she was – I'm saying she it could have been a he – was- that had been sent by the Minister to call you and ask you to come to Cape Town. Otherwise the PA would not say come to Cape Town unless the Minister wanted you to come to Cape Town.

MR HUMBULANI INNOCENT KHUBA: That is correct.

CHAIRPERSON: Yes. But he – what he had to say was just brief. I want you to cooperate with Werksmans.

MR HUMBULANI INNOCENT KHUBA: That is correct.”

7. I confirm calling Mr Khuba. This was after I had been made aware by Werksmans that he was not cooperating with them. It is clear from the above exchange between the Chairperson and Mr Khuba that the purpose of my call to him was to instruct him to cooperate with Werksmans in their investigation, nothing more and nothing less. I find it rather curious that despite Mr Khuba stating categorically that I did not propose that I meet with him in Cape Town, but that it was my PA that proposed, the Chairperson continued to speculate that I wanted Mr Khuba to come to Cape Town to meet with me .

MR KHUBA'S SUSPENSION

8. Mr Khuba testified as follow on this aspect:

"MR HUMBULANI INNOCENT KHUBA: Chairperson in – in May 2015 that was 21 May I received a letter of precautionary suspension signed by the then Acting Executive Director Mr Kgamanyane. The letter was served to me by Ms Netsianda. That was after McBride was suspended around March 2015.

Now she gave me a telephonic call and told me that she wanted to serve the suspension letter and apparently the Minister wanted me to receive that letter. Now at that time she indicated that she was driving. It was very late

and I knew that she was going to cover between 200 or 252 to 300 km to arrive in Polokwane.

9. I am not privy to the discussions between Mr Khuba and Ms Netsianda. I deny that I instructed Ms Netsianda to serve a precautionary suspension letter signed by the then acting Executive Director, Mr Kgamanyane.

10. It boggles the mind that I would bypass an acting Executive Director and instruct a member of staff and insist on the same day delivery of a letter of precautionary suspension to Mr Khuba in Limpopo. Mr Khuba also speculates. This is evident from the following exchange between Mr Khuba and the Chairperson:

“CHAIRPERSON: *Yes. Do you have any idea why if the decision to suspend you was that of the Acting Executive Director, namely Mr Kgamanyane why the Minister would have an interest that you receive the letter of suspension on that day? What did that have to do with him?*

MR HUMBULANI INNOCENT KHUBA: *I'm not really sure, but seeing previously I had received a call from the Minister, I realise that probably that the acting Executive Director was just being... [Intervenes]*

CHAIRPERSON: *Was just being an instrument.*

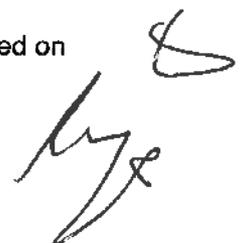
MR HUMBULANI INNOCENT KHUBA: *An instrument to achieve that goal.*

CHAIRPERSON: *These were decisions being taken by the Minister?*

MR HUMBULANI INNOCENT KHUBA: *That's correct and probably to add on that Chairperson, if I had not had an experience where the Minister called me directly it would have been another issue, but because he had called me, I realised that these things above... [Intervenes]*

CHAIRPERSON: *The Executive Director”*

11. I deny that I took the decision to place Mr Khuba on precautionary suspension or to dismiss him for that matter. The acting Executive Director, Mr Israel Kgamanyane placed Mr Khuba on suspension after he had granted him an opportunity to make written representations as to why he was not to be placed on



precautionary suspension.

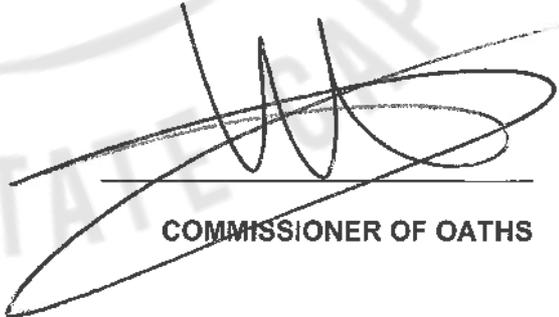
12. A disciplinary enquiry was convened against Mr Khuba and chaired by an outside independent counsel. 23 September 2015 Mr Khuba freely and voluntarily pleaded guilty to the charges preferred against him. He was legally represented.
13. By pleading guilty he in fact admitted that the January 2014 IPID investigation report was the final report and that he, Sesoko and McBride unlawfully altered it in order to exonerate Dramat and Sibiya.
14. I attach hereto a sworn statement by Mr Kgamanyane in relation to the above allegations by Mr Khuba. I pray that it be read as part of my evidence pertaining to allegations made against me by Mr Khuba.


 NKOSINATHI PHIWAYINKOSI THAMSANQA NHLEKO

THUS SIGNED AND SWORN TO BEFORE ME AT MIDRAND ON THIS
 THE 24th DAY OF JULY 2020, THE DEPONENT HAVING ACKNOWLEDGED THAT
 THE DEPONENT KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT,
 THAT IT IS BOTH TRUE AND CORRECT TO THE BEST OF THE DEPONENT'S
 KNOWLEDGE AND BELIEF, THAT THE DEPONENT HAS NO OBJECTION TO TAKING
 THE PRESCRIBED OATH AND THAT THE PRESCRIBED OATH WILL BE BINDING ON
 THE DEPONENT'S CONSCIENCE.

MOLESENG GODFREY KOBENG

Commissioner Of Oaths
 Practicing Attorney, RSA
 Mthobi Attorneys
 Thornhill Office Park, Building 27
 Suite F5, 94 Bekker Road, Vorna Valley
 Midrand 1685


 COMMISSIONER OF OATHS

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

SWORN STATEMENT: KETSEBAE ISRAEL KGAMANYANE

I, the undersigned,

KETSEBAE ISRAEL KGAMANYANE

do hereby make oath and state that:

1. I am an adult male person and former Acting Executive Director of the Independent Police Investigative Directorate ("IPID"). I occupied that position from 24 March 2014 until 18 October 2016.

**APPLICATION IN TERMS OF RULE 3.3.6 READ WITH
RULE 3.4 OF THE COMMISSION'S RULES**

2. This statement is submitted to the Commission of Enquiry ("the Commission") in terms of Rule 3.3.6 of the Commission's Rules ("the Rules").
3. I was notified by the Commission in terms of Rule 3.3 on or about 12 September 2019 that Mr Humbulani Innocent Khuba ("Mr Khuba"), the Chief Director and Provincial Head for Limpopo at IPID has implicated me in allegations of State



A. BRIEF BACKGROUND

8. I was employed by the South African Police Service ("SAPS") from 16 May 1990 until August 1997. I joined the then Independent Complaints Directorate ("ICD") subsequent to its establishment in September 1997 as one of its first investigators for the Gauteng Provincial Office. I later on moved to the Mahikeng Provincial Office after its establishment around August 1998.
9. I was later promoted to Assistant Director: Investigation and thereafter transferred to the Free State Provincial Office of the ICD. From 1 March 2002 until 2003 I occupied the Northern Cape Provincial Office of the ICD until my transfer back to the Free State Provincial Office. Around March 2014 I was appointed by the former Minister of Police, Mr Nkosinathi Nhleko to act as the Executive Director of IPID. I acted in that position until McBride's return from suspension.
10. When Minister Nkosinathi Mthethwa was the executive authority, I acted as Executive Director of IPID on several occasions. I would be requested to act when Ms Koekie Mbeki, then acting Executive Director, would be on leave. This was long before McBride was appointed as Executive Director and before Minister Nkosinathi Nhleko was appointed as the executive authority of SAPS.
11. The ICD was later named IPID when it was established in terms of section 3(1) of the Independent Police Investigative Directorate Act 1 of 2011.
12. I later applied for and was transferred to the Directorate for Priority Crime Investigation ("DPCI") from 1 December 2016 until 31 July 2017. I was Major General and head of a component responsible for financial, asset forfeiture, digital forensic and cybercrime investigations. I also managed the component's financial

17. In their report to the Minister, Werksmans concluded that Mr Khuba, Mr Sesoko and Mr McBride were responsible for the deletion of information from the first report ("the January 2014"). Werksmans recommended that they 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.
18. Mr McBride was suspended by the Minister and I was appointed to act as the Executive Director during his suspension.¹
19. Having been appointed to act as Executive Director of IPID, I proceeded in terms of the responsibilities and powers² attendant to the post of Executive Director, to effect the recommendations by Werksmans relating to preferring disciplinary charges against Mr Khuba and Mr Sesoko for the alleged deletion of information from the January 2014 report.
20. It was imperative that I proceed and institute disciplinary hearings against both Mr Khuba and Mr Sesoko because firstly, as the acting Executive Director, I was duty-bound to do so as part of my responsibilities in terms of the Act. I would have been remiss and/or derelict in my responsibilities if I had not acted on the recommendations of the report.

¹ Section 6 (4) IPID Act 1 of 2011 permits the Minister to designate another person to act as Executive Director, in the event that the incumbent is unable to perform the functions of the office or during a vacancy in the directorate, until the incumbent returns to perform the functions of office or the vacancy is filled.

² Sections 7 (3) of the Act requires the Executive Director to appoint such staff as may be necessary to enable the Directorate to perform its functions in terms of the Act. The corollary of the power to appoint staff includes the power to effect discipline and where necessary and warranted, dismissal.

25. At his disciplinary hearing, Mr Khuba pleaded guilty to a charge of dishonesty and defeating the ends of justice. By pleading guilty he in fact admitted that the January 2014 investigation report was the final report and that he, Mr Sesoko and Mr McBride unlawfully altered it in order to exonerate Mr Dramat and Mr Sibiya.
26. When he pleaded guilty to the charges preferred against him, he was legally represented. He did so freely and voluntarily.
27. A settlement agreement in respect of sanction ONLY was entered into between the Directorate and Mr Khuba. I elected, in terms of the settlement agreement, to impose a lenient sanction of a final written warning despite the seriousness of the charges that he pleaded guilty to.
28. Later on, about 25 September 2015, he deposed to an affidavit that contradicted his guilty plea. I confronted him about it as I was of the view that his subsequent conduct of deposing to an affidavit that contradicted his guilty plea constituted a perpetuation of his dishonesty and a breach of the trust relationship which I was of the view that the guilty plea as well as the lenient sanction agreed upon and imposed, would go a long way in trying to mend the broken trust relationship.
29. He was given an opportunity to make written representations as to why I should not dismiss him in light of the perpetuation of his dishonest conduct. I proceeded to summarily dismiss him on the grounds of the employment relationship having irreparably broken down, after considering his written representations.

the report to Mr McBride.⁸ The report emailed to Mr McBride was already updated with the statements that were received after the report had already been sent to the NPA. On receipt of the new statements he never looked at the recommendations but just updated the statements *"but the actual interpretation and the changing of everything happened when McBride had already arrived."*⁹

33.2 when asked as to who would have deleted the information from the report, he said the following:

"Mr Khuba: That is a very difficult question. But I need to say as the investigating officer I was over trusting with the report. Because when SESOKO asked for the report, I never withheld the report, I emailed it to him. When we were working on the report, I used his computer. Whether he showed McBride – but I remember McBride, if there is one person who read that the report extensively it was McBride. He read it extensively. Then the progress which I was doing on the report itself, I was only adding stuff. He was sitting next to me. I was adding things, I was doing things, but whether that part was cut out by him or by me, I would not say, but I don't remember removing it.

Mr July: deleting?

Mr Khuba: no, no, no, I do not remember thinking to say: I'm deleting this part. Because I had nothing to benefit by it. In fact, it's something that would have made me feel bad, to have the investigation and make me have sleepless nights, and that not all things are going into that. But the way we worked on that report, I email it to Mr SESOKO. I do not know how Mr SESOKO dispatched it to him."

33.3 he signed a report that was printed off Mr Sesoko's computer. Whether it was not the right one, he did not know because he never went back to reading and analysing but believed that it was the same January 2014 report.¹⁰

⁸ "KGK6"; p 7 lines 10 – 22

⁹ "KGK6"; p 7 lines 23 – 25; p 8 lines 1 – 3

¹⁰ "KGK6"; p 11 lines 1 – 6

Handwritten initials and a signature in the bottom right corner of the page.

33.7 with regard to Mr Sesoko's knowledge about the report:

"Mr July: ... The issue about how he goes to a meeting with the NPA on the basis of the report that was submitted, and then he claims that he didn't know anything about the report ...

Mr Khuba: On that, I still remember the meeting. Mr Moukangwe was also there. Also, what I'm really worried about insofar as this matter is concerned, is I'm really - okay, there are things that I'm going to mention off record.

Mr July: Okay. We can switch off now."¹⁴

The version before the High Court

34. Mr Khuba deposed to an affidavit in support of Mr McBride's case before the High Court, Gauteng Provincial Division, Pretoria under case number 6588/15¹⁵. In that affidavit Mr Khuba sought to, amongst others, address the allegations made in respect of *"the nature of and reasons for the differences between the preliminary IPID report (of 22 January 2014) and the final IPID report that I have read and signed (of 18 March 2014), particularly as regards the findings and recommendations made in respect of Dramat and Sibiya."*¹⁶

35. In this affidavit in which he supported the application made by Mr McBride, his version is the following:

35.1 he was not satisfied that the January 2014 report was in fact a final report because his investigations were not complete. He always intended to supplement the docket with outstanding evidence and to send an updated report when his

¹⁴ "KGK6"; p 23 lines 12 –21

¹⁵ Annexure "KGK7". Mr Khuba deposed to this affidavit on or about 19 June 2015

¹⁶ "KGK7"; paragraph 3.2

one he had previously sent to advocate Mosing.

38. He further alleges that before then, Mr Sesoko and Mr McBride were not aware of the existence of the January report. They only became aware when an enquiry was made by the journalist.²²

The version before the Commission

39. The version that he provided to the Commission when he testified differs in material respects to the versions outlined above. In fact, all the versions that he gave in respect of the report differ in material respects. When he testified before the Commission, his version was the following:

39.1 there was nothing deleted in the January report;²³

39.2 an amendment (in respect of the January report) was not made to the full report but only on the recommendation;²⁴

39.3 he changed his mind upon receipt of the cell phone analysis report. He did not amend the first report physically. He produced a new report that had a different conclusion.²⁵

²² "KGK8"; paragraphs 16 – 19

²³ 26 September 2019 session, transcript "KGK9" p 155 lines 12 – 25; p 156 line 1. In his affidavit before the High Court in support of Mr McBride, Mr Khuba admitted that certain information was deleted and/or removed and sought to justify the deletion and/or removal of information. For instance, in paragraph 26 of "KGK7" Mr Khuba states the following: "26 First, it is correct that the summary of Madlonga's statement was changed to remove Madlonga's description of a call that Madlonga made to Dramat about 2 weeks before 18 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."

²⁴ "KGK9" p 166 lines 16 – 25; p 167 - 170 lines 1 – 8. For the first time at the Commission Mr Khuba makes mention of an amended report that allegedly existed between the January report and the March report. In all the affidavits that he deposed to before various fora no mention is made of such an amended report. It simply does not exist.

²⁵ "KGK9" p 175

*powers when maybe there was something. Maybe I just do not see it. So that is why I keep on asking these questions because I am trying to understand whether really we could be dealing here with a situation where certain people which is abusing their powers. You people had absolutely nothing wrong or whether maybe there was something wrong. I just do not see it. That – that is why I keep on asking these questions.*²⁷

42. The various versions provided by Mr Khuba that are outlined above and the contents of this sworn statement will hopefully provide the Chairperson of the Commission with an understanding he seeks as evidenced from the remarks quoted above.

43. I now proceed to deal with Mr Khuba's allegations against me as pointed out from his sworn statement. The allegations that I did not reply to, but which are inconsistent with what I state in this sworn statement should be taken to have been denied.

AD PARAGRAPH 83

44. I deny that I requested Mr Khuba to go to Duma Nokwe Chambers in Sandton to go and meet with advocate William Mokhari SC. I requested both Mr Khuba and Mr Sesoko to cooperate with the Werksmans investigation.

²⁷ "KGK9" p 154 – 155

50. In any event these allegations are made by the same Ms Netsianda that leaked confidential information, contrary to the Directorate's policies, relating to the appointment of Ms Boniwe Soty to the media and disrespected the chairperson of the Audit Committee because she was unhappy when the issue of the irregular transfer/payment of R 500 000.00 to fund Mr McBride's litigation was raised for discussion during the Audit Committee meeting.

51. The R 500 000.00 irregular transfer/payment formed part of the charges that were preferred against Mr McBride by the Minister. The Auditor General also found that the Supply Chain Procedures were not followed in effecting the transfer to Adams and Adams attorneys who represented Mr McBride in his litigation against the Minister and the Directorate.

AD PARAGRAPHS 94 – 102

52. I deny that I dismissed Mr Khuba without having regard to his written representations. In my letter of dismissal of Mr Khuba, I clearly stated in paragraph 2 thereof that I received his written representations at 08h45 on 30 September 2015 and that I had taken his representations into account in coming to my decision. Nothing in his written representations addressed the issues I had raised in my letter of 29 September 2015.

53. He was legally represented at his disciplinary enquiry. The Directorate's counsel was confident that the evidence against him that was at the disposal of the Directorate and the Werksmans report together with the witnesses that were to be called, was likely going to result in the finding of guilt against Mr Khuba and that, considering the severity of the charges preferred against him, dismissal would have been an appropriate sanction in the circumstances.

59. If Mr Khuba was of the view that I ought not to have acted in terms of the recommendations of the Werksmans report, which report was already in the public domain and had attracted public interest, because I was "friends" with him, he was clearly mistaken. I was appointed to act in a statutory position with statutorily prescribed obligations. I would have been remiss and/or derelict in my duties if I had not acted on the recommendations of the Werksmans report.



KETSEBAE ISRAEL KGAMANYANE

THIS SIGNED AND SWORN TO BEFORE ME AT Bloemfontein ON THIS THE 27 DAY OF NOVEMBER 2019, THE DEPONENT HAVING ACKNOWLEDGED THAT THE DEPONENT KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, THAT IT IS BOTH TRUE AND CORRECT TO THE BEST OF THE DEPONENT'S KNOWLEDGE AND BELIEF, THAT THE DEPONENT HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH AND THAT THE PRESCRIBED OATH WILL BE BINDING ON THE DEPONENT'S CONSCIENCE.


COMMISSIONER OF OATHS

Full names:

Capacity:

Business Address:

CLAUDINE BOTHA
COMMISSIONER OF OATHS
PRACTISING ATTORNEY (SBA)
49 PARFITT AVENUE, BLOEMFONTEIN, 9301

NPN J

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

SWORN STATEMENT: KETSEBAE ISRAEL KGAMANYANE

I, the undersigned,

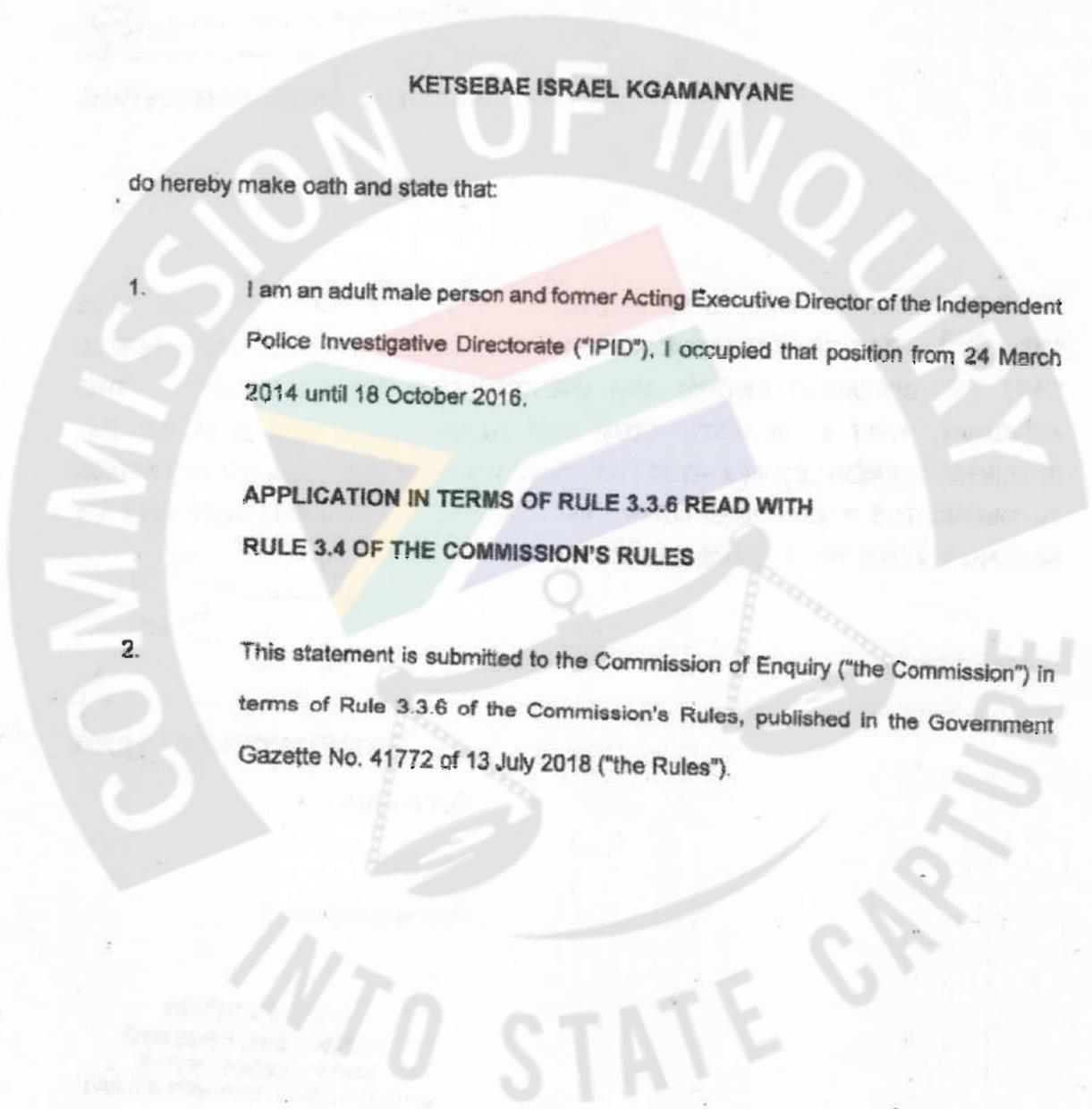
KETSEBAE ISRAEL KGAMANYANE

do hereby make oath and state that:

1. I am an adult male person and former Acting Executive Director of the Independent Police Investigative Directorate ("IPID"). I occupied that position from 24 March 2014 until 18 October 2016.

**APPLICATION IN TERMS OF RULE 3.3.6 READ WITH
RULE 3.4 OF THE COMMISSION'S RULES**

2. This statement is submitted to the Commission of Enquiry ("the Commission") in terms of Rule 3.3.6 of the Commission's Rules, published in the Government Gazette No. 41772 of 13 July 2018 ("the Rules").



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54. It is incorrect that Mr Khuba had no choice. He could have declined the offer, or he could have, through his legal representative, sought the recusal of the appointed Chairperson if he was of the view that the outcome of the proceedings was predetermined.
55. The inescapable conclusion why he opted to accept the offer and plead guilty was that he knew he was in the wrong.
56. He sought to change his mind after he was confronted by Mr McBride and Mr Sesoko. Because of his fear of Mr McBride and Mr Sesoko, he deposed to an affidavit that contradicted his guilty plea, on Mr McBride's and Mr Sesoko's insistence.
57. The agreement reached between the Directorate and Mr Khuba was in respect of the sanction ONLY and not the plea itself. He freely and voluntarily, while legally represented, pleaded guilty to the charges preferred against him.

CONCLUSION

58. Mr Khuba's suspension and eventual dismissal was not motivated by any abuse of power on the part of either the Minister or Werksmans nor myself. Mr Khuba committed serious misconduct as evidenced from the charges preferred against him. His misconduct is easily determinable from the report compiled by Werksmans. I have provided the Commission with various versions by Mr Khuba relating to the reports that give rise to charges of misconduct being preferred against him.

45. I have no knowledge of the alleged meeting between Mr Khuba and advocate Mokhari SC nor am I privy to the discussions that are alleged to have taken place between the two. It is noteworthy that Mr Khuba makes this allegation for the first time in the Commission.

AD PARAGRAPH 84

46. I have no knowledge of the number of times that Mr Khuba was called for interviews by Werksmans. I also do not have knowledge of the assurances that are alleged to have been given by Werksmans. What I know is that Mr Khuba as an employee of the Directorate was not immune to discipline in respect of misconduct if found to have been committed, irrespective of the alleged assurances given by Werksmans.

AD PARAGRAPH 86

47. If the recommendations were completely unfounded, why did Mr Khuba plead guilty to the charges preferred against him? Why did he, when interviewed by Werksmans stated that the January 2014 report was the final report?

AD PARAGRAPHS 88 – 90

48. I admit that I signed Mr Khuba's letter of precautionary suspension. As acting Executive Director, I was empowered to do so.
49. I am not privy to the discussions between Mr Khuba and Ms Netsianda. It is odd that the Minister would have an interest in the service of a precautionary suspension letter signed by me.

40. The above versions are provided to the Commission to assist it to make its own determination about the true state of affairs that led to Mr Khuba been disciplined and eventually dismissed. They are also provided to demonstrate to the Commission that its confusion about the various reports referred to in Mr Khuba's testimony, was deliberately made and calculated to deceive.
41. The Commission's confusion and being blindsided is evident from the following exchange between the Chairperson and Mr Khuba:

CHAIRPERSON: *I am – I am sorry. When you refer to the amended report are you referring to the report to which I understood you to refer earlier where you said after he had submitted what we call the first report there was another report that you submitted. I do not know if you said it was one page, but you submitted the report before what we call the second report. Is my understanding correct?*

MR HUMBULANI INNOCENT KHUBA: *That is correct. It was where I made an amendment but that amendment was not made in a full report but only on the recommendation.*

CHAIRPERSON: *Yes. Was it one page?*

MR HUMBULANI INNOCENT KHUBA: *No.*

CHAIRPERSON: *It was not – it was ...?*

MR HUMBULANI INNOCENT KHUBA: *It was a complete report.²⁶*

And also, from the following:

CHAIRPERSON: *Hm. Well that is – that is why I ask these questions and I have been asking them. I ask them with Mr Sesoko. I asked them with Mr McBride because I am trying to understand what it is really there was a problem but also I am trying to understand whether there is something that I do not understand in what you, Mr Sesoko and Mr McBride have been telling me that may make me thing[sic] that the NPA and Werksmans and maybe the Minister were abusing their*

²⁶ "KGK9" p 166 – 167

investigation was properly completed;¹⁷

35.2 the changes that were made in March 2014 on the renditions investigation report by him, Mr Sesoko and Mr McBride were not actuated by improper motive. "The changes were made to reflect what we considered to be the credible evidence that would withstand the scrutiny in court."¹⁸

35.3 the differences highlighted by the Minister as tabulated in the Werksmans report had no basis;¹⁹ and

35.4 he confirmed that the March 2014 report is the only report that he considers to be a final report on the renditions investigation.²⁰

The version on the affidavit in support of Mr Sesoko

36. After pleading guilty to the charges preferred against him in the disciplinary enquiry and when confronted by Mr Sesoko, he deposed to an affidavit in which he sought to explain the circumstances of his guilty plea.²¹

37. Mr Khuba alleges in "KGK8" that he was telephoned by Mr Sesoko enquiring whether he had knowledge of the signed report dated January 2014. He alleged that he could not immediately recall the specific report but did so when two pages of the report were sent to the Directorate's spokesperson by a journalist. It was only then that he recalled that the report Mr Sesoko was enquiring about was the

¹⁷ "KGK7"; paragraph 13

¹⁸ "KGK7"; paragraph 20

¹⁹ "KGK7"; paragraph 25. Mr Khuba sought to explain away the tabulated differences which when interviewed in April 2015 he stated not to be aware of and having signed the January 2014 report "knowing that it is the same report, because I had dealt with that report for the past eighteen months to the date I signed the report."

²⁰ "KGK7"; paragraph 57. He considered the January 2014 report to be the final report when interviewed by Werksmans.

²¹ Annexure "KGK8"

33.4 "once you make the recommendations in the report which has recommendations is a final report";¹¹

33.5 with regards to deleted information he said the following:

"Mr Khuba: But when he started to show me that some of the things were missing, for me that was ...

Mr July: And you never suspected anything, he never told you about the information that was deleted?

Mr Khuba: No.

Mr July: You signed the report on the basis that it is the same report and you are adding to that?

Mr Khuba: Yes. I signed knowing that it was the same report, because I had dealt with that report for the past eighteen months to the date, I signed the report... But my conscience is clear, I never...

Mr July: ... deleted?

Mr Khuba: No, I never. That's why even when you called me today, I said I will tell you what I know."¹²

33.6 a further confirmation that the January 2014 report was the final report can be ascertained from the following exchange:

"Mr July: The last thing from my side, because it is not for us to determine the merits or demerits of findings, it's to find out about the existence of the two reports, as to which is the report, I can tell you now that our preliminary view is that there is only one report, which is the first report.

Mr Khuba: Yes."¹³

¹¹ "KGK6"; p 11 lines 20 – 23; p 12 lines 2 – 5

¹² "KGK6"; p 16 – 18

¹³ "KGK6"; p 22 lines 11 – 18

Handwritten initials and a signature.

30. Subsequent to his dismissal, he approached the Labour Court seeking to have his dismissal set aside. The application was dismissed by the Labour Court. His referral to the Bargaining Council also suffered the same fate. Pleadings before the Labour Court and the Bargaining Council award are attached and marked "KGK4" and "KGK5" respectively.

31. It is noteworthy that from Mr Khuba's application before the Labour Court, there is nowhere where he insinuates or alleges that I suspended and ultimately dismissed him on instructions of the Minister.

C MR KHUBA'S VARIOUS VERSIONS RE: THE REPORTS

32. Mr Khuba has provided various differing versions with regard to the reports. In this section of the statement, I highlight the various versions given by him as ascertained from various documents including during his testimony before the Commission.

The version during Werksmans interview⁴

33. When interviewed by Werksmans on 13 April 2015, Mr Khuba stated that:

33.1 he, together with Mr Sesoko and Mr Moukangwe went to the NPA to obtain a warrant of arrest.⁵ That was before Mr McBride joined the Directorate.⁶ By then Mr Sesoko was aware of the report (the January 2014 report).⁷ Mr McBride asked for the report, which report was the same report that was sent to the NPA. He emailed

⁴ The transcript of the Werksmans interview is marked annexure "KGK6"
⁵ "KGK6"; p 1 lines 15 – 25
⁶ "KGK6"; p 2 – 3
⁷ "KGK6"; p 2 lines 1 – 20

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21. Secondly, the findings and recommendations in the Werksmans report were already in the public domain and it would have been contrary to the public interest that had already gained traction as a result of various media reports not to proceed to implement the recommendations. It would have also eroded the confidence that the public is supposed to enjoy in the Directorate. Thirdly, the disciplinary enquiry was an opportunity for both Mr Khuba and Mr Sesoko to put their version of events before an independent and impartial chairperson who would then make findings of fact.
22. Both Mr Khuba and Mr Sesoko as employees of the Directorate were not immune to discipline. In proceeding to institute disciplinary proceedings against them I did so as permitted by the law and nothing else.
23. When the Chairperson of the enquiry asked Mr Khuba about my relationship with him before the disciplinary hearing, the response provided by Mr Khuba give an impression that my initiation of disciplinary proceedings against him was motivated by my ambitions for a "bigger position" to an extent that I was willing to compromise my integrity.³ Mr Khuba neither states the "bigger position" I was ambitious of nor does he state who told him that his petrol claim was not to be processed and on whose instructions. This is just a clear indication of malice and a smear campaign waged by Mr Khuba in concert with Mr McBride and Mr Sesoko against me for simply acting as I was legally obliged to.
24. I pause and mention at this stage that, the findings and recommendations contained in the Werksmans report have, to this day, not been reviewed and set aside by any Court.

³ 27 September 2019 proceedings "KGK3"; transcript p 98 lines 23 – 25; p 97 lines 1 – 12

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and human resources.

13. From August 2017 until 31 December 2017 I was appointed as deputy CEO Compliance and law enforcement for the Private Security Industry Regulatory Authority (PSIRA).

14. I am currently the Chief of Metro Police for the Mangaung Metropolitan Municipality since January 2018 to date. I attach hereto my curriculum vitae marked annexure "KGK2".

B KHUBA'S SUSPENSION AND EVENTUAL DISMISSAL

15. Werksmans Attorneys ("Werksmans") were instructed by the then Minister of Police, Mr Nkosinathi Nhleko, to conduct an investigation into the reports submitted by the Directorate which dealt with the rendition of Zimbabwean nationals. The relevant terms of reference for the purposes of my answer to the allegations by Mr Khuba and Mr Sesoko were:

"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?"

16. In the course of the investigation as mandated by the Minister, Werksmans conducted various interviews with all concerned persons including Mr Khuba, Mr Sesoko as well as Mr McBride.

Capture, Corruption and Fraud in the Public Sector including organs of state ("State Capture") in his affidavit that he provided to the Commission.

4. By this sworn statement, I hereby submit an application in terms of Rule 3.3.6 to give evidence myself and to cross-examine Mr Khuba.
5. In preparing this statement, I relied on matters that do not fall within my personal knowledge, and the probative value of such evidence is dependent upon the person from whom they emanate. In certain instances, although I may not have personal knowledge of what I say, such evidence is corroborated by objective evidence from the documents which are not disputed and could not be disputed, and thus making it unnecessary to call anybody to corroborate them.
6. I have already submitted a statement to the Commission on or about 20 September 2019 in response to Mr McBride's allegations against me. In that statement I have dealt with allegations made by Mr McBride against me in relation to Mr Khuba. I attach hereto and marked annexure "KGK1" a copy of the statement submitted to the commission in response to Mr McBride's allegations against me. I pray that the statement be read is incorporated herein.
7. In this statement I will confine myself to responding to allegations warranting a response in Mr Khuba's statement. Before responding to Mr Khuba's allegations, I deem it necessary to sketch out a brief background about my employment history. In this statement, where I make mention of the Directorate, I refer to the Independent Police Investigative Directorate ("the IPID").

INTRODUCTION





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

NOTICE IN TERMS OF RULE 3.3

TO : MINISTER NKOSINATHI PHIWAYINKOSI NHLEKO

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CELL : 066 086 2678 / 076 010 7601

EMAIL : nnhleko@parliament.gov.za

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

- 1 The Commission's Legal Team intends to present evidence of Mr Robert McBride ("Mr McBride") at its hearing held at 4th Floor, Hill on Empire, 16 Empire Road, Parktown, Johannesburg. The presentation of this evidence will commence on 11 April 2019 until its conclusion. The evidence in question implicates, or may implicate you in unlawful, illegal or improper conduct.
- 2 The allegations in the evidence of Mr McBride implicates or may implicate you in, *inter alia*, the following respects:
 - 2.1 You improperly and/or unlawfully sought to-

- 2.1.1 unduly interfere in the investigative independence of the National Prosecuting Authority (“NPA”), the Independent Police Investigative Directorate (“IPID”) and/or the Directorate for Priority Crime Investigation (“DPCI”) commonly known as the HAWKS;
- 2.1.2 unduly delay and/or decline recommended prosecutions;
- 2.1.3 participate in the undue persecution of officials of the NPA, IPID and/or the DPCI; and
- 2.1.4 destabilize the NPA, IPID and/or the DPCI.
- 2.2 In acting as set out above, you allegedly sought to enable the state capture of the criminal justice system.
- 3 The relevant portions of the statement of Mr McBride which implicate, or may implicate, you in the above allegations are annexed hereto marked “A”. Your attention is drawn to paragraphs 16-30, 34-48, 53, 55, 56, 58, 60, 61, 72-77, 131, 135, 138 and 139 of his statement and the annexures referred to therein, if any.
- 4 Due to the fact that you are implicated or may be implicated by the evidence of Mr McBride, you are entitled to attend the hearing at which that evidence is being presented. You are also entitled to be assisted by a legal representative of your choice when that evidence is presented. The full statement of Mr McBride will be uploaded on the Commission’s website (www.sastatecapture.org.za) as soon as he concludes his evidence. The transcript will be uploaded daily.
- 5 If you wish to:
- 5.1 give evidence yourself;
- 5.2 call any witness to give evidence on your behalf; or
- 5.3 cross-examine the witness

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

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

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



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





NDUMISO VOYI INC.
ATTORNEYS

OUR REF : F SITHOLE//NHL1/0001
YOUR REF :
DATE : 07 OCTOBER 2019

Ground Floor, Building 5
Midrand Business Park
563 Old Pretoria Main Road
Halfway House
MIDRAND, Gauteng Province
P.O. Box 2592
Halfway House, 1685
Tel: (011) 312 7536
Fax: 086 246 2216
Email: Ndumiso@voyi.co.za
Amanda@voyi.co.za

BY EMAIL**THE CHAIRPERSON**

**JUDICIAL COMMISSION OF INQUIRY INTO
ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC
SECTOR INCLUDING ORGANS OF STATE
HILL ON EMPIRE
16 EMPIRE ROAD
PARKTOWN**

EMAIL: Boipelor@commissionsc.org.za
Andre@commissionSC.org.za

Dear Sirs,

**RE: IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF
DATA CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC
SECTOR INCLUDING ORGANS OF STATE – IN RE: N. NHLEKO / THE
COMMISSION'S LEGAL TEAM AND ANOTHER**

1. We refer to the above matter and particularly to the application served on you on 05 July 2019, copy of which is annexed hereto for your ease of reference.
2. We kindly request you provide us with the status of the matter, alternatively, when is same likely to be allocated for hearing.



NDUMISO VOYI | INC.
ATTORNEYS

OUR REF : NP VOYI/FS/NHL1/0001

YOUR REF :

DATE : 24 OCTOBER 2019

Ground Floor, Building 5
Midrand Business Park
563 Old Pretoria Main Road
Halfway House
MIDRAND, Gauteng Province
P.O. Box 2592
Halfway House, 1685
Tel: (011) 312 7536
Fax: 086 246 2216
Email: Ndumiso@voyi.co.za
Amanda@voyi.co.za

BY EMAIL

ATTENTION: THE CHAIRPERSON

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

CARE OF: THE SECRETARY

Dear Honourable Chairperson,

OUR CLIENT: MR NKOSINATHI NHLEKO (FORMER MINISTER OF POLICE)

1. We confirm that we represent Mr Nkosinathi Nhleko ("our client").
2. As a point of departure, we make reference to our correspondence dated 07 October 2019. A copy of same is attached hereto for ease of reference.
3. As indicated in our aforesaid correspondence, our client submitted an Application for *inter alia* leave (a) to lead evidence and (b) to cross-examine Mr McBride, who implicated our client in his evidence before the Commission.
4. Our client's Application was duly delivered in July 2019 and receipt of same was acknowledged.

5. We appreciate that, under the provisions of **Rule 3.6** of the Rules Governing Proceedings of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State ("**the Rules of the Commission**"), the Chairperson has the **discretion** to grant the requested leave (a) to lead evidence and (b) to cross-examine Mr McBride.
6. To date and way over three (3) months since our client's Application was launched, we are still awaiting its outcome. If there has been a decision on our client's Application, same has certainly not been communicated to our office.
7. We humbly place it on record that our client is being severely prejudiced by the delay in the entertainment of his Application. So long as he is an implicated person, his life and specifically his work prospects have been brought to a standstill.
8. Our client was implicated by Mr McBride and his adverse testimony still stands as unchallenged in the court of public opinion. In the meantime and as a result of such testimony, our client remains being viewed in a very negative light.
9. Further and to aggravate the prejudice, the Commission has called Mr M. Sesoko and Mr Khuba who testified in or around September 2019, yet implicating our client in their evidence and further corroborating Mr McBride's testimony.
10. What makes matters worse is that our client never received any notice contemplated by **Rule 3.3** of the Rules of the Commission, alerting him to the adverse testimony to be presented by the aforesaid individuals.
11. In the absence of any explanation as to why this was allowed to happen, our client harbours a justified, reasonable and well-founded apprehension that failure to notify him was *mala fide*.

12. All things considered, we are instructed to kindly request an outcome of our client's Application, alternatively an indication as to when our client is likely to receive such outcome.
13. Our client also instructs us to request reasons as to why he was never favoured with the necessary **Rule 3.3** Notice in respect of the evidence of Mr M. Sesoko and Mr Khuba.
14. In closing, we respectfully advise that should we not hear from the Commission by close of business on **Monday 28 October 2019**, we hold instructions to approach the High Court for an appropriate relief.
15. All of our client's rights remain strictly reserved.

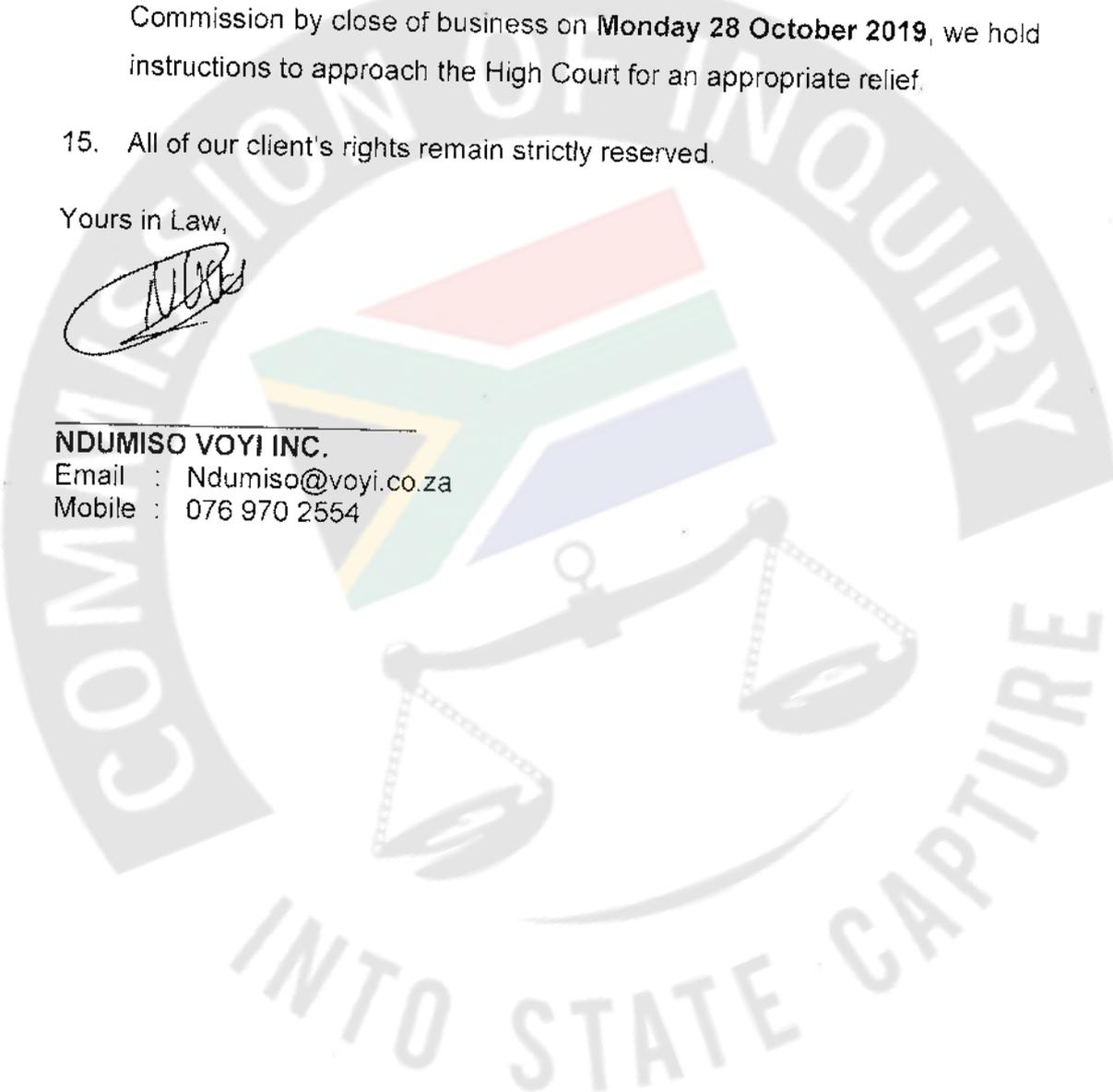
Yours in Law,



NDUMISO VOYI INC.

Email : Ndumiso@voyi.co.za

Mobile : 076 970 2554





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

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

28 October 2019

To: **NDUMISO VOYI INCORPORATED**
Attention: **Ndumiso Voyi and Fezile Sithole**
E-mail: ndumiso@voyi.co.za / fezile@voyi.co.za

Dear Sirs

RE: MR NKOSINATHI NHLEKO ("YOUR CLIENT") // ROBERT MCBRIDE EVIDENCE

1. We refer to your letters dated the 7th and 24th October respectively, which letters were received by our server via e-mail at close of business at 16h58 on Friday, 25th October 2019.
2. Please be advised that at the time of your letter dated the 7th October 2019, we were experiencing serious server difficulties and believe that it was missed in the result.
3. We confirm receipt of your client's application which forms part of a considerable number that have been bundled and handed to the Chairperson of the Commission, Deputy Chief Justice Zondo, for determination in due course. The Commission has since adopted a process which requires your client's application to be sent to the witness for his/her comment, if any.
4. Your client's application is currently in this process, which includes Mr. McBride being afforded an opportunity to provide an answer to your client's application pursuant to which your client will be afforded an opportunity to reply to Mr. McBride's response, if any. In consequence, you will be advised of the progress and further process thereafter.

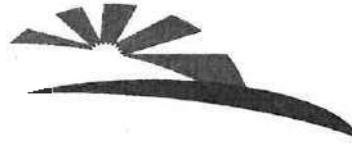
5. We confirm that the Rule 3.3 Notice in respect of Matthews Sesoko was sent to your client on the 10th September 2019, with confirmatory delivery receipt which, for your convenience, is attached hereto with the said Notice.
6. We can also confirm that the Rule 3.3 Notice in respect of Innocent Khuba was sent to your client on the 11th September 2019, also with confirmatory delivery receipt which, for your convenience, is also attached hereto with the said Notice.
7. For your information, these aforesaid two notices were sent to the same e-mail address as the Rule 3.3. Notice in respect of Mr. McBride's evidence, which Notice was received by your client at that e-mail address.
8. Please do not hesitate to contact Shannon Van Vuuren and/or Advocate Andre Lamprecht of the Secretariat regarding this matter (shannonv@commissionsc.org.za).

Yours faithfully,



Ms Brigitte Shabalala
Acting Secretary

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



NDUMISO VOYI | INC.
 ——— ATTORNEYS ———

OUR REF : Mr NP Voyi/ah
 YOUR REF :
 DATE : 26 November 2019

Ground Floor, Building 5
 Midrand Business Park
 563 Old Pretoria Main Road
 Halfway House
 MIDRAND, Gauteng Province
 P.O. Box 2592
 Halfway House, 1685
 Tel: (011) 312 7536
 Fax: 086 246 2216
 Email: Ndumiso@voyi.co.za
 Amanda@voyi.co.za

BY EMAIL

**THE CHAIRPERSON
 JUDICIAL COMMISSION OF INQUIRY INTO
 ALLEGATIONS OF STATE CAPTURE, CORRUPTION
 AND FRAUD IN THE PUBLIC SECTOR, INCLUDING
 ORGANS OF STATE**
 EMAIL: BOIPELOR@COMMISSIONSC.ORG.ZA
 ANDREL@COMMISSIONSC.ORG.ZA

URGENT

Dear Honourable Chairperson

**RE: OUR CLIENT: MR NKOSINATHI NHLEKO (FORMER MINISTER OF
 POLICE)**

1. We act on behalf of Mr Nkosinathi Nhleko (the former Minister of Police) ("*our client*"). On 5 July 2019, our client lodged an application for leave to give evidence and also leave to cross-examine Mr Robert McBride.
2. To date, and over a period of 4 months, our client has yet to receive the outcome of his application.
3. As matters stand, our client's political life is permanently on hold as he has been unjustly and unfairly implicated through the untested evidence of Mr McBride. What is and remains in the public domain is only the untested adverse evidence given by Mr McBride. So long as our client has not been given an opportunity to state his side of the story, and to equally test Mr McBride's evidence, he will remain being viewed with public contempt and suspicion.

4. The predicament our client finds himself in has necessitated that we address this letter directly to you respectfully requesting that a decision be made on our client's application as to whether will he be permitted to cross-examine Mr McBride and to also give his version orally before the Commission in rebuttal to Mr McBride's unfounded accusations, and if so, when will he be called by the Commission to testify and when will he be afforded an opportunity to cross-examine Mr McBride. Mr McBride was quick to make scurrilous, yet unsubstantiated allegations against our client in the public platform at the Commission yet he is unable to provide a response to our client's version timeously.
5. Our view is that four months since our client has submitted his sworn statement and an application for leave to cross-examine is a long period. The Commission should give Mr McBride the time frame upon which he should respond failing which the decision should be made by the Commission forthwith. In any event Mr McBride will be afforded an opportunity to respond when he is cross-examined by our client's legal team.
6. We request that we be provided with a response by no later than close of business on **Friday, 29 November 2019** in order for our client to consider other legal options that might be available to him including approaching Court for appropriate relief.

All our client's rights are reserved.

Yours faithfully



NDUMISO VOYI INC.

Email : Ndumiso@voyi.co.za

Mobile : 076 970 2554



271 West, 17th Floor, 17th
17 Grafton Road,
Parktown
Johannesburg
2193
Tel (international): +27 (0) 21 4 00 51
Tel (toll free): 0800 222 167
Email: info@coiqa.org.za
www.coiqa.org.za

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

28 November 2019

Ndumiso Voyi Inc

Email : ndumiso@voyi.co.za
amanda@voyi.co.za

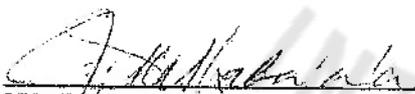
Your ref: Mr N P Voyi/ah

Dear Sir

MR NKOSINATHI NHLEKO

1. We refer to your letter dated 29 October 2019.
2. Your letter was placed before the Chairperson yesterday.
3. Your client's application, and many other similar applications are receiving necessary attention and the applicants will hear from the Commission soon.
4. You will be advised accordingly.

Yours faithfully


MS B SHABALALA
 Acting Secretary
 Judicial Commission of Inquiry into Allegations
 of State Capture, Corruption and Fraud in the
 Public Sector including Organs of State



NDUMISO VOYI INC.
ATTORNEYS

OUR REF : Mr NP Voyi/ah
YOUR REF : The Chairperson
DATE : 23 January 2020

Ground Floor, Building 5
Midrand Business Park
563 Old Pretoria Main Road
Halfway House
MIDRAND, Gauteng Province
P.O. Box 2592
Halfway House, 1685
Tel: (011) 312 7536
Fax: 086 246 2216
Email: Ndumiso@voyi.co.za
Amanda@voyi.co.za

BY EMAIL

**THE CHAIRPERSON
JUDICIAL COMMISSION OF INQUIRY INTO
ALLEGATIONS OF STATE CAPTURE, CORRUPTION
AND FRAUD IN THE PUBLIC SECTOR, INCLUDING
ORGANS OF STATE C/O THE SECRETARIAT**
EMAIL: BOIPELOR@COMMISSIONSC.ORG.ZA
ANDREL@COMMISSIONSC.ORG.ZA
SHANNONV@COMMISSIONSC.ORG.ZA

Dear Honourable Chairperson

**OUR CLIENT: MR NKOSINATHI NHLEKO (FORMER MINISTER OF
POLICE)**

1. We refer to all of our letters following up on our client's application for, *inter alia*, leave (a) to lead evidence; and (b) to cross-examine Mr Robert McBride, who implicated our client in his evidence which was tabled before the Commission in April 2019.
2. In particular, we refer to our letters dated 7 and 24 October 2019, as well as to our last letter dated 26 November 2019.
3. In the response received from the Acting Secretary of the Commission dated 28 November 2019, we were informed that our letter dated '29 October' was placed before the Chairperson on 27 November 2019. The response further stated that our client's application, and many other similar applications are receiving necessary attention and the applicants will hear from the Commission soon.

4. A period of almost two months has elapsed since then.
5. Our client instructs us to request that he be given an indication of an estimated date or period when he will be given an opportunity to rebut what Mr Robert McBride said in his evidence before the Commission, which was over eight months ago.
6. Our client further instructs us that he is unable to be gainfully employed, particularly because of the untested allegations made in the evidence tendered by Mr Robert McBride.
7. As a result, our client is suffering and continues to suffer irreparable harm. It is for this reason that our client instructs us to seek an indication of approximately when he will be called to testify before the Commission and state his own version of events in line with the audi alteram partem principle.
8. We shall be glad to receive a response by no later than Tuesday, 28 January 2019 whereafter we shall advise our clients of his rights accordingly.

All our client's rights are reserved.

Yours faithfully



NDUMISO VOYI INC.

Email : Ndumiso@voyi.co.za

Mobile : 076 970 2554



2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel: (010) 214-0651

Email:

inquiries@sastatecapture.org.za

Website:

www.sastatecapture.org.za

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

30 January 2020

Ndumiso Voyi INC

Ground Floor, Building 5

Midrand Business Park

563 Old Pretoria Main Road

email: ndumiso@voyi.co.za

Halfway House

Midrand

1685

Dear Sirs

Re: Mr Nkosinathi Nhleko (Former Minister of Police)

1. Your letter dated 23 January 2020 addressed to the Chairperson refers.
2. While the Commission understands your client's predicament, it is important to point out that he is not the only person in that position. There are many others and the Commission appreciates their situation. While the Commission cannot give any date when your client will give evidence before the Commission, it is likely to be earlier than June.

Yours sincerely


Ms Brigitte Shabalala
ACTING SECRETARY

**Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the
Public Sector Including Organs of State**



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

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

NOTICE OF SET DOWN

**FORMER MINISTER NKOSINATHI NHLEKO // RULE 3.4 APPLICATION // MR. ROBERT
JOHN MCBRIDE**

3 April 2020

Our reference: SEQ24/2019

To: Mr. Ndumiso Voyi
Ndamiso Voyi Inc (**Client: Former Minister Nkosinathi Nhleko**)
Email: ndumiso@voyi.co.za / amanda@voyi.co.za

Dear Sirs

1. We refer to Former Minister Nkosinathi Nhleko's application to give evidence and to cross-examine Mr. Robert John McBride and further refer to the Chairperson's decision in this regard.

2. Please be advised that:

Thursday, 14 May 2020 at 10h00

has been set down as the date on which Former Minister Nkosinathi Nhleko will be required to give evidence, answer questions and cross-examine Mr. Robert John McBride. Accordingly, Mr. Robert John McBride will be required to appear before the Commission on that date at that time.

3. The Commission's hearing venue is located at:

City of Johannesburg Old Council Chamber, 158 Civic Boulevard, Braamfontein.

4. Please contact the Secretariat of the Commission (shannonv@commissionsc.org.za) regarding any queries relating to this matter.
5. A representative of the Commission will be in contact with you in due course to render any assistance that you may require in preparation for your client's appearance.

Yours faithfully



Ms. Brigitte Shabalala
Acting Secretary

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





NDUMISO VOYI | INC.
 ——— ATTORNEYS ———

OUR REF : Mr N.P Voyi/FS/NHL1/0001

YOUR REF :

DATE : 11 May 2020

Ground Floor, Building 5
 Midrand Business Park
 563 Old Pretoria Main Road
 Halfway House
 MIDRAND, Gauteng Province
 P.O. Box 2592
 Halfway House, 1685
 Tel: (011) 312 7536
 Fax: 086 246 2216
 Email: Ndumiso@voyi.co.za
 Amanda@voyi.co.za

VIA EMAIL

ATTENTION: MS BRIGITTE SHABALALA

**ACTING SECRETARY
 JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS
 OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE
 PUBLIC SECTOR INCLUDING ORGANS OF STATE
 2ND FLOOR, HILLSIDE HOUSE
 17 EMPIRE ROAD
 PARKTOWN
 JOHANNESBURG, 2193**

EMAIL: BOIPELOR@COMMISSIONSC.ORG.ZA;
SHANNONV@COMMISSIONSC.ORG.ZA;

Dear Sirs

OUR CLIENT: MR NKOSINATHI PHIWAYINKOSI THAMSANQA NHLEKO

1. We confirm that we represent Mr NPT Nhleko, the former Minister of Police for the Government of the Republic of South Africa.
2. On 03 April 2020 and during the National Lockdown that was announced by the State President on 23 March 2020, we received a formal notice of set down *inter alia* advising of a hearing that will take place before the Commission on Thursday 14 May 2020 at 10h00.

3. At paragraph 5 of the aforesaid notice, it was stated that a representative of the Commission will be in contact with us in due course to render any assistance that we may require in preparation for our client's appearance.
4. Understanding that the notice of set down was issued when the end of the National Lockdown was contemplated, we deemed it necessary to enquire if the hearing was still going to proceed on 14 May 2020.
5. Accordingly and on Thursday 07 May 2020, we addressed correspondence to the Commission enquiring if our client's hearing for 14 May 2020 will be proceeding.
6. To date, we have not had the courtesy of a response, let alone a mere acknowledgement of receipt. Of great concern to our client, it is also not known who will be leading his evidence when he testifies. He is completely in the dark in so far as what will be required of him in that regard.
7. With no response being forthcoming on our correspondence of 07 May 2020, we accepted, on the strength of the notice of set down issued, that the hearing will be proceeding on 14 May 2020.
8. All the necessary preparations were embarked upon and a consultation was duly arranged with Senior Counsel for Tuesday 12 May 2020 at 11:00 in Johannesburg. Our client had to travel from KZN to Johannesburg for the scheduled consultation.
9. On the afternoon of 11 May 2020 (which was two days before the actual hearing), we heard it through the 'grapevine' that the Commission's hearings for May 2020 were not going ahead.
10. In order to confirm what we heard, our Ms Fezile Sithole contacted your Boipelo Ratshikana, who confirmed verbally that indeed the matter will not be proceeding on Thursday 14 May 2020.

11. Our instructions are to now formally register, as we hereby do, our client's displeasure at the manner in which he is being treated by the Commission.
12. Our client calls for no special attention but certainly a minimum measure of consideration and due regard to his rights as a human being is professionally warranted.
13. It is of great concern to him that he was allowed to make all the necessary arrangements, at great cost, to prepare for the hearing and only to learn it through the grapevine that the hearing is actually not proceeding.
14. This kind of treatment adds to and aggravates the severe prejudice our client has thus far sustained.
15. In our previous correspondence, we detailed the severe and irreversible prejudice our client has suffered as a result of the manner in which the Commission is conducting its affairs.
16. In our client's considered view, the treatment meted out by the Commission manifestly inconsistent. Our client doubts very much that the persons who were called to testify and who gladly testified negatively concerning him were treated in the same inconsiderate manner he is being treated.
17. Our client's livelihood and his constitutionally guaranteed right to freedom of occupation and profession is being severely curtailed by the manner in which the Commission is dealing with his matter, in particular.
18. It is, therefore, sincerely hoped that our client's aforesaid grievances will be given due consideration and an effort will be made to expedite the new date for his appearance.
19. At the commencement of his hearing, our client reserves his right to place on record the manner in which he has been prejudiced and his rights trampled upon by the Commission.

All of our client's rights remain strictly reserved.

Yours in Law,



NDUMISO PEDRO VOYI
Email : Ndumiso@Voyi.co.za
Mobile : 076 970 2554



PART A



**UNIVERSITY OF ZIMBABWE
DEPARTMENT OF TEACHER EDUCATION
KEY TO GRADES**

CATEGORY	SYMBOL	PERCENTAGE RANGE
Distinction	A	90-100
	A ⁻	80-89
Merit	B ⁺	70-79
	B	60-69
Pass	C	50-59
	D ⁺	45-49
Fail but can supplement	D	40-44
Fail	E ⁺	30-39
	E	0-29

****Note: 'D+' was a pass up to 1989. This transcript is issued without alteration.**

NOTES:

The University of Zimbabwe was formerly the University of Rhodesia, the change in name being effected on 18 April, 1980. Initially the University was a College of the University of London, the last intake for qualifications of the University of London being 1970.

University of Zimbabwe
Department of Teacher Education
P.O. Box MP167, Mount Pleasant, Harare, ZIMBABWE
☎ (263+4) 303211 ext. 1317/ 333550
☎ (263+4) 303291/333407/335249
e-mail dte@education.uz.ac.zw



**UNIVERSITY OF ZIMBABWE
DEPARTMENT OF TEACHER EDUCATION**



CERTIFICATE AND DIPLOMA IN EDUCATION TRANSCRIPT

CANDIDATE: Abednigo Nicholas Sibanda **REGISTRATION NO:** 10

PROGRAMME: Primary School Teacher **DURATION:** 1984-1986

ASSOCIATE COLLEGE ATTENDED: Gwanda Zintec College

YEAR OF AWARD: November 1986 **TYPE:** Certificate (Pre-Service)

EXAMINATION & SUBJECTS

Teaching Practice

C

Theory of Education

C

Main Subject: Social Studies

B

Professional Studies

Pass

FINAL RESULT

PASS

UNIVERSITY OF ZIMBABWE
DEPARTMENT
OF
TEACHER EDUCATION
FACULTY OF EDUCATION

Chairman, Teacher Education Department

29 AUG 2008

see reverse side for key to grades



**UNIVERSITY OF ZIMBABWE
DEPARTMENT OF TEACHER EDUCATION**



CERTIFICATE AND DIPLOMA IN EDUCATION TRANSCRIPT

CANDIDATE: Abednigo Nicholas Sibanda **REGISTRATION NO:** 10

PROGRAMME: Primary School Teacher **DURATION:** 1984-1986

ASSOCIATE COLLEGE ATTENDED: Gwanda Zintec College

YEAR OF AWARD: November 1986 **TYPE:** Certificate (Pre-Service)

EXAMINATION & SUBJECTS

Teaching Practice

C

Theory of Education

C

Main Subject: Social Studies

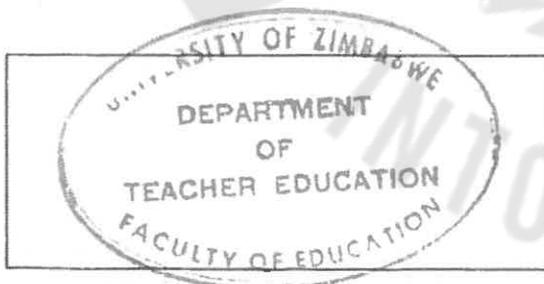
B

Professional Studies

Pass

FINAL RESULT

PASS



Chairman, Teacher Education Department

29 AUG 2008

see reverse side for key to grades



Faculty of Commerce, Law and Management

Private Bag 3, Wits 2050, South Africa • Tel: +27 11 717-8007 • Fax: +27 11 717-8175
Parktown Campus: Tel: +27 11 717-3582 • Fax: +27 11 717-3625

6 September 2010

TO WHOM IT MAY CONCERN

**Re: Status of Master of Management (Public & Development Management)
Degree Leon Abednigo Mbangwa
Student Number: 9205174W**

This serves to confirm that Mr Leon Abednigo Mbangwa, student number: 9205174W, registered for his masters degree in 1998. He successfully completed the coursework and submitted a research report in fulfilment of the requirements of the degree in 2000.

We confirm that the status of this degree has been queried by Leon Abednigo Mbangwa and that we have received an appeal in this regard. Upon investigation we have ascertained and confirmed that Mr Leon Abednigo Mbangwa did submit his research report in the year 2000. His supervisor commenced the process of marking his research report. Mr Mbangwa was informed of the revisions required and that he needed to re-submit the research report for final assessment within a period of no longer than three months. He did not submit the final report.

In the light of the long period of time that it has taken Mr Mbangwa to do the necessary revisions, he had to appeal to register for the programme of study again. The Assistant Dean for Postgraduate Studies is currently considering his appeal to register. The outcome of the appeal is still pending.

Should you wish to obtain clarity with regards to the above mentioned matter, kindly contact the writer.

A handwritten signature in cursive script, appearing to read 'S Vergie'.

Mrs S Vergie
Deputy Faculty Registrar
Faculty of Commerce Law and Management

UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

STATEMENT OF ACADEMIC RECORD



This is to certify that Mr. Leon Abednigo Mbangwa was registered as detailed below.

Date: 2009/09/11

Person Number: 9205174W

Program/Unit	Final Marks	Result Code	Result Decision	Exam Type
1997				
Master of Management (Public & Development Management) (Part Time)				
Year of Study 1				
PADM569 Organisation and Management (Mm)	59	D	PASS	
PADM571 Analytical Methods	52	D	PASS	
PADM570 Information Based Policy Analysis & Decision Making			CANCELLED	
OUTCOME: Must return to complete requirements for year of study				
1998				
Master of Management (Public & Development Management) (Part Time)				
Year of Study 1				
PADM5029 Resources Management	58	D	PASS	DEF EXAM
PADM568 Paradigms for Public & Development Management	61	C	PASS	
PADM570 Information Based Policy Analysis & Decision Making	53	D	PASS	DEF EXAM
OUTCOME: Permitted to proceed				
1999				
Master of Management (Public & Development Management) (Part Time)				
Year of Study 2				
PADM5166 Research Report (Public & Development Management)			PINC	
PADM5167 Managing the Policy Process	53	D	PASS	
PADM5187 Monitoring & Evaluation	54	D	PASS	
PADM5191 Public Policy Analysis	61	C	PASS	
OUTCOME: Must return to complete requirements for year of study				
2000				
Master of Management (Public & Development Management) (Part Time)				
Year of Study 2				
PADM5212 Research Report Extension			WINC	
OUTCOME: Must return to complete requirements for year of study				

For explanation of unit results and overall decision codes see overleaf.

	UNIVERSITY OF THE WITWATERSRAND JOHANNESBURG
	FACULTY OF LAW & MANAGEMENT
Page 1 of 2	
For Registrar	

UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG



STATEMENT OF ACADEMIC RECORD

This is to certify that Mr. Leon Abednigo Mbangwa was registered as detailed below.

Date: 2009/09/11

Person Number: 9205174W

Program/Unit	Final Marks	Result Code	Result Decision	Exam Type
--------------	-------------	-------------	-----------------	-----------

2001
Master of Management (Public & Development Management) (Part Time)

Year of Study 2

PADM5222 Research Report: Awaiting Examiners

WINC

OUTCOME: Must return to complete requirements for year of study

2005
Master of Management (Public & Development Management) (Part Time)

Year of Study 2

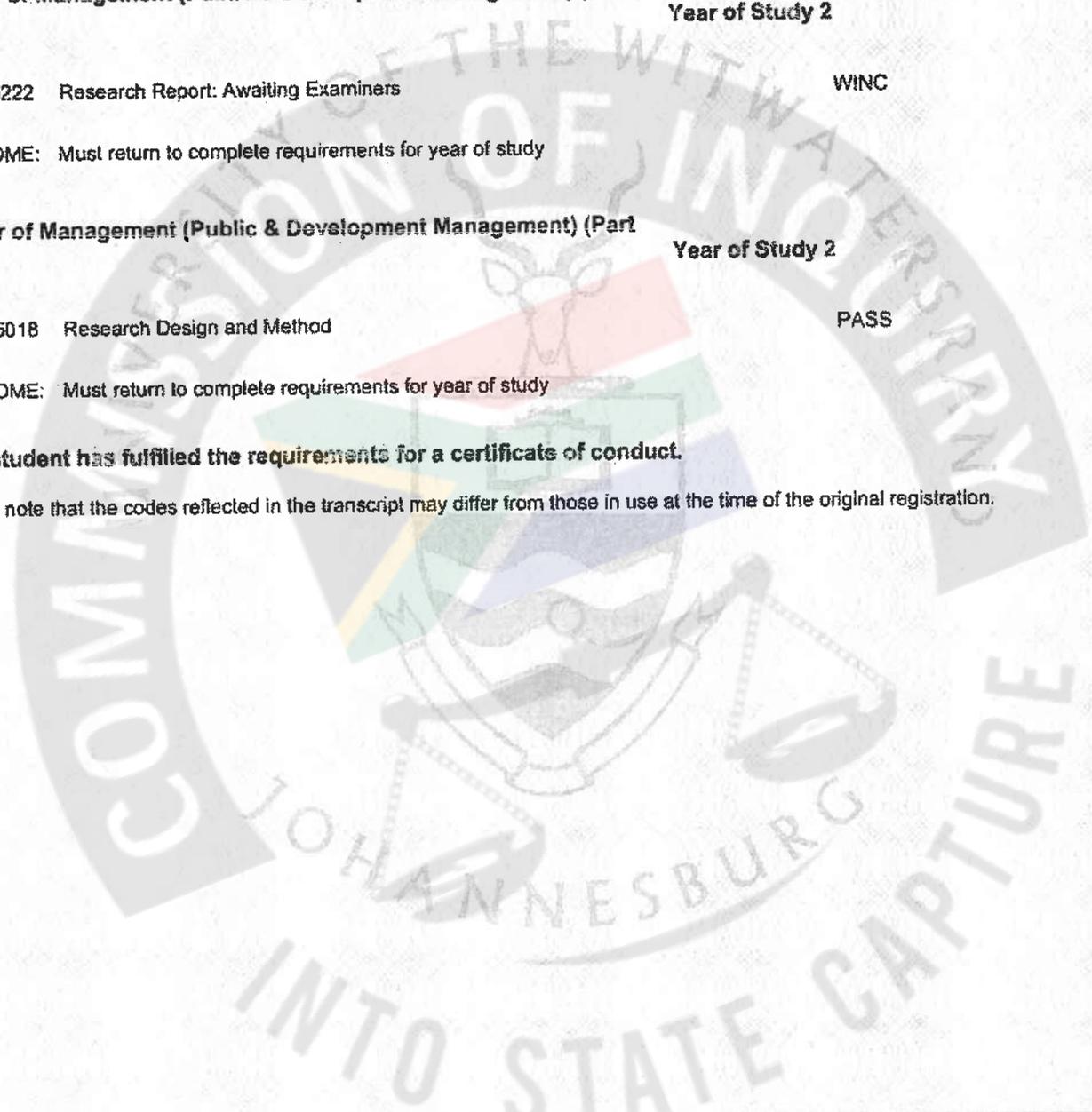
PADM5018 Research Design and Method

PASS

OUTCOME: Must return to complete requirements for year of study

This student has fulfilled the requirements for a certificate of conduct.

Please note that the codes reflected in the transcript may differ from those in use at the time of the original registration.



	UNIVERSITY OF THE WITWATERSRAND JOHANNESBURG
	FACULTY OF COMMERCE, LAW & MANAGEMENT
For Registrar	



Centre for Business Management

of the

University of South Africa

This is to certify that

Leon Abednico Mbangwa

has complied with the requirements

for the

Programme in Industrial Marketing Management

MODULES:

- 1. CUSTOMER ANALYSIS
- 2. STRATEGIC MARKETING PLANNING
- 3. MARKETING STRATEGIES
- 4. EXPORT MARKETING

MINIMUM DURATION: TWELVE MONTHS

Dean: Faculty of Economic and Management Sciences

Head: Centre for Business Management



2 May 2002

PRETORIA



Accredited by the
Council on Higher Education (CHE)
and registered with the
Department of Higher Education
and Training (DHET)
Reg No : 2000/HE07/012

Mr Leon Abednigo Mbangwa
P O Box 101616
Scottsville
Pietermaritzburg
South Africa 3209

16 September 2015

STATEMENT OF RESULTS

Name : Mbangwa Leon Abednigo
Student Number : MBA1131193

Programme : Master of Business Administration: General

INTAKE	MODULE	ASSESSMENT SCORES			RESULT
		Assign %	Exam %	Final %	
Jan 2013	Managerial Statistics				Exempt
Jan 2013	Operations Management				Exempt
Jan 2013	Global Business Management	52	65	60	P
Jan 2013	Public Sector Management				Exempt
July 2013	Financial and Managerial Accounting	70	67	69	P

B. Bismath

REGISTRAR

Key:

PD: Passed with Distinction
P: Pass
F: Fail
Exempt: Exempted

ABS: Absent from examination
NS: Non submission of assignment
SUP: Supplementary
AEG: Aegrotat

Page 1 of 2

Regent Business School



This is to certify that

Leon Abednigo Mbangwa
(Student Number: MBA1131193)

having fulfilled all the requirements
has been awarded the

Master of Business Administration Degree



R. Brnath
Registrar

[Signature]
Principal

Issued on: 26th September 2015
R/S/2031





PUBLIC RELATIONS INSTITUTE OF SOUTHERN AFRICA

Certificate in Public Relations Practice

THIS IS TO CERTIFY THAT

Leon Mbangwa

HAS SUCCESSFULLY COMPLETED THIS COURSE

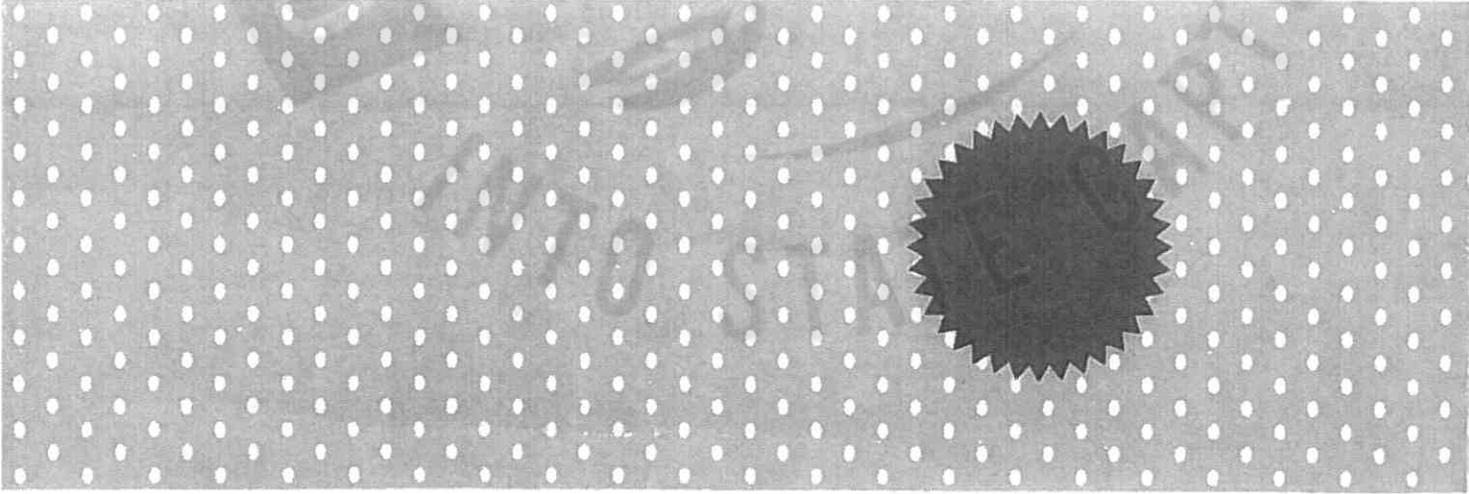
DATE *March 6, 1999*

Abaswath

DIRECTOR: PRISA

[Signature]

DIRECTOR: EDUCATION CENTRE



The International Association for Public Participation

Certificate in Public Participation awarded to

Leon Abednego Mbangwa

November 2012



International Association
for Public Participation

Nova Deslandes

Executive Director, IAP2

Stephen...

President, IAP2



MPUMALANGA PROVINCIAL GOVERNMENT

45 Andrew Street
Nelspruit, 1200
Republic of South Africa



Private Bag X11273
Nelspruit, 1200
☎ (013) 755-4986
Fax: (013) 755-4983

Department of Central Services Directorate: Personnel Administration

Our Ref.: SP/MBANGWA LA
Enquiries: MNISI NS

28 OCTOBER '98

Mr/Mrs/Miss MBANGWA LA
C/O The Head
Department of LOCAL GOVERNMENT
Private Bag X 11304
NELSPRUIT
1200

MERIT AWARD: YOURSELF

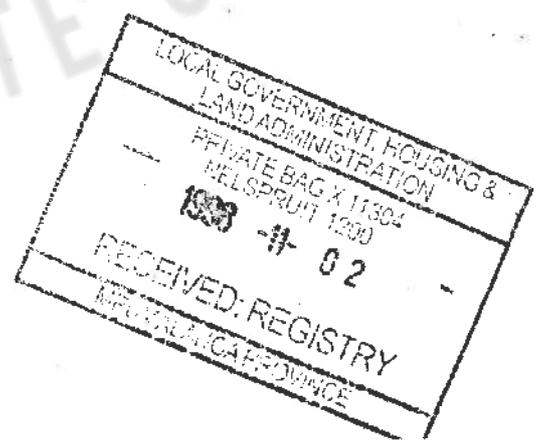
I am pleased to inform you that the Head of your Department has given approval for the granting of merit award to you for your outstanding achievements in your present rank.

A single cash amount equal to 18% of the minimum notch of the standard salary scale attached to the rank of ASD COMMUNICATION LIAISON will be paid to you once only.

The amount of R14065,28 which is also taxable, will be paid to you in due course.

On behalf of your department, this office wishes to congratulate you on your outstanding achievement.


HEAD: PERSONNEL ADMINISTRATION
NSM/jm/meritform



INDEPENDENT ELECTORAL COMMISSION

CERTIFICATE OF SERVICE

This is to certify that

Leon Mbangwa

ID No. 6306135903081

Was employed at Independent Electoral Commission

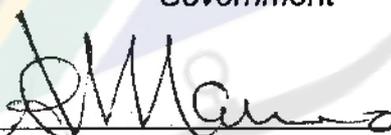
Mpumalanga

As stated below:

Date of entry: 1 December 1998

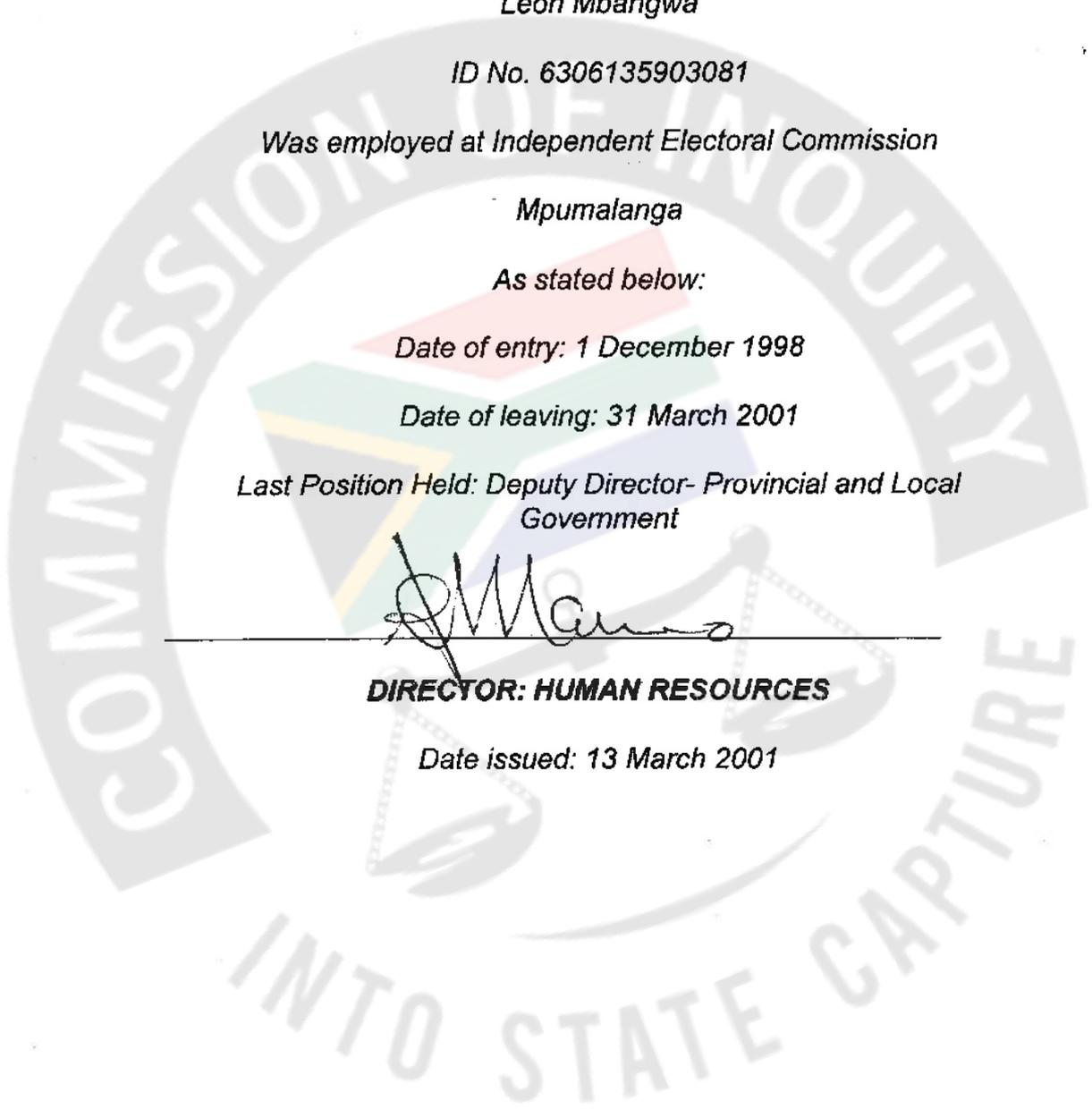
Date of leaving: 31 March 2001

*Last Position Held: Deputy Director- Provincial and Local
Government*



DIRECTOR: HUMAN RESOURCES

Date issued: 13 March 2001



Commissioners:

Brigalia Bam (Chairperson) • Herbert Vilakazi (Deputy Chairperson) • Thoko Mpumlwana • Fanie van der Merwe • Justice Ismail Hussain
Election House, 260 Walker Street, Sunnyside, Pretoria • PO Box 7943, Pretoria, 0001 • Tel (012) 428-5700 • Fax (012) 341-5292



REPUBLIC OF SOUTH AFRICA



REPUBLIEK VAN SUID-AFRIKA

Department/Administration Departement/Administrasie	Address Adres
Department of Health	330 Langalibalele Street Pietermaritzburg 3201

CERTIFICATE OF SERVICE

(Issued without alterations or erasures of any nature)

DIENSSERTIFIKAAT

(Uitgereik sonder verandering of uitkrapping van enige aard)

Sumame Van	Mbangwa	Address Adres
First names Voorname	Leon Abednigo	19 Burns Road Hayfields Pietermaritzburg 3201
Identity number Identiteitsnommer	630613 590 3081	

In compliance with your request, it is hereby certified that according to the records of this department you were employed in the Public Service in the capacities and for the periods indicated hereunder:

Ooreenkomstig u versoek word hierby gesertifiseer dat u volgens die rekords van hierdie departement, vir die tydperke en in die hoedanighede hieronder aangedui, in die Staatsdiens werksaam was:

Department/Administration Departement/Administrasie	Rank Rang	From Vanaf	To Tot	Reason for termination of service Rede vir diensbeëindiging
KZN Department of Health: Corporate Communication	General Manager	01/02/06	01/10/10	Resignation

Departmental date stamp Departementele datumstempel	KWAZULU-NATAL DEPARTMENT OF HEALTH	 for Head of Department/namens Departementehoof
	2011-03-02	
	PRIVATE BAG X 9051 PIETERMARITZBURG 3200	

UNITED NATIONS

NATIONS UNIES

**UNAMET**

United Nations Mission in East Timor
Misi Bantuan Perserikatan Bangsa-Bangsa Di Timor Timur

CERTIFICATE OF APPRECIATION

Mr. Leon Abednico Mbangwa

In appreciation of your services with UNAMET, which culminated in your contribution to the ballot cast for the Implementation of the Popular Consultation in East Timor, I wish to express my sincere appreciation for your participation in this Mission.

You, together with other staff members performed your responsibilities with utmost dedication, competence and courage in very difficult conditions. The United Nations Security Council and the Secretary-General have expressed appreciation of the work of all the staff of UNAMET and I wish herewith to add my personal thanks and recognition.

A handwritten signature in black ink, appearing to read 'Ian Martin'.

Ian Martin

Special Representative of the Secretary-General
Head of Mission

Dili, East Timor

31 August 1999

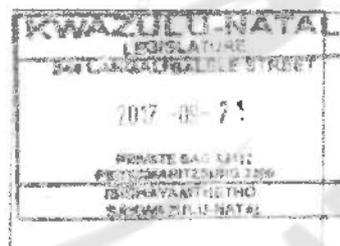


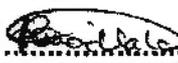
EMPLOYMENT CERTIFICATE OF SERVICE

INSTITUTION	ADDRESS
KWAZULU NATAL LEGISLATURE	244 Langalibalele Street Pietermaritzburg 3201 033 355 7098 086 571 5081 Fax

Surname: Mbangwa	EMPLOYEE ADDRESS: 19 Burns Road Hayfields Pietermaritzburg 3201
First Names: Leon Abednigo	
Identity Number: 6306135903081	
Persal Number: 80081606	

Position	Level	From	To	Reason for termination of service
Senior Manager: Corporate Communication	D3	2011/09/26	2015/03/31	Transferred to National Ministry of Police




 MRS. P.N.N. MADLALA
 MANAGER: HR ADMINISTRATION

Institution Date Stamp





DEPARTMENT OF HOME AFFAIRS
 UMN YANGO WEZANGAPHAKATHI
 DEPARTEMENT VAN BINNELANDSE SAKE
 DEPHATEMENTE YA MERERO YA TSA SELEGAE

TEL: 3148-422
 FAX: 3148-618
 REF: 630613 5903 081
 Pers/Wys (R25)

Mr. L. A. Mbangwa

P.O. Box 1336

North Riding

2162

1996-12-27

Dear Mr. Mbangwa

ALTERATION OF FORENAME/FORENAMES

I wish to inform you that your application for the alteration of your forename/forenames from Abednigo Sibanda to Leon Abednigo has been approved, in terms of section 24 of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992). Your birth and/or marriage certificate will soon be posted to you.

In terms of the provisions of section 27 of the said Act the alteration of forenames must be published in the Government Gazette. Therefore the change of forename was published in Government Gazette No. 17669 dated 20 December 1996 under Government Notice No. 2105.

If you have applied for an identity document, it will be issued in due course.

Yours faithfully

Matty
 p.p. DIRECTOR-GENERAL



**DEPARTMENT: HOME AFFAIRS
REPUBLIC OF SOUTH AFRICA**

242 Struben Street, Private Bag X114, Pretoria, 0001
Parliamentary Office, 120 Plein Street, Private Bag X9048, Cape Town, 8000

TEL: (012) 314-8323

FAX: (012) 316-7012

REF: 31570/02

20362770

Leon Abednico Mbangwa
Pretoria Central Prison
Private Bag X45
PRETORIA
0001

2004-03-15

DETERMINATION OF SOUTH AFRICAN CITIZENSHIP: YOURSELF

Your letter dated 13 July 2003 refers.

I wish to inform you that you are not a South African citizen.

You may apply for South African citizenship by descent in terms of section 3(1) of the South African Citizenship Act, 1995 (Act No. 88 of 1995) provided that the following is submitted:

1. BI-24 (Notice of Birth); (original form) ✓
2. BI-9 (Application for identity document); (original form) ✓
3. Full birth certificate in respect of yourself indicating both of your parents names (no affidavit or abridge birth certificate) ✓
4. Proof of birth of the parent that is a South African citizen (e.g. full birth certificate, baptismal certificate, etc.) (copy of identity document/passport is not proof of South African citizenship).
5. Marriage certificate of parents ✓
6. BI-529 (citizenship questionnaire) in respect of yourself and your parents.
7. Proof if parents acquired foreign citizenship.



UMNYANGO WEZASEKHAYA
LEFAPHA LA DITABA TSA LEHAE
DEPARTEMENT VAN BINNELANDSE SAKE

James Botha

012 810-8888
073 206 5162



IN THE KWAZULU-NATAL HIGH COURT, PIETERMARITZBURG
IN THE REPUBLIC OF SOUTH AFRICA

Case no. 8840/09

ON THE 01ST DAY OF NOVEMBER 2010

Before The Honourable Madam Justice STEYN

In the matter between:

LEON ABEDNIGO MBANGWA

APPLICANT

And

THE DIRECTOR-GENERAL DEPARTMENT
OF HOME AFFAIRS,
REPUBLIC OF SOUTH AFRICA

1ST RESPONDENT

THE MINISTER OF HOME AFFAIRS
REPUBLIC OF SOUTH AFRICA

2ND RESPONDENT

UPON reading the Notice of Motion and the other documents filed of record; and
UPON the motion of Counsel for the Applicant/s;

IT IS ORDERED THAT:

1. The late filing of the Respondents' Answering Affidavits is hereby condoned.
 - 1.1 The matter be and is hereby referred to the hearing of oral evidence on the 16th, 17th and 18th March 2011, on the following issue:

"Is the Applicant the son of the late Mabel Mbangwa, identify number 160328 0056 08 1?"
2. The deponents to the Affidavits filed in this matter are required to attend to such hearing, in order to be examined or cross-examined.
3. If either party wishes, at the hearing of the oral evidence, to call a witness who has not deposed to an Affidavit, a summary of such person's evidence shall be furnished to the other side at least 10 days before the date of hearing.
4. The provisions of Rules 35, 36 and 37 shall apply to the hearing *mutatis mutandis* to the hearing of the oral evidence.

5. Pending the finalisation of this matter the Respondents are interdicted from taking steps to deport the Applicant from the REPUBLIC OF SOUTH AFRICA.
6. The costs of the application to date are reserved for decision by the Court hearing the oral evidence.

BY ORDER OF THE COURT


N WILAMINI
REGISTRAR
N WILAMINI

Tatham Wilkes



IN THE KWAZULU-NATAL HIGH COURT, PIETERMARITZBURG

REPUBLIC OF SOUTH AFRICA

CASE NO: 6840/09

In the matter between:

LEON ABEDNIGO MBANGWA

Applicant

and

THE DIRECTOR-GENERAL DEPARTMENT
OF HOME AFFAIRS,
REPUBLIC OF SOUTH AFRICA

First Respondent

THE MINISTER OF HOME AFFAIRS
REPUBLIC OF SOUTH AFRICA

Second Respondent

SETTLEMENT AGREEMENT

The above matter is settled on the following basis:

1.

- (a) It is agreed that, insofar as is possible, the issue of whether the Applicant LEON ABEDNIGO MBANGWA is the natural son of Mabel Mbangwa, ID No.1605280056081, will be determined by DNA testing of a blood sample of the Applicant and one or more of the late Mabel Mbangwa's known surviving children.

gc H

- (b) The Applicant's attorneys will advise the Respondents' attorneys by close of business on Wednesday 23 March 2011 of the name and identity number of Mabel Mbangwa's surviving child who will provide the blood sample. This is subject to the provisions of paragraph 5(a) below.

2.

- (a) The Applicant has appointed Professor Aboobaker Sulliman (Practice no. 14377040) to perform the DNA testing on the aforementioned blood samples.
- (b) The Respondents may, at their sole option, appoint an independent laboratory (not being a State owned laboratory), to also perform DNA tests on the said blood samples, such to be performed at the same time as the tests referred to in paragraph 2 (a) above.
- (c) The Applicant undertakes that he and the other person who is to provide a blood sample shall present themselves to the laboratory/ies on a date to be determined by such laboratory/ies, it being intended that this should occur within three weeks from date of signature of this agreement

3.

The Respondents will, initially, bear the costs of:

- (a) The DNA testing and;
- (b) The reasonable transport costs of Mabel Mbangwa's surviving child who is to provide the blood sample from his or her place of residence to the laboratory/ies where the blood sample is to be taken.

4.

If the test performed by Professor Sulliman and by the laboratory appointed by the Respondents indicate with 80% certainty or more that the Applicant either is or is not the natural son of Mabel Mbangwa, then the parties will be bound by those results.

5.

If the tests disagree or if they are not conclusive then:

- (a) Either party may call for a further test to be done on a blood sample taken from another of Mabel Mbangwa's surviving children under the same conditions as set out above;

- (b) If such further tests differ or are not conclusive, then the tests will be disregarded and the matter will proceed in Court and the results of the tests will not be made known to the presiding Judge.

6.

In the event that the tests are both conclusive and indicate with 80% certainty that the Applicant is the natural son of Mabel Mbangwa then:

- (a) The Respondents will consent to the Court granting an Order declaring the Applicant to be a South African citizen by descent;
- (b) The Respondents will pay the Applicant's party and party costs of the above proceedings, including all reserved costs.

7.

In the event that the tests both conclusively indicate with 80% certainty that the Applicant is not the natural son of Mabel Mbangwa then:

- (a) The Applicant will withdraw the above proceedings;

- (b) The Applicant will depart from the Republic within thirty (30) days of being advised of the results of the test.
- (c) The Respondents will be entitled to set the matter down as a matter of urgency for an order for costs, having regard to the principle set out by the Constitutional Court in the case of *Biowatch Trust vs Registrar Genetic Resources & Ors* 2009(6) SA 232.

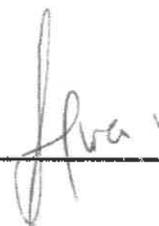
8.

The party and party costs referred to in paragraphs 6 and 7 above will include the costs referred to in paragraph 3 above.

9.

The person who signs this Agreement on behalf of the Respondents warrants that he has been specifically authorized to do so by the First Respondent.

DATED AT PIETERMARITZBURG THIS 17TH DAY OF MARCH 2011.



APPLICANT



RESPONDENTS' REPRESENTATIVE
ACTING DDG: COUNTER
CORRUPTION & SECURITY
GWELELMUSA CHRYSOSTOMUS
KHWELE





MOLECULAR DIAGNOSTIC SERVICES (PTY) LTD

6 Ribston Place, Westville, 3629, Pvt. Bag X20, Westville, 3630, South Africa
 Tel: +27 31 267 7000, Fax: +27 31 267 7005, Email: mde@mdsafrica.net
 VAT Reg. No. 4270210554, Practice No 0235860
 Registration Number 2001 001 77907

www.mdsafrica.net



PATERNITY RESULTS - FINAL REPORT -

ATTN: M Cele / MM Jonas **DATE:** 21 April 2011
COURT: **FAX:** 031 582 5762 / 086 507 6415
ADDRESS: PO Box 5003 Private Bag X54301 **TEL:** 031 582 5600 / 072 560 1691
 Pencarrow Park Durban 4019 **083 443 6095**
E-MAIL: Nosipho.khuzwayo@denevseitz.co.za
mojonas@justice.gov.za

COURT REF No	P049138	P049139	BAR CODE
	Alleged Sibling 1	Alleged Sibling 2	HPAT018938
First Name	T	LA	
Surname	Mbangwa	Mbangwa	
ID No. /D.O.B	420920007087	6306135903081	
Ethnic Group	African	African	

The probability of Full-siblingship between T Mbangwa and LA Mbangwa is greater than 99.9999%.

Frequencies based on Published frequency tables from Applied Biosystems, Promega, the SAPS, and internal MDS frequency tables.

These results were all generated by MDS (Pty) Ltd.

	SIGNED BY:	DATE:
1	Linda Richards	21/04/2011
2	L. Erasmus	21/04/11

Authorised by Dr. D. F. York:

Whilst we take as much care as possible from our side to provide you with a reliable result we have been advised to add the following notice to all the results that we give out:

Disclaimer:

In the event that MDS (Pty) Ltd returns a verifiable erroneous result for a particular sample, MDS (Pty) Ltd will reimburse the submitter only the amount paid to MDS (Pty) Ltd to perform the test. In no event shall MDS (Pty) Ltd be liable for incidental, consequential, special or other damages of any nature even if MDS (Pty) Ltd has been advised of the possibility of such damage. We realize the importance of confidentiality in the service we provide and undertake to abide by our code of strictest confidentiality at all times. Should any details on this form be incorrect then they must be brought to the attention of MDS (Pty) Ltd. Any alteration or modification of the information on this form is not authorised and legal action will be taken against any person found guilty of such action.

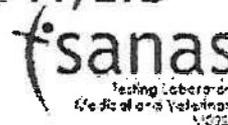
STR Loci	Allele		Allele		Proportional Probability				Likelihood Full siblingship against Unrelated	Likelihood Half siblingship against Unrelated	Likelihood Full siblingship against Half siblingship
	Full Siblingship : Half Siblingship : Unrelated										
D8S1179	12	13	13	15	(1+2*0.264)	(1+4*0.264)	(8*0.264)	0.723	0.973	0.743	
D21S11	30	33.2	30	33.2	(1+0.074+0.034+2*0.074*0.034)	(0.074+0.034+4*0.074*0.034)	(8*0.074*0.034)	55.298	5.868	9.427	
D7S820	8	11	8	11	(1+0.142+0.259+2*0.142*0.259)	(0.142+0.259+4*0.142*0.259)	(8*0.142*0.259)	5.012	1.863	2.680	
CSF1PO	10	12	10	10	(1+0.265)	(1+2*0.265)	(4*0.265)	1.193	1.443	0.827	
D3S1358	17	17	17	18	(1+0.172)	(1+2*0.172)	(4*0.172)	1.703	1.953	0.872	
TH01	7	7	7	8	(1+0.367)	(1+2*0.367)	(4*0.367)	0.931	1.181	0.788	
D13S317	12	15	12	15	(1+0.376+0.030+2*0.376*0.030)	(0.376+0.030+4*0.376*0.030)	(8*0.376*0.030)	15.831	4.989	3.167	
D16S539	9	9	9	12	(1+0.192)	(1+2*0.192)	(4*0.192)	1.552	1.802	0.861	
D2S1338	16	19	19	21	(1+2*0.151)	(1+4*0.151)	(8*0.151)	1.078	1.328	0.812	
AMEL	X	X	X	Y							
D5S818	11	11	8	13	1	2	4	0.250	0.500	0.500	
FGA	21	26	21	26	(1+0.075+0.091+2*0.075*0.091)	(0.075+0.091+4*0.075*0.091)	(8*0.075*0.091)	21.605	3.540	6.103	
D18S433	13	15	13	15	(1+0.311+0.057+2*0.311*0.057)	(0.311+0.057+4*0.311*0.057)	(8*0.311*0.057)	9.896	3.095	3.198	
VWA	16	16	15	16	(1+0.269)	(1+2*0.269)	(4*0.269)	1.179	1.429	0.825	
TPOX	6	9	6	9	(1+0.085+0.240+2*0.085*0.240)	(0.085+0.240+4*0.085*0.240)	(8*0.085*0.240)	8.369	5.545	1.509	
D19S34	14	18	14	18	(1+0.060+0.109+2*0.060*0.109)	(0.060+0.109+4*0.060*0.109)	(8*0.060*0.109)	26.720	3.730	7.163	
Combined Likelihood Ratio								141701240	88646	2064	
Probability Of Full Siblingship								99.9999%			



MOLECULAR DIAGNOSTIC SERVICES (PTY) LTD

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 Tel: +27 31 267 7000, Fax: +27 31 267 7005, Email: mde@mdeafrika.net
 VAT Reg. No. 4270210554, Practice No 0235660
 Registration Number 2001 001 77907

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PERFORMANCE CERTIFICATE

Attn: M Cele / M M Jonas

Court:

Tel: 031 582 5600 / 072 560 1691
 083 443 6095

Fax: 031 582 5762 / 086 507 6415

Sample Received: 7 April 2011

Sample Type: Dried Blood Spot

Court/Case Ref No:

HPAT Ref No: 018938

Sibling1: T Mbangwa

Sample Ref No: P049138

Sibling2: LA Mbangwa

Sample Ref No: P049139

Statement in terms of section 12 of the Maintenance Act, Act No 99 of 1998

I, Dr Denis F York, state as follows:

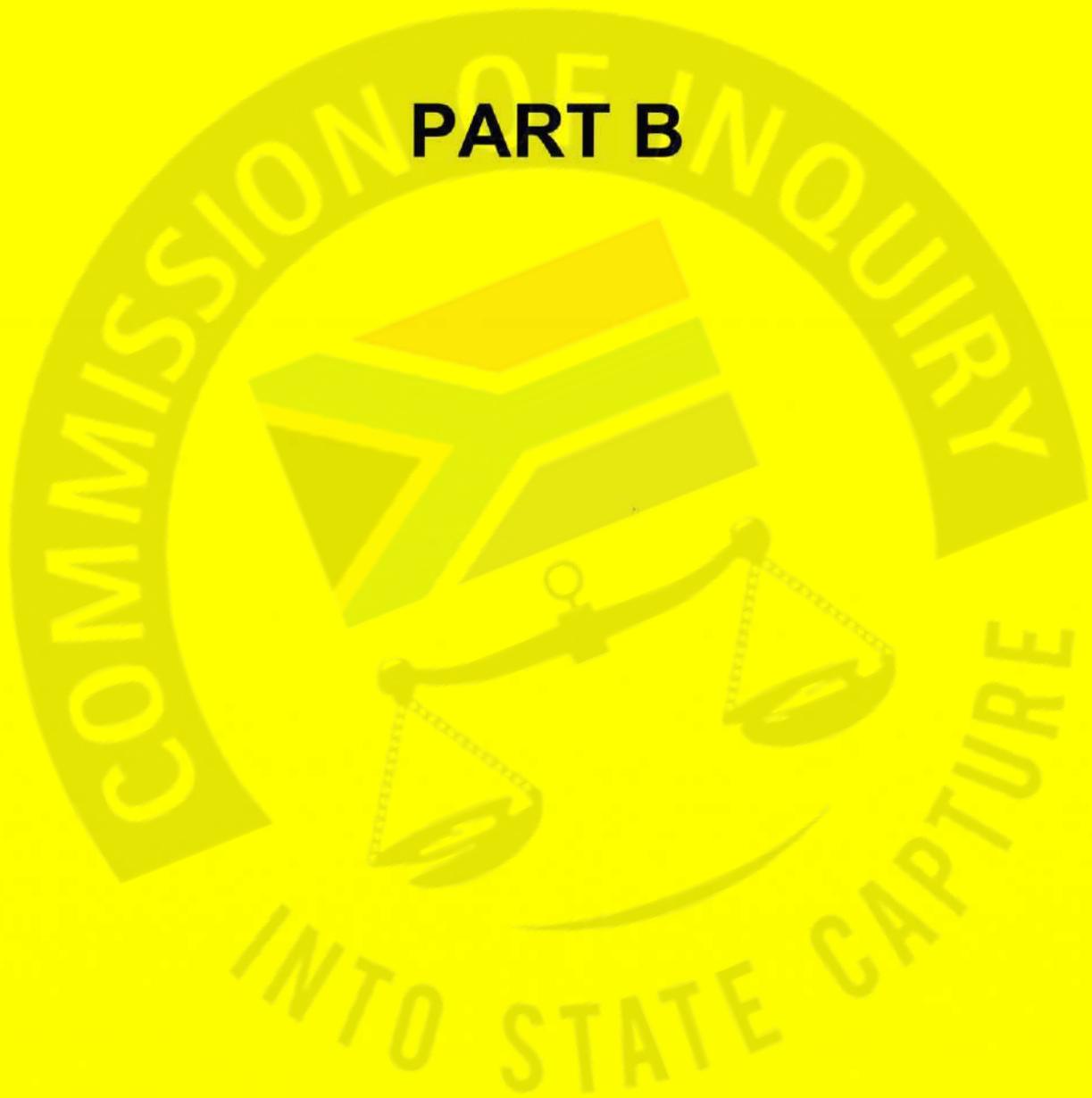
- (a) That I am the managing director of Molecular Diagnostic Services (MDS) (Pty) Ltd, a specialist laboratory registered with the South African National Accreditation Service (SANAS) license number M0388.
- (b) That the samples analyzed in this report were received by the Bioinformatics department in a uniquely coded tamper proof bag that was sealed in the presence of the owners of the samples. The samples were collected for analysis by authorized staff of MDS (Pty) Ltd.
- (c) That the tamper proof bag was opened by an appointed authorized member of this department who signed a declaration stating that the tamper proof bag had not been tampered with and that the samples were received in good order.
- (d) That the uniquely bar coded samples were removed from the tamper proof bag and placed in a locked cupboard and only removed for processing and analysis.
- (e) That all the procedures for the analysis were performed by an authorized person.
- (f) That the analysis was determined using the Applied Biosystems AmpFISTR Identifier PCR amplification reagents and our optimized protocol which analyses 15 different loci in addition to the sex allele using the appropriate software.
- (g) That the results were interpreted using the criteria recommended by the South African National Accreditation Service (SANAS) for paternity and forensic testing laboratories.
- (h) That MDS (Pty) Ltd participates in a proficiency testing program that is run by Dr André de Kock, Dept. Haematology & Cell Biology, Faculty of Medical Science, University of the Free State, Bloemfontein, 9300.

Signed at Westville on this 2nd day of April 2011

Dr D.F. York (MSc, PhD) Date: 21/04/11
 Managing Director
 Molecular Diagnostic Services (Pty) Ltd Westville

Signature:

PART B



power or duty in writing.

- (2) Any authorisation to perform a duty in terms of these Regulations does not prevent the Secretary of Police from performing that duty himself or herself.

9. Directives

- (1) The Minister may, from time to time issue directives to the Secretary on matters relating to civilian oversight or policing.
- (2) Any directive of the Minister must –
- (a) be aligned to the mandate of the Civilian Secretariat;
 - (b) contain a clear terms of reference; and
 - (c) result in the Secretary submitting a report to the Minister and, where necessary, to Parliament with the approval of the Minister.
- (3) This regulation is applicable to a provincial secretariat where the MEC issues such directives as he or she may be legally entitled to issue.
- (4) The Secretary or the head of a provincial secretariat must ensure that the directives of the Minister or an MEC are complied with within a reasonable period.

CHAPTER 3

REPORTS

10. Annual Report

The annual report of the Civilian Secretariat contemplated in section 15 of the Act must include an overview of –

- (a) the administration of the Civilian Secretariat relating to its overall management and organisation;
- (b) the monitoring, evaluation and assessment of the performance of the police service;
- (c) the extent to which the police service complies with the Constitution, relevant laws, policies, service standards and norms and ministerial directives or instructions;



Appointment of heads of department

12. (1) Subject to the provisions of this Chapter and of Chapters V and VI-

- (a) (i) a person who is appointed as an officer in the office of head of department;
- (ii) an officer who is promoted or transferred to that office; or
- (iii) an officer who, at the commencement of this Act, occupies such an office for a fixed term under a law repealed by this Act, shall in the case of a person referred to in subparagraph (i) or (ii), occupy that office for a period of five years, or such shorter period as the relevant executing authority may, subject to the provisions of subsection (3), approve from the date of his or her appointment, promotion or transfer, and, in the case of a person referred in subparagraph (iii), occupy that office for the unexpired portion of the term for which he or she was appointed as head of department in terms of the relevant repealed law;
- (b) an officer who is promoted or transferred from the office of head of department referred to in paragraph (a) to another office of head of department, shall occupy the latter office for the remainder of the term of office which applies to him or her in regard to the first-mentioned office in terms of paragraph (a), or the remainder of any extended term in terms of paragraph (c);
- (c) an officer's term of office as head of department as provided in paragraph (a) or (b) may be extended at the expiry thereof for a period or successive periods not exceeding five years, as the relevant executing authority may approve, subject to the provisions of subsection (2).

(2) (a) The relevant executing authority shall in writing inform the officer concerned at least two calendar months before the expiry of the terms contemplated in paragraph (a) or (b) of subsection (1) or any previously extended term contemplated in paragraph (c) of that subsection, whether he or she proposes to retain such officer in service for an extended term, or not.

- (b) If the officer concerned is so informed of such intention to retain him or her in service for an extended term, he or she shall in writing inform the relevant executing authority, within one calendar month from the date of that communication, of his or her acceptance or not of such extended employment.
- (c) If the officer concerned so informs the relevant executing authority of his or her acceptance of extended employment, his or her term of office as head of department shall be extended by the further period as have been agreed to with such executing authority.

(3) Before an executing authority approves a shorter period contemplated in sub-section (1) (a) in respect of an officer who is not a member of the services or the National Intelligence Services, or communicates with such an officer in terms of sub-section (2) (a), the Commission shall make a recommendation.

Appointment, transfer and promotion on probation

13. (1) The appointment of a person and the transfer and promotion of an officer in the A or B division shall be made on probation -

- (a) unless, in the case of an appointment in-
 - (i) the A division, the Commission recommends otherwise; or
 - (ii) the B division, the person having the power to approve such an



- (xxv) "Secretary" means the Secretary for Safety and Security appointed under section 2(2); (xxi)
- (xxvi) "Service" means the South African Police Service established by section 5(1); (ii)
- (xxvii) "stores" means any movable property of the State which is kept in stock for distribution in the Service; (xxviii) 5
- (xxviii) "strike" means a strike within the meaning of the Labour Relations Act, 1956 (Act No. 28 of 1956); (xxii)
- (xxix) "this Act" includes the regulations; (iv) and
- (xxx) "uniform" means a uniform as prescribed. (xxvi) 10

CHAPTER 2 MINISTERIAL SERVICES

Secretariat

2. (1)(a) The Minister shall establish a secretariat to be called the Secretariat for Safety and Security. 15
- (b) A provincial government may establish a provincial secretariat to be called the Provincial Secretariat for Safety and Security: Provided that the date on which a provincial secretariat will come into operation shall be determined by a provincial government in consultation with the Minister.
- (2) The Minister may, subject to the laws governing the public service, appoint a person to the office of Secretary who shall be responsible for— 20
- (a) the performance of the functions of the secretariat; and
- (b) the management and administration thereof.
- (3) The Secretary may, in consultation with the Minister, subject to the laws governing the public service, appoint the necessary personnel to assist the Secretary to perform, subject to his or her control and directions, any function of the secretariat. 25

Functions of secretariat

3. (1) The secretariat shall—
- (a) advise the Minister in the exercise of his or her powers and the performance of his or her duties and functions; 30
- (b) perform such functions as the Minister may consider necessary or expedient to ensure civilian oversight of the Service;
- (c) promote democratic accountability and transparency in the Service;
- (d) promote and facilitate participation by the Service in the Reconstruction and Development Programme; 35
- (e) provide the Minister with legal services and advice on constitutional matters;
- (f) provide the Minister with communication, support and administrative services;
- (g) monitor the implementation of policy and directions issued by the Minister and report to the Minister thereon; 40
- (h) conduct research into any policing matter in accordance with the instructions of the Minister and report to the Minister thereon;
- (i) perform such functions as may from time to time be assigned to the secretariat by the Minister; and
- (j) evaluate the functioning of the Service and report to the Minister thereon. 45
- (2) To the extent that it is reasonably necessary for the performance of the functions of the secretariat, any member of its personnel—
- (a) may request and obtain information and documents under the control of the Service;
- (b) may enter any building or premises under the control of the Service; and 50
- (c) shall be entitled to all reasonable assistance by a member.
- (3) The Minister may make regulations regarding the establishing and proper functioning of secretariats: Provided that regulations with regard to provincial



PART III . PLANNING, WORK ORGANISATION AND REPORTING

A. PRINCIPLES

An executing authority shall, in order to provide services with the best value for money, set measurable objectives for her or his department, optimally utilise the department's human and other resources and apply fair labour practices. Within available funds, she or he shall, based on the department's and the Government's service delivery objectives and mandates, plan to execute functions with an efficient and effective internal organisation and well developed human resources. To permit oversight by the public and legislatures, the executing authority shall publish an annual report giving key information on her or his department.

B. STRATEGIC PLANNING

B.1 An executing authority shall prepare a strategic plan for her or his department -

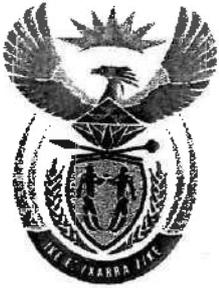
- (a) stating the department's core objectives, based on Constitutional and other legislative mandates, functional mandates and the service delivery improvement programme mentioned in regulation III C;
- (b) describing the core and support activities necessary to achieve the core objectives, avoiding duplication of functions;
- (c) specifying the functions the department will perform internally and those it will contract out;
- (d) describing the goals or targets to be attained on the medium term;
- (e) setting out a programme for attaining those goals and targets;
- (f) specifying information systems that-
 - (i) enable the executing authority to monitor the progress made towards achieving those goals, targets and core objectives;
 - (ii) support compliance with the reporting requirements in regulation III J and the National Minimum Information Requirements, referred to in regulation VII H; and
- (g) complying with the requirements in paragraphs 5.1 and 5.2 of the Treasury Regulations.

B.2 Based on the strategic plan of the department, an executing authority shall-

- (a) determine, after consultation with the Minister, the department's organisational structure in terms of its core and support functions;
- (b) define the posts necessary to perform the relevant functions while remaining within the current budget and medium-term expenditure framework of the department, and the posts so defined shall constitute the department's approved establishment;
- (c) grade proposed new jobs according to the job evaluation system referred to in Part IV; and







police

Department:
Police
REPUBLIC OF SOUTH AFRICA

CIVILIAN SECRETARIAT FOR POLICE

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PRETORIA, Tel: (012) 393 2500/2/3, Fax (012) 393 2536/8, WEB: www.nationalsecretariat.gov.za

INFORMATION NOTE

TO	Mr. N P T NHLEKO, MP MINISTER OF POLICE
FROM	Ms. R E FOURIE ACTING - SECRETARY OF POLICE: DDG
SUBJECT	APPOINTMENT OF A REFERENCE GROUP & TERMS OF REFERENCE
DATE	23 SEPTEMBER 2014

1. BACKGROUND

- 1.1. Following the announcement of the new Cabinet by the President in May 2014, the Minister of Police immediately embarked on a programme aimed at familiarising himself with the policing environment. This included meeting the senior management of the institutions for which he is responsible and studying the Constitutional and legal framework governing the environment.
- 1.2. The Minister met with various stakeholders to solicit their views and perceptions on what is required to improve the delivery of the policing function aligned to the National Development Plan (NDP) - Vision 2030, which seeks to:
 - a. strengthen the criminal justice system;
 - b. make the police service professional;
 - c. demilitarise the police service;
 - d. build safety using an integrated approach and
 - e. build community participation in community safety.
- 1.3. During the familiarisation process many critical issues were brought to the fore. In this regard a number of legal and disciplinary issues and long outstanding matters relating to institutional reform and transformation were identified as requiring urgent resolution as they impact negatively on the morale, efficiency, effectiveness and image of the Service.

- 1.4. The Minister has accordingly requested the Acting Secretary of Police to establish a Reference Group that will focus on the second objective of the NDP, which talks to the professionalisation of the police.

2. TERMS OF REFERENCE

2.1 Purpose of the Reference Group

- 2.1.1 The Reference Group will support the Civilian Secretariat in discharging its responsibilities in terms of section 3 (e) and (j) of the Police Act (Act No 68 of 1995); read with section 12A of the Public Services (Act No of 1994) and further read with Part III G of the Public Service Regulations, 2001 to "provide legal services" and "evaluate the functioning of the Service and report to the Minister".
- 2.1.2 The Reference Group is to critically analyse the identified areas of concern in the current environment within the Service and compile reports for the attention of the Minister.

2.2 Expertise of the Reference Group Members

- 2.2.1. The expertise of the members shall include legal, strategic planning, management, organisational development, intelligence work and institutional reform.
- 2.2.2. The Reference Group shall be comprised of five to six members headed by a convenor who shall report to the Minister through the current Acting Secretary of Police.

2.3 Roles and Responsibilities of Reference Group Members and the Secretariat

The Reference Group will:

- 2.3.1 Interrogate and analyse relevant legal and disciplinary matters;
- 2.3.2 Interrogate and analyse compliance to good corporate governance;
- 2.3.3 Advise the Minister, in the form of report(s), as to the best course of action to resolve the issues identified by the Minister, bring about closure and positively impact on the improvement of service delivery.
- 2.3.4 The Civilian Secretariat shall provide the operational and strategic resources for the Reference Group to complete its work within the prescribed period.

2.4 Working Methods of the Reference Group

- 2.4.1 To gather all necessary background information and material in relation to each of the identified matters;
- 2.4.2 To invite inputs on the specific issues from police management and directly or indirectly affected and/or involved individuals within the Service;
- 2.4.3 To interview any relevant person/s who may provide any information in connection with identified matters;
- 2.4.4 To research, examine and analyse any written material, documents or media articles relevant to each identified matter;
- 2.4.5 To research and analyse the implications of the legal, regulatory or governance environment pertaining to the identified matters;

2.4.6 To compile report(s) in respect of each identified matter.

2.5 Process Evaluation

2.5.1. The Reference Group will provide phased reports determined by the prioritisation of the issues identified in accordance with the timeline specified, and a final comprehensive report.

3. PERIOD OF APPOINTMENT & CONDITIONS OF APPOINTMENT

- 3.1 Preparatory work for the establishment of the Reference Group commenced on 12 September 2014.
- 3.2 The duration of the Reference Group is three months with effect from 1 October 2014 with the possibility of a further extension as determined by the Minister based on the progress made.
- 3.3 Three of the Reference Group members will be remunerated in accordance with Public Service Regulations from the budget of the Civilian Secretariat for Police. The Civilian Secretariat shall also take responsibility for all subsistence, travel and other expenses required in relation to the work of the Reference Group.
- 3.4 The members of the Reference Group who are in the full-time employment of any organ of state shall not be remunerated for work done relating to the Reference Group.
- 3.5 The members referred to paragraph 3.3 above will only receive payment for subsistence, travel and other expenses for his or her work as a member of the Reference Group in terms of the applicable policies of the Department of Public Service and Administration.
- 3.6 The Civilian Secretariat will be responsible for all necessary air transport, accommodation and other operational costs of the members of the Team.

4. POWERS OF THE REFERENCE GROUP

The Reference Group is authorised to, without limiting its mandate –

- (i) Determine its own rules of procedure in conducting its work;
- (ii) Call for, and receive, any documentation that will assist its work;
- (iii) Invite any person to give information or evidence; and
- (iv) Examine documents relating to its mandate.

5. OPERATIONAL CONDITIONS

- 5.1. The Minister directs the National Commissioner and Administration to co-operate with the Reference Group;
- 5.2. The Minister directs the Reference Group to treat all information disclosed to it as confidential; in this regard each member of the Reference Group will enter into a binding non-disclosure agreement with the Minister and subject themselves to security clearance, and

- 5.3. The Reference Group as and when it deems fit and proper, is permitted to interact with other government agencies and any relevant person outside of government to assist in expediting its work.
- 5.4. The above terms of reference has been formulated on the understanding that where necessary the Minister may revise the scope and terms of reference of the Reference Group to accommodate new matters arising.

6. RECOMMENDATIONS

- 6.1 It is recommended that the Minister –
 - 6.1.1 Approves the appointment of the Reference Group; and
 - 6.1.2 Approves the Terms of Reference of the Reference Group

Submitted by:

R Fourie

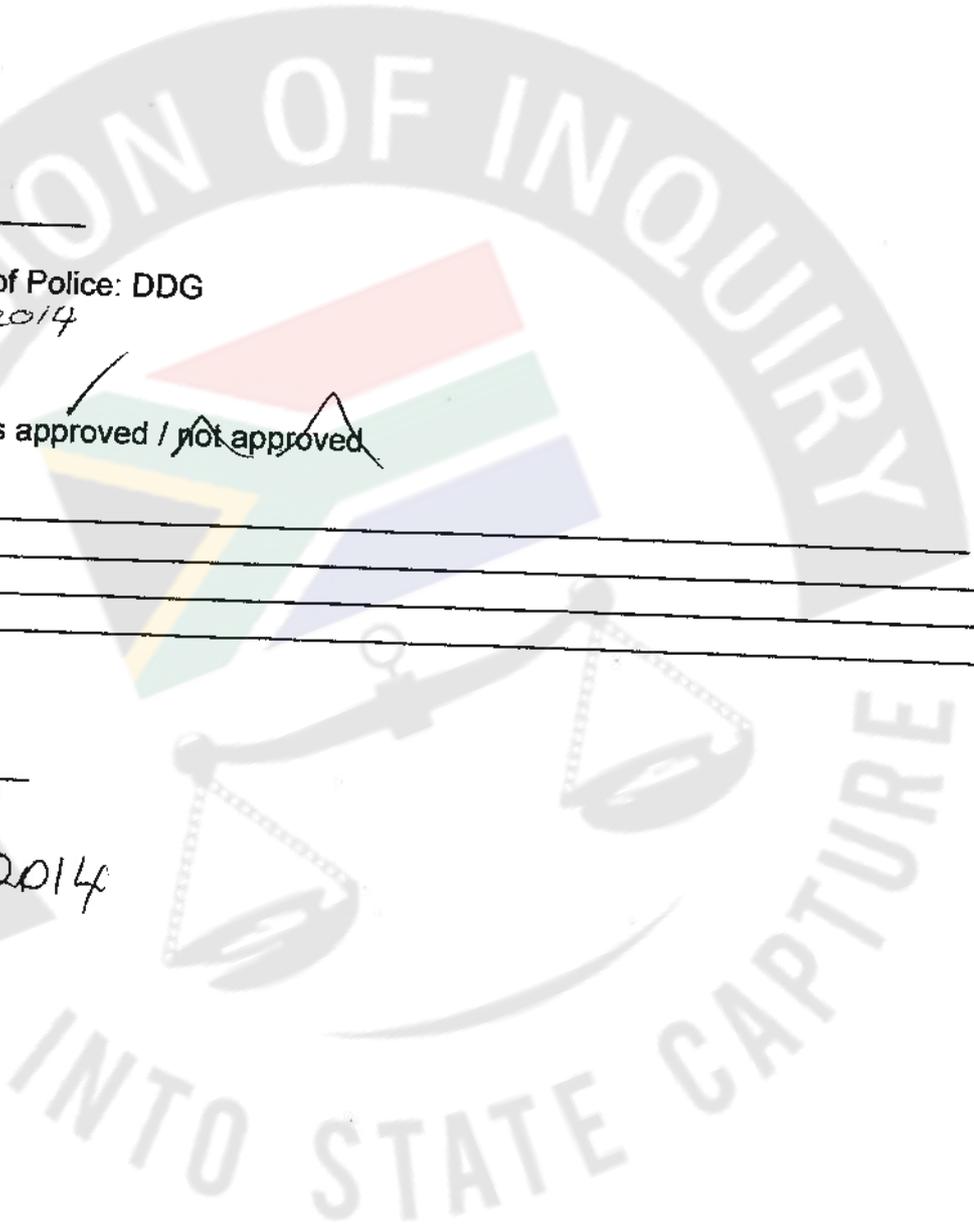
Ms R FOURIE
Acting-Secretary of Police: DDG
Date: 30/09/2014

Recommendations approved / ~~not approved~~

Comments: _____

M P T Nhleko

Mr M P T NHLEKO
Minister of Police
Date: 30/09/2014







**MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA**

Private Bag X463 PRETORIA 0001, Telephone (012) 393 2800, Fax (012) 393 2819/20, Private Bag X9080 CAPE TOWN 8000, Tel (021) 467 7021, Fax (021) 467 7033

General M V Phiyega
National Commissioner of the South African Police Service
Private Bag X94
Pretoria
0001

Dear National Commissioner

ESTABLISHMENT OF A REFERENCE GROUP

Following the announcement of the new Cabinet by the President in May 2014, the Ministry has been inundated with concerns raised by various interested parties pertaining to, amongst others, the functioning of the South African Police Services. Views were also expressed regarding how to improve the delivery of the policing function aligned to the National Development Plan (NDP) - Vision 2030, in relation to:

- a. strengthening the criminal justice system;
- b. making the police service professional;
- c. demilitarising the police service;
- d. building safety using an integrated approach, and
- e. building community participation in community safety.

I have accordingly, established a Reference Group, through the Civilian Secretariat for Police, with Adv Margaret Kruger appointed as the convenor. The Reference Group has been given three (3) months to conclude its work, focusing on the following areas:

- 1.1 Human Resources Management
 - 1.1.1. Appointments, suspensions, disciplinary and criminal proceedings involving senior management.
- 1.2 Operational Issues

- 1.2.1 Alleged involvement of police members in illegal renditions of Zimbabwean nationals;
- 1.2.2 Crime Intelligence;
- 1.2.3 Integration and transformation issues:
 - 1.2.3.1. Ethos and adherence to good governance;
 - 1.2.3.2. Rank Structure including promotion and perceived salary discrepancies, and
 - 1.2.3.3. Non – Statutory Forces
- 1.3 Review of the National Key Points Act.

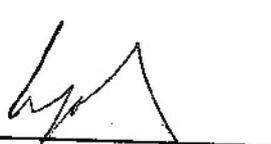
In this regard, it will exercise the following roles and responsibilities:

- Gather all necessary background information and material;
- Invite inputs on the specified matters from the police management and directly or indirectly affected and/or involved individuals within the Service;
- Interview any relevant person/s who may provide any information in connection with the specified matters;
- Research, examine and analyse any written material, documents or media articles relevant to each specified matter;
- Research and analyse the implications of the legal, regulatory or governance environment pertaining to the specified matters;
- Compile report(s) in respect of each specified matter in accordance with prioritised and agreed upon deadlines, and shall further compile a comprehensive final report.

The National Commissioner and the Administration will be required to cooperate fully with the Reference Group and is particularly required to timeously provide all documentation requested, to ensure that the Reference Group completes its responsibilities within the stipulated time-frame. All necessary steps have been undertaken to safe-guard the confidentiality and security of information obtained.

I thank you in anticipation.

Kind regards,


 Mr N P T NHLEKO, MP
 MINISTER OF POLICE

Date: 03/10/2014



civilian secretariat for police

Department:

Civilian Secretariat for Police
REPUBLIC OF SOUTH AFRICA

Private Bag X922, PRETORIA, 0001 Van Erkorn Building, Van Erkorn Arcade, 7th Floor,
217 Pretorius Street
PRETORIA, Tel: (012) 393 2500/2/3, Fax (012) 393 2536/8, WEB:

NAME	ACADEMIC QUALIFICATIONS	EXPERIENCE
Adv Margaret Kruger <i>Coordinator</i>	LLB (1979 – University of Natal)	Professional experience in: <ul style="list-style-type: none"> conducting, leading and managing commercial forensic investigations for the public and private sectors in Southern Africa and international donor organisations Reviewing and redrafting organisational structures, financial management systems, policies and procedures, codes of conduct, and physical site inspections to ensure adequate control measures to manage identified risks Worked at the South African Police Service from 1982 to 1998 as investigating officer, senior legal official and advisor to the office of the MEC of Safety and Security (1994-1996)
Sibusiso Richard Radebe	Diploma-Military Science, Zimbabwe Technical certificates from the Intelligence Academy: Basic Intelligence; National Occupational Safety; Middle Management Course; Project Management Course; Public Finance Management Course; Security Training Course	<ul style="list-style-type: none"> Extensive experience in institutional security and risk management as well as counter intelligence Major projects include: investigating corruption in the Eastern Cape (2002-2003); the integration of intelligence services (1998-2000) including the establishment of the Provincial Intelligence Coordinating Committee; investigating violence and killings, including the Qumbo Tsolo Violence and the Moerane Commission

Adv Mahlodi Samuel Muoffhe	LLB (Unisa)	<p>Extensive experience in progressive institutions including:</p> <ul style="list-style-type: none"> • Priscilla Jana and Associates (attorneys) – 1979-1981 • Learn and Teach (1981-1983) • Methodist Church of South Africa (1988-1989) • Centre for Black Economic Development (1989-1994) <p>Also worked as CEO and Chairman of FK Investment Holdings (1994-2003) and is currently the Parliamentary Liaison Officer and Spokesperson for Deputy Minister Ramatlhodi</p>
Mr Zwile Zulu	Masters in Business Administration, Post Graduate Diploma in Business Management, Bachelors Degree in Business Technology	Extensive experience in organisational development, strategic planning and performance management and auditing primarily in the public sector
Adv Khulekani Raymond Mathenjwa	LLM (x2 – 2006 Criminal Law and Criminal Procedure; 2009 Labour Law) LLB (1996)	Twenty years experience in National Prosecuting Services. Projects include SASSA fraud and corruption project and DoJ fraud and corruption projects
Thulani Mkhwanazi Administrator	Matric (1993)	1996-1998: ANC YL Durban South Regional Secretary 1998-2004: Member of the ANC YL KZN PEC 2000-2004: SA Youth Council KZN PEC Member



CONFIDENTIAL REPORT

TO : THE MINISTER OF POLICE

FROM : THE REFERENCE GROUP

DATE : 22 NOVEMBER 2014

RE : ZIMBABWEAN NATIONALS RENDITIONS



Purpose

1. The purpose of the report is to advise the Ministry on good governance procedures and inter-governmental protocols, national legislation and the legality of the deportation of Zimbabwean nationals by the Directorate for Priority Crime Investigation.

The Directorate for Priority Crime Investigation (DPCI)

2. The DPCI was established in terms of section 17Ar/wCof the South African Police Service Act 68 of 1995 (SAPS Act). The Directorate is responsible for preventing, combating and investigating national priority offences, in particular serious organised crime, serious commercial crime and serious corruption matters.
3. The Directorate is headed by a National Head who is appointed by the Minister of Police in terms of section 17C (2) of the SAPS Act. The National Head shall manage and direct the Directorate. The Directorate has provincial offices headed by provincial heads.
4. The arrests and deportations of the Zimbabwean nationals were effected in a joint operation by members of the DPCI from Head Office and the Gauteng Provincial Office.
5. In this regard, Lt General Dramat is the National Head of the Directorate and, Maj General Sibiya is the Gauteng provincial Head of the Directorate.

Renditions

6. In November 2010, Supt Ncube of Zimbabwe Police, with his entourage, entered South Africa to meet with Lt General Dramat. The purpose of the meeting was to get assistance in tracing Zimbabwean nationals who had killed a police colonel in Zimbabwe, Bulawayo district. The Border police allowed Supt Ncube with his team to enter South Africa, on confirmation by Lt General Dramat.
7. On 5 November 2010, a meeting was held between the Zimbabwean police and Lt General Dramat – see page 16 par 5.2 of the IPID progress report. Success report dated 04/02/2014: 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 ref: 3/12/2010 and Zimbabwe (Bulawayo CR 348/09/2010, witness Dumisani Nkosi; E Ndeya: Zimbabwe National and others.”

“The report was signed by Col Leonie Verster. Par A1 of the Report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at the DPCI offices about the nationals who shot and killed one of their senior officers. Paragraph 3 states that Capt Maluleke was tasked to trace and arrest the said murderers. The report also mentions the arrest of Gordon Dube and further appreciates the assistance from TRT members and members of Crime Intelligence.”

8. Another success report dated 11/11/2013. The report is addressed to Deputy National Commissioner DPCI, enquiries: Capt Maluleke, signatory PJ Selundu, “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 Vundla eNdeya and Shepard Chuma.

9. On 5 November 2010, an operation by Capt Maluleke, Zimbabwean police and members of DPCI Gauteng, was conducted in Diepsloot, Gauteng where the following Zimbabwean nationals were arrested and tortured.
 1. Shepard Chuma
 2. Maqhawe Sibanda
 3. Nelson Ndlovu
 4. Witness Ndeya.
10. They were taken to Soweto, in search of John Nyoni, and later detained at Orlando police station as illegal immigrants instead of suspects in a murder investigation.
11. On 8 November 2010, these four suspects were booked out of the cells by Capt Maluleke whereafter, Maqhawe Sibanda and Nelson Ndlovu were released, however, Shepard Chuma and Witness Ndeya were taken to Beit Bridge by Capt Maluleke and his companions where they were handed to Zimbabwean police across the border.
12. Shepard Chuma and Witness Ndeya were further tortured by Zimbabwean police and starved for eleven (11) days. Shepard Chuma was released after eleven days, however, Witness Ndeya was killed by Zimbabwean police.
13. On 23 November 2010, Prichard Chuma was arrested in Diepsloot. He was wanted for the murder of the Zimbabwean Colonel as well. Prichard Chuma was detained in Alexandra for murder. He was booked out from Alexandra Police Station and taken to Beit Bridge and handed over to Community Service Centre. That was the last time Prichard Chuma was heard of.
14. In January 2011, John Nyoni was arrested by members of Crime Intelligence, liaising with Capt Maluleke. John Nyoni was taken to Silverton Police Station. On the way he

complained that he was in Zimbabwe two weeks ago to burry some people he committed the crime with and also knew that they were after him. Johnson was later taken to DPCI offices for a photo shoot with police and thereafter booked in Moot Police Station. Johnson Nyoni was handed over to Capt Maluleke who handed him over to Zimbabwean police at Beit Bridge. He was killed in the hands of Zimbabwean police in Zimbabwe.

15. Members of Crime Intelligence, DPCI and Zimbabwean police took a joint photo shoot with the suspect Johnson Nyoni.
16. In January 2012, Gordon Dube was arrested in possession of the fire arm suspected to be belonging to the murdered Zimbabwean Colonel. Gordon Dube was handed over to Capt Maluleke who, in turn handed him over to Zimbabwean police whilst he had a pending case in South Africa.
17. It is not known what happened to him in Zimbabwe and he has not been heard of since the handing over (investigation).

Witnesses to the arrests

18. The progress report from IPID compiled by Mr Khuba and the report to the Minister from Crime Intelligence state that Major General Sibiya participated in the arrests that took place on 05/11/2010.
19. Shepherd Chuma states that Major General Sibiya was present on 05/11/2010 when they were arrested. Chuma says Sibiya is the one who gave instructions for them to be detained at Orlando police station. Maqhawe Sibanda corroborates Chuma in that Major General Sibiya was present when the arrest was effected.

20. The following police officials state that Major General Sibiya was present in the operations conducted on 05/11/2010 and 23/11/2010: Petros Jawuke, Desmond Campbell and Alfred Ndobe state that Major General Sibiya took part in the assault of the suspects.

Interviews

21. On 22/11/2014, Lt Col Maluleke was interviewed by a member of the Reference Group. He was confronted with the following questions:

21.1 Why did the DPCI not follow extradition procedures when deporting the Zimbabwean nationals wanted for the murder of the Zimbabwean police officer? He denied that he had any knowledge about the murder of a police officer in Zimbabwe. He alleged that he arrested the suspects for robberies committed in South Africa, and decided to deport them when they could not be linked with the crimes.

21.1.1 This explanation cannot be true, given that the success reports stating clearly, that the suspects were wanted for the murder committed in Zimbabwe.

21.1.2 Furthermore, the briefing to the members involved in the operation was that the suspects were wanted for the murder of a police officer and that the alleged offence was committed in Zimbabwe.

21.1.3 IPID investigator retrieved emails from his computer where he was finding out from the Zimbabwean police as to how they travelled home and stating that he is still tracing the remaining suspects.

21.2 He was asked whether or not his boss, Lt General Dramat knew about the operation. Lt Col Maluleke stated that, he was the one in charge of the operation and Lt General Dramat did not know anything.

21.2.1 This cannot be true because when Zimbabwean authorities entered South Africa they were coming to Lt General Dramat and he allowed them into the country.

Furthermore, on 05/11/2010, Lt General Dramat had a meeting with the Zimbabwean authorities and thereafter the operation began. The success report from Col Voster states that Capt Maluleke was tasked to assist in tracing the Zimbabwean fugitives following the said meeting.

21.3 Lt Col Maluleke was asked about the involvement of Major General Sibiya in the operation. His response was that, the police officials implicating General Sibiya are lying. They are falsely implicating him deliberately because, Major General Sibiya arrested their boss, Lt General Mdluli. However, civilian witnesses are also implicating General Sibiya. Furthermore, he was in constant contact with the members during the operations. He sent a number of SMSs to Lt General Dramat during the operation. The contents of the SMSs is currently unknown. The investigation did not traverse the contents of the SMSs.

22. On 10/11/2014, Mr Khuba, the officer in charge of the investigation, was interviewed. During the interview, it became clear that he was supportive of the conspiracy theory against Lt General Dramat and despite the abundant evidence explaining his involvement. He has also accepted that police officials implicating General Sibiya are deliberately misdirecting the investigation process.

Home Affairs Officials

23. The investigating officer obtained statements from Home Affairs officials in Soweto and Beit Bridge. They all state that the deportations were illegal and unprocedural. Lt General Dramat misled Parliament when a question was asked about the renditions. In a formal response to parliamentary question he said the deportation was done by Home Affairs, well knowing that the said response was false.

Zimbabwean national rendition to South Africa: Bongani Moyo

24. Bongani Moyo, a Zimbabwean national, escaped from custody in South Africa and went back to Zimbabwe. Capt Maluleke conducted an operation with Zimbabwe police in Zimbabwe. Bongani Moyo was arrested and renditioned to South Africa where he stood trial and consequently sentenced.

Analysis of the IPID Report and Crime Intelligence Report

25.1 The following Zimbabwean nationals were illegally deported to Zimbabwe, where they were tortured and some were killed by the Zimbabwean police Homicide Unit:

- i. Shepard Chuma
- ii. Maqhawe Sibanda
- iii. Nelson Ndlovu
- iv. Witness Ndeya
- v. Prichard Chuma
- vi. Johnson Nyoni
- vii. Gudi Dube

25.2 The individuals in roman figures (i) to (iii) survived the ordeal and are witnesses in this matter.

25.3 Witness Ndeya and Johnson Nyoni were killed by the Zimbabwean police, and members of the DPCI are accomplices in this inhuman act against human life.

25.4 Prichard Chuma and Gudi Dube were handed to Zimbabwe police and disappeared in their hands. All seven of them were wanted in Zimbabwe for the murder of a police officer.

26. There is enough evidence to show before any tribunal that, Lt General Dramat participated in the rendition activities in the following form:

26.1 He allowed Zimbabwean police into the country;

26.2 On 05/11/2011, he had a meeting with the Zimbabwean police;

26.3 He committed government resources into the operation;

26.4 He congratulated officers for arresting Johnson Nyoni and advised them to keep it secret;

26.5 He continuously received updates and success reports on the operations.

26.6 He had a reason to mislead Parliament, because the operations were illegal, under his instructions.

27. The allegation that Major General Sibiya was involved cannot be dismissed simply on the alleged conspiracy theory.

27.1 The Zimbabwean nationals who survived say that he was involved in the operation.

27.2 Police officers who were in the operation from DPCI state that he was commanding the operation.

27.3 There is communication between himself, Capt Maluleke during the operations and furthermore, he was sending SMSs in the process to Lt General Dramat. The contents of the SMSs need to be investigated.

27.4 Whether or not the civilian witnesses and police officials are falsely implicating Major General Sibiya need to be tested in a formal tribunal/enquiry, where the presiding officer will make credibility findings on all parties involved.

27.5 The cellular phones used by Lt General Dramat, Cpt Maluleke, Maj General Sibiya, W/O Makoa during the operation need to be located and be sent to SAPS TSU for downloading.

28. Home Affairs officials deny any involvement in the deportation processes, and alleged that the deportation papers that were used in this instance, were no longer used by Home Affairs. This assertion makes the deportations illegal and demonstrates ill-treatment of foreign nationals by a South African law enforcement agency, the DPCI.

29. It is common cause that the DPCI and Zimbabwean Police Homicide Unit decided to exchange fugitives between themselves without following legal protocols and procedures. The investigations by IPID and CI focussed on criminal liability and not on the administrative responsibility of DPCI Generals in the Republic of South Africa, whereas international instruments were contravened.

Statement of Law

30. Rendition is an illegal act of kidnapping and transfer of criminal suspects or prisoners from one country to another, without following international and national legal protocols and procedures between the countries involved.

31. Transferring criminal suspects and prisoners between two independent states is governed by mutual legal assistance in criminal matters and extradition treaties between two independent states.

32. In this matter, the two countries involved are the Republic of South Africa and the Republic of Zimbabwe, who are both members of the Southern African Development

Community at African sub- Regional level. Furthermore the two countries are members of the African Union at continental level.

33. The Republic of South Africa and the Republic of Zimbabwe have no extradition treaty. Their legal co-operation in criminal matters is complemented by the SADC Protocols on extradition adopted on 3/10/2002 and mutual legal assistance in criminal matters adopted on 3/10/2002. These protocols are applicable in conjunction with National legislations, on extradition, Act No 67 of 1962 and International Co-operation in Criminal Matters Act 75 of 1996.

34. The SADC Protocols on extradition provide that the desired factor is to offer SADC co-operation in the prevention and suppression of cross-border crimes amongst the SADC states.

34.1. Article 2 of the Protocol mandates South Africa and Zimbabwe to extradite to each other any person, subject to article 4, in accordance with the provisions of this protocol and their domestic laws.

34.2. Article 4 of the protocol provides for mandatory procedures for refusal to extradite; if the subject of the extradition would be subjected by the requesting state to torture or cruel, inhuman or degrading treatment or punishment.

34.3. Article 5 of the protocol provides that the requesting state should provide assurance that the death penalty shall not be imposed; if imposed, will not be carried out.

35. SADC Protocol on mutual legal assistance on criminal matters; article 2 provides that mutual legal assistance be given by the requested state in respect of investigations; prosecutions or proceedings in the requesting state in a criminal matter which includes locating or identifying persons.

36. Zimbabwe, being a member of SADC, falls under the designated states in terms of section 2(1)(b) of the South African Extradition Act 67 of 1962.

36.1. In terms of section 4 of the Extradition Act, all extradition requests must be made to the Minister of Justice by a person recognised by the Minister as a diplomatic or consular representative of that state or by any Minister of that State through diplomatic channels; existing between the Republic of South Africa and the State.

36.2. A magistrate shall in terms of section 5 issue a warrant upon receipt of a notification from the Minister of Justice that a request to surrender such a person has been made. And thereafter hold an enquiry in terms of section 9, in order to determine as to whether or not the arrested person must be deported. Once a magistrate decides in terms of section 10 that the subject of enquiry should be committed for surrender s/he shall forthwith forward to the Ministry a copy of the record of the proceedings together with a report as s/he may deem fit. A decision to surrender/commit a person by a magistrate is appealable, in terms of section 13 of the Act.

36.3. The Minister of Justice is empowered in terms of section 11 of the Act to decide, whether or not to surrender the arrested person (fugitive), who is the subject of the extradition to the requesting state. The Minister may refuse to surrender a person if s/he has pending proceedings in the Republic or there are reasonable grounds to believe that, an unjust, unreasonable or too severe a punishment will be imposed to the person concerned or if the person concerned will be prosecuted or punished or prejudiced at his or her trial in the foreign State.

36.4.1. In deciding whether or not a fugitive is to be surrendered, the Minister shall take into account; whether the person will be subjected to cruel, inhuman or degrading punishment in the hands of the requesting state. The underlying values of the constitution are that, the Republic of South Africa has an obligation to protect the right of life of everyone and shall not be party to the imposition of cruel, inhumane or degrading punishment. (Mohamed V President of the RSA; Society for the Abolition of the Death Penalty in SA intervening 2001 (2) SACR 66 CC).

36.4.2. South African authorities have a constitutional obligation to seek assurance from any requesting state which might impose cruel, inhumane and degrading punishment, that such will not be imposed. (Minister of Home Affairs and others vs Tshoba and others 2012 (5) SA 467.CC.

36.4.3. Therefore if the Zimbabwean authorities had followed extradition protocols and procedures, the Minister of Justice, would have been assured, that, none of the fugitives will be subjected to torture, cruel, inhumane or any degrading punishment. The Minister was not afforded this opportunity because of the disguised extradition and consequently the people who tortured, shattered and killed.

37. Gudi Dube was deported to Zimbabwe; whilst there were pending cases against him in Weinberg Police Station and appearing in court. Therefore the Minister of Justice would have refused to surrender him, if the extradition procedures were followed.

38. The Deported Zimbabwean nationals would have the opportunity to test the available evidence against them, before the Magistrate if an enquiry was held in terms of section 9 of the Extradition Act, and appeal the decision to extradite them, if necessary but, this opportunity was not afforded to them, instead they were illegally deported.

39. South Africa has ratified the UN Convention Against Torture and Cruel, Inhuman and degrading treatment or punishment dated 10/12/1984.

39.1. Article 3 of the Convention provides that no state party shall expel, return or extradite a person to another state, where there are substantial grounds for believing that he would be in danger of being subjected to torture. In so determining the competent country shall take into account the existence in the state concerned; of a constant culture of gross flagrant or mass violation of human rights. To this end the Minister of Justice would have taken into account, the allegations of torture against Zimbabwean police, which were before the South African police and National Prosecuting Authority of South

Africa. These allegations matured to court litigation proceedings by Southern African Human Rights Litigation; Zimbabwe Exiles forum and others vs National Commissioner of the South African Police Service.

40. The Republic of South Africa enacted the Prevention and Combating of Torture of Persons Act 13 of 2013. The acts of torture against Zimbabwean nationals were committed in 2010/2011 and this act has no retrospective effect, nonetheless South Africa is bound by the UN Convention Against Torture, other cruel, Inhuman or Degrading Treatment or Punishment.

Unlawful deportation

41. Department of Home Affairs officials allege that between the period of 20/09/2010 to 31/12/2010, there was a ministerial moratorium on deportation of illegal Zimbabweans in the country. The moratorium was called, Dispensation for Zimbabwean project (DZP). There is no Zimbabwean who was supposed to be deported during this period. Therefore the deportations were unlawful and in contravention of the Ministerial directive.

Disguised extradition

42.1. There is overwhelming evidence that the Zimbabwean nationals deported by DPCI were wanted for the murder of a Police Colonel in Zimbabwe. Instead of following the extradition protocols, the DPCI and Zimbabwean Police, disguised their extradition, in the form of a deportation. Disguised extradition clearly aims to circumvent the more lengthy procedures and safeguards of extradition proceedings.

42.2. For deportation to qualify as unlawful disguised extradition there must be a link between the deportation and pending criminal investigations in the in the fugitive's country of origin. (Pyle extradition; Politics; human rights; (2001) 146)

(Jeebhaid and others V Minister of Home Affairs and others 2009 (51 SA 54 SCA).

43. The unlawful deportations and disguised extraditions constitute a crime against humanity in terms of the Implementation of the Rome Statute of the International Crimes Courts Act 27 of 2002; because they amount to “enforce disappearances”.

44. The DPCI, under the management of Lt General Dramat and, Major General Sibiya, failed to observe the SADC protocol on extradition and mutual legal assistance. The Directorate further failed as a law enforcement agency to comply with the extradition Act 67 of 1962.

45.1. The DPCI, under the management of Lt General Dramat and, Major General Sibiya unlawfully deported the Zimbabwean nationals; and executed disguised extradition of Zimbabwean nationals who were wanted for criminal activities in Zimbabwe.

45.2. Lt General Dramat misled the Minister of Police and Parliament in a formal response to a parliamentary question; where he said the deportations were done by home affairs; well knowing that the said response was false.

46. The DPCI kidnapped the Zimbabwean nationals, and defeated the ends of justice in that, the arrested persons were not brought before a court of law for the adjudication of their extradition.

47. The Directorate forged the Home Affairs deportation documents, which in itself, was an act of defeating the course of justice and crime of forgery.

48. In terms of section 17DA of the South African Service Act, the Minister may provisionally suspend the National Head of the DPCI from his or her office pending an enquiry into his or her fitness to hold office or for misconduct.

49. The participation of the National Head on the renditions, requires an enquiry into both his fitness to hold office and acts of misconduct.

50. It must be noted that Capt Maluleke, who is at the centre of the renditions, has subsequently been promoted to the rank of Lt Colonel within the DPCI, whilst the rendition investigations are still in progress, which symbolises an act of impunity from the National Head.

51. The National Head can also be removed from office through a vote of at least two-thirds majority in the National Assembly (section 17DA 14 of the SAPS Act).

52. In law, the two Generals are responsible for the acts of the DPCI officers even if they did not participate in the rendition process but were aware that, such activities were taking place. Their responsibility comes from the international doctrine of command responsibility. "As long as a supervisor has effective control over subordinates, to the extent that he can prevent them from committing crimes, or punish them after they committed the crimes, he would be held responsible for the commission of the crimes if he failed to exercise such abilities of control." Prosecutor v Zenjil De Lalic, Ldravko Musil, Hazim Delic, Esad Landzo (appeals Chamber) IT. 56-21A (ICH) at 198.

Recommendations

53. It is recommended that the Minister of Police, should consider provisionally suspending Lt General Dramat as the National Head of the Directorate for Priority Crime Investigation, pending investigations on few outstanding aspects and the composition/constituting of an enquiry into his fitness to hold office on the following basis; That, Lt General Dramat and DPCI officers, acting under his management, supervision, and/or control and/or guidance and/or instructions;

53.1 Undermined the legislative authority of the Minister of Justice and the South African judiciary to make a determination and adjudication on the extradition of the Zimbabwean nationals who were suspected of murder and robbery committed in Zimbabwe by unlawfully deporting the Zimbabweans.

53.2 The DPCI failed to comply with South African Mutual Legal Assistance Act and Extradition Act 67 of 1962 read with SADC protocols on mutual legal assistance on criminal matters and extradition.

53.3 Bringing the international image of Republic of South Africa into disrepute by contravening the SADC protocols on extradition, mutual and legal assistance and the United Nations Convention on torture by being co-perpetrators and accomplice on torture and murder of Zimbabwean nationals, committed by DPCI officers and Zimbabwean police.

53.4 Committing criminal law offences, including:

- i. Kidnapping;
- ii. Defeating the ends of justice;
- iii. Forgery/fraud;

As a co-conspirator and accomplice in the commission of the said common law offences.

53.5 Misleading the Minister of Police and Parliament by stating that the Department of Home Affairs deported the Zimbabwean nationals, well knowing that it was the DPCI under his management which renditioned the Zimbabwean nationals for their alleged criminal offences.

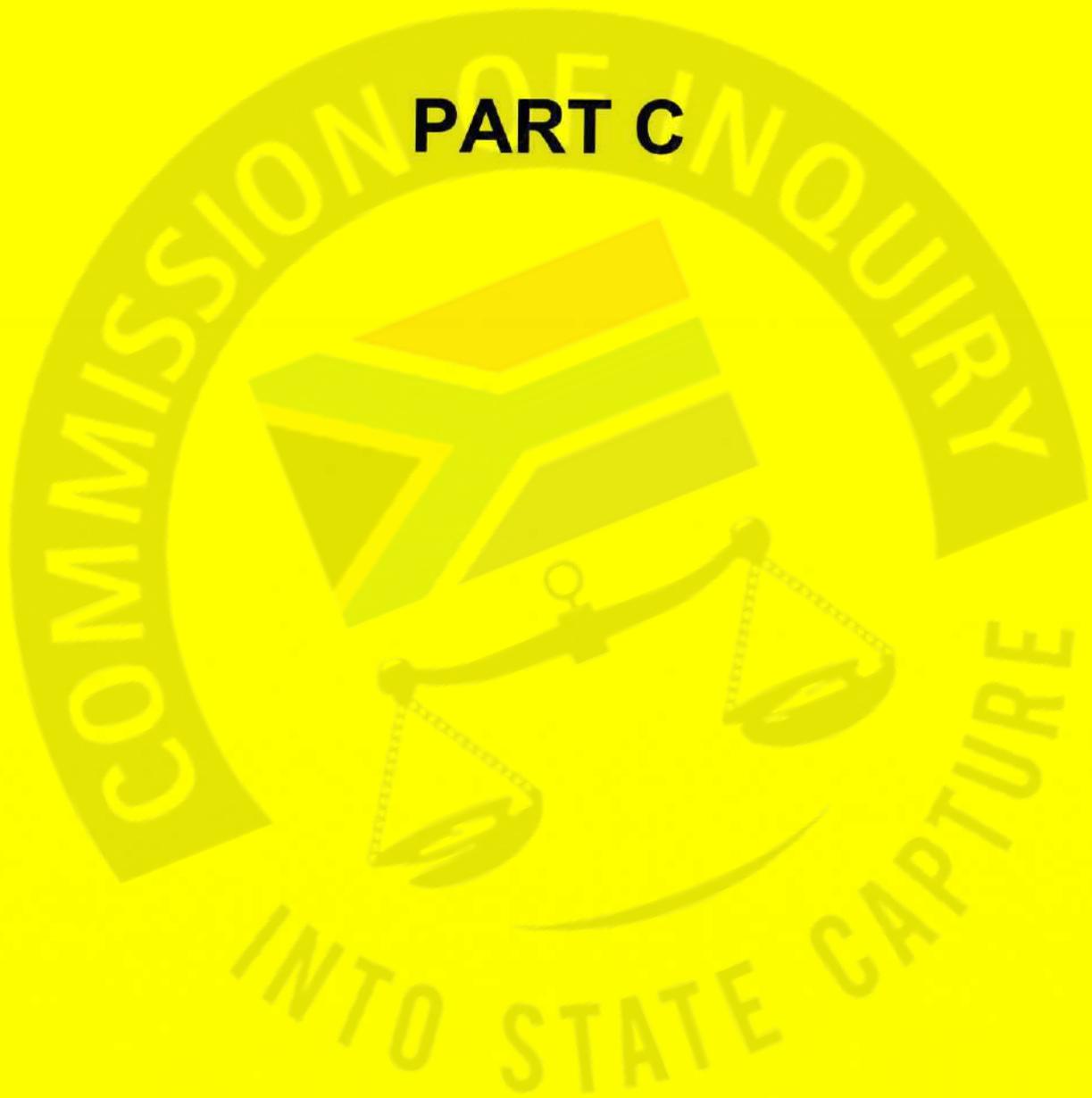
53.6. Bringing the international image of the Republic of South Africa into disrepute by executing unlawful deportations, disguised extradition and enforced human disappearances.

54. The Minister of Police should consider issuing the directive in terms of section 207 (2) of the Constitution, to the DPCI Head/ National Commissioner, that Major General Sibiya and Lt Colonel Maluleke, be suspended pending internal investigations on their involvement in the renditions, contraventions of SADC protocols and national legislation on extraditions, mutual legal assistance and common law offences of kidnapping, defeating the ends of justice and, fraud/ forgery.

55. The source documents are as follows:

- i. IPID progress report.
- ii. CI report to Minister.
- iii. Response to parliamentary questions.
- iv. SADC protocols on extraditions and mutual legal assistance Acts.
- v. National legislation on extradition and mutual legal assistance on criminal matters.
- vi. UN Convention on torture.

PART C





MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA

Private Bag X463 PRETORIA 0001, Tel: (012) 393 2800, Fax: (012) 393 2819/20 • Private Bag X6080 CAPE TOWN 8000, Tel: (021) 467 7021, Fax: (021) 467 7033

To : Mr Sandile July
Werksmans Attorneys
Sandton

From : The Minister of Police

Date : 23 February 2015

Ref : INV/1/02/2015

Dear Mr July

Re: YOUR APPOINTMENT TO CONDUCT AN INVESTIGATION ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT, MAJOR GENERAL SHADRACK SIBIYA, AND OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES INVESTIGATION ("DPCI") IN THE ILLEGAL RENDITION OF THE ZIMBABWEAN NATIONALS IN 2010

1. Serious allegations of misconduct and possible criminal acts have been made against the Head of the Directorate for Priority Crime Investigations ("DPCI"), Lieutenant-General Dramat; the Provincial Head of DPCI, Gauteng, Major-General Shadrack Sibiya, and other members of the DPCI. It has been reported

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in the media and elsewhere that these members of the DPCI have authorised, and participated in the illegal rendition of Zimbabwean nationals, i.e. Shepard Chuma; Maqhawe Sibanda; Prichard Chuma; Johnson Ndoni; Gugu Dube and Bongani Moyo.

2. Mr I H Khuba, who was the Provincial Head of Independent Police Investigative Directorate, Limpopo at the time, led a task team that was commissioned to conduct an investigation into these allegations. Mr Khuba and his team conducted an extensive investigation and produced a report which was signed by Mr Khuba on page 35 of the report with the following recommendations:

*1) *Based on the available evidence the Independent Police Investigative Directorate recommends that Lieutenant-General Dramat, Major-General Sibiya, Lieutenant Colonel M Maluleke, constable Radebe, Captain S E Nkosi and Warrant Officer Makoe be charged criminally for:*

- 1.1 *kidnapping;*
- 1.2 *defeating the end of justice;*
- 1.3 *assault and theft (only applicable to Captain M L Maluleke, Warrant Officer Makoe, Constable P M Radebe and Captain S E Nkosi).**

3. The above mentioned report was submitted to the National Prosecuting Authority ("NPA") for a decision to prosecute. No decision was taken by the NPA to date. After Mr Khuba had submitted his report, another report surfaced, also signed by Mr Khuba. The said report is dated at the bottom by Mr M Sesoko and Mr R J McBride 9 April 2014. In this report the recommendation had been changed to the following:

**Based on the available evidence, the Independent Police Investigative Directorate recommends that no charges should be brought against Lieutenant-General Dramat and Major-General Sibiya. The investigation established that there is no prima facie case against them. However with regard to Lieutenant*

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Colonel M Maluleke, there is a prima facie case to sustain charges of kidnaping and defeating the ends of justice."

4. In the report which purports to exonerate Lieutenant-General Dramat and Major-General Sibiya, there is also no longer any mention of Constable Radebe, Captain Nkosi and Warrant Officer Makoe and whether they have been exonerated as well or not.
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-General Dramat; Major-General Sibiya; and any other officers mentioned in the original report;
 - 5.4 the circumstances under which the 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 is relevant to your conclusions and findings.
6. In your investigation, you will interview the relevant witnesses at your own discretion and have access to all relevant documentation including the two reports, the docket and witness statements made so far.

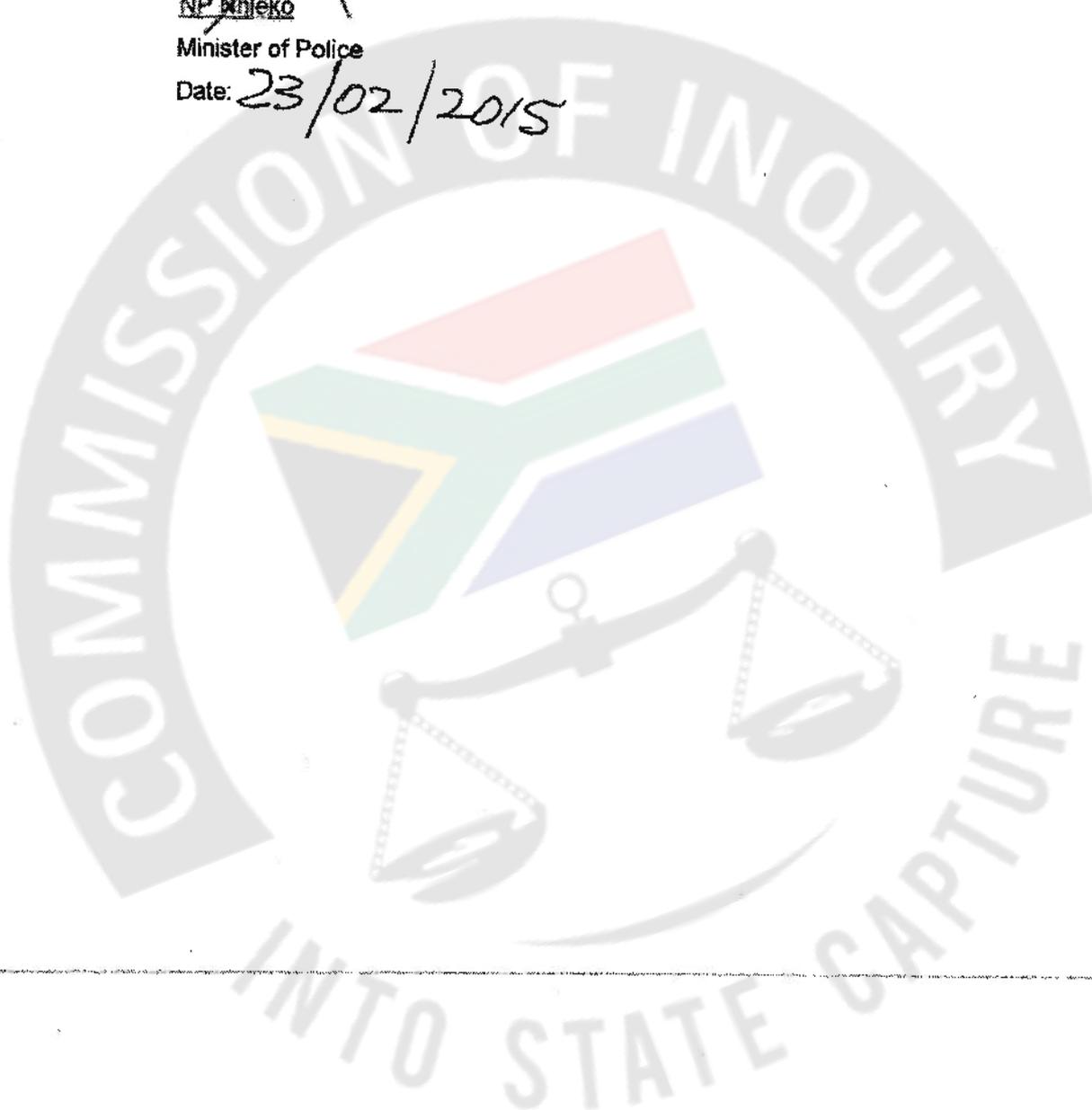
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- I require your report within two weeks from the date of your appointment, an extension may however be granted at your request.

Yours faithfully,


NP Mhleko
Minister of Police

Date: 23/02/2015



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S July/IPID
17.04.15

ROBERT McBRIDE

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

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ROBERT McBRIDE

PRESENT:	MR ROBERT McBRIDE	IPID	
	MR SANDILE JULY	Director, Werksmans	10
	MS KERRY BADAL	Associate, Werksmans	
	MR SANDILE TOM	Associate, Werksmans	
	MR KWAZI BUTHELEZI	Candidate Attorney	

17 April 2015

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MR JULY: Mr McBride, my name is SANDILE JULY, I'm an attorney conducting this interview. This is SANDILE TOM, who is an Associate here, then we have KWAZI BUTHELEZI, who is a Candidate Attorney, and that is KERRY BADAL, who is an Associate here. 20

MR McBRIDE: Okay.

MR JULY: We were supposed to start this meeting at 12h00, but we are late. The reason for us being late is that we were stuck in traffic. 25
We do apologise. Today is 17 April 2015, and we are talking to MR McBRIDE.

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8 July/IPID
17.04.15

ROBERT McBRIDE

Mr McBride, I don't know how we start, but we will tell you what we know. We have interviewed a number of people.

MR McBRIDE: I just want to mention something. In your first communication with IPID, the email didn't reach me. By the time I was suspended you sent the next email to my work email address, and I don't have access to it. I was also expecting an SMS from you confirming today, so that I could have details, because I think both of you phoned me from ...

MR JULY: ... a landline?

MR McBRIDE: Yes, without a number on it.

MR JULY: I will tell you what happened, Mr McBride. After I spoke to you, we then received a letter which made reference to you. They then wrote us a letter to say: We know that we are not supposed to speak to you. That's how it works. When you have a lawyer, we don't then talk to you. But what has happened is this, and maybe we need to explain this, we sent you an email which you did not receive. We then forwarded that email to your employer to say: Listen, we wrote a letter to Mr McBride - we didn't know that you did not receive it - but

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S July/IPID
17.04.15

ROBERT McBRIDE

we have not received any response from him,
can you liaise with him? Apparently MR
KGAMANYANE directed him to send the letter to
ADAMS & ADAMS. Remember, we don't know for
the purposes of this interview, that you are 5
represented by ADAMS & ADAMS. Initially ADAMS
& ADAMS indicated to us that they were
representing IPID, they were not representing
individuals at IPID. Therefore, if we wanted
to speak to any person from IPID, we must come 10
through (?). Then on 26 March I got a call
from MR JACQUES MARAIS, who said: When is
KHUBA coming here? I said: No, the meeting
with KHUBA is supposed to be at 11h00 and the
time was 10h55. Then I said I wasn't sure 15
where he was, but we were supposed to meet
with him at 11h00. He then said he was going
to confirm his instructions with IPID. He
came back to me to say he was no longer
representing IPID. So when he said to me he 20
was no longer representing IPID, therefore the
individuals at IPID were no longer represented
by him, hence the letter to you and not to
ADAMS & ADAMS. Hence when we couldn't find
you and you couldn't respond to us, we didn't 25

SJ LS

S July/TPID
17.04.15

ROBERT McBRIDE

know the reason and we sent the letter to the employer, who then wrote to ADAMS & ADAMS. Then we received a letter from ADAMS & ADAMS telling us that we should not have contacted you, they have been on record several times - 5
I think MR MARAIS forgot about our telephone conversation on 26 March, which I explained to him.

MR McBRIDE: Okay.

MR JULY: He came back to say today's meeting is 10
proceeding. We also thought that you would be coming with him.

MR McBRIDE: No, I think initially, from the beginning, we had indicated that we do not require lawyers to be present. But since I am suspended, and 15
they are acting on my behalf, I obtained advice and guidance from them. The most important issue was you were not in contact with me, either via the lawyer or anybody, because I was not receiving this stuff. For 20
me I was happy that at least you could make contact and sort out the legal issues between the lawyers. That was the most important thing.

MR JULY: At least that has been sorted out now, Mr 25

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S July/IPID
17.04.15

ROBERT McBRIDE

McBride. The issue is this, you started at IPID in March.

MR McBRIDE:

Yes.

MR JULY:

If I'm not mistaken it was 3 March?

MR McBRIDE:

That's correct, 3 March I started, yes.

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MR JULY:

Yes, 3 March. MR KHUBA tells us a few days later, which could have been 6 March, you contacted him and asked him about the report, and the report we are talking about is the report in question, which is the ZIMBABWEAN report. He came to you and he talked about the report, and the following day you again called him to talk about the report. In that meeting it was you, SESOKO, him and MR GLEN ANGUS, and there was talk about the report.

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KHUBA says he was told by SESOKO that you wanted to speak to him, because he was attending a conference, and you didn't have his numbers, so you only contacted him through SESOKO. We want to know what happened when

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you received the report on either the 5th or the 6th, and what happened in the meeting with the four of you. Subsequent to that, according to MR KHUBA, there were other meetings.

Firstly, there was an email

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S July/IPED
17.04.15

ROBERT McBRIDE

exchange about the report, and later on there was a meeting where there was a signing of the report.

MR McBRIDE:

I will answer your question. On the first issue I was initially concerned about the way I was not contacted when you started communicating with IPID, so I mention that. Then also the fact that a private law company is investigating a government investigative agency, albeit an independent one, before the NPA had made a decision. Just to say that I would have expected that there would have been a wait, for the NPA to make a decision. It's neither here nor there, but with the communication problem, and then this, it was a little bit of a concern to me. (External interruption.) Is it okay if I continue speaking?

MR JULY:

If you can just hold on.

MR McBRIDE:

On my appointment I had asked for a briefing on all high-profile cases, and I think it was CATO MANOR, it was RIAH PHIYEGA's matter, it was this one of SIBIYA and DRAMAT - I can't remember - but I can't recall ANGUS and KHUBA in the same meeting on this issue of DRAMAT's

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8 July/TPID
17.04.15

ROBERT McBRIDE

case. Maybe in the CATO MANOR cases, but I don't see why he would have been in that meeting, because I don't think he was an investigator in this case. He could have been in a meeting with me, but I don't seem to recall ... 5

MR JULY: Let me tell you what he says. He says he was called into that meeting because he had raised a number of issues. You wanted to know - you must have thought there was something that went wrong with the investigation, and then you wanted him to also be involved in the investigation. He was hesitant to do that, but it did not happen in any event that he became part of the investigation, because one of the things he raised about the investigation was the involvement of MOUKANGWE from Crime Intelligence. 10 15

MR McBRIDE: My issue in the briefing - and I can't remember the exact sequence of events - was firstly Crime Intelligence was involved in the case from the beginning. That's the one issue. The second issue was that my predecessor, Acting, MS MBEKI, had told KHUBA: Mr Khuba, just report directly to me, don't 20 25

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report to . This is what I was told. Then
also that he must work with the Crime
Intelligence guy, and the Crime Intelligence
guy also linked him up with ADVOCATE MOSING.
So for me already independence in the 5
investigation was compromised, the way it had
been said. In other words, bypass the Head of
Investigations. Those were my issues.
Immediately that was my concern.

I was also concerned because it became 10
apparent that Crime Intelligence operatives
were involved in the rest of the ZIMBABWEANS
themselves. They were also involved in the
illegal repatriation. Those were my concerns.
Then I questioned, because there were many 15
people involved: Who was involved at what
stage in this crime that you mention to me,
and to what extent? I also asked: What crime
has been committed, by whom, and who was
involved in it? What are the elements of that 20
crime? That's what it was. Basically that is
how it was.

At a later stage they gave me a work session
on MARIKANA. In fact KGAMANYANE was the
investigator there. Then they briefed me 25

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about CATO MANOR and its status, and so on. PHIEGA with LAMOER was completed. They were waiting for a warning statement from PHIEGA. On this matter of HAWKS, Rendition and Crime Intelligence, if my memory serves me correctly 5 there were some outstanding statements or warning statements at the stage when they spoke to me. If I'm not mistaken it could be SIBIYA's warning statement.

MR JULY: Did they tell you at that time that they had 10 asked SIBIYA about his warning statement?

MR McBRIDE: It's possible, yes. I can't remember the specifics. They could have said that they needed a warning statement from SIBIYA.

MR JULY: Can I also clarify this. In that meeting did 15 KHUBA indicate to you that: On 22 January I submitted the report to the NPA?

MR McBRIDE: No, no, no, no, what he did tell me was that he was in discussions with ADVOCATE MOSING. No, he didn't tell me, and I don't think he 20 would have - and I don't want to think on his behalf - because the investigation was not complete, as there were outstanding statements. In fact, I think there was a statement from JENNI IRISH-QUOBOSHEANE in that 25

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thing. I can't remember the context of it. I remember after I had started, I bumped her, and she said my guys were there - meaning IPID people were there to take a statement from her. I don't know if she meant then or on a previous occasion before I had started with IPID. 5

MR JULY: So he didn't express it in so many words, that: My investigation is not complete, and the report that you are asking for is not complete? 10

MR McBRIDE: Look, the specifics of what was discussed in a meeting more than a year ago, where no minutes were taken - I think it would not be safe to rely on who said what and in which context. The key issue for me, is normally such a report, the way I understand the law, would not come to me. It would go from the provinces. But because it concerned two provinces this one had to come to me, and it was driven by National. So that's the issue. Normally I wouldn't even have the report, because reports and dockets move in every day to the NPA, they don't come past me. 15 20

MR JULY: You were still explaining. 25

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MR McBRIDE:

On the issue of details of the discussion and sequence of events, they were not really important to me. We did not take minutes of the meeting, so I can't confirm what was said.

What I know is there is one report I have seen, which I have signed. The only issue on that report was that it was badly written: there were spelling errors, grammar and stuff like that. There were no other issues. I didn't even go through any of the evidence that was there. I looked at the recommendations that were made, and the analysis, and I signed it.

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MR JULY:

Let's make this supposition. If you knew about the existence of the report which had been given to the NPA, would you have asked for that report which had gone to the NPA?

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MR McBRIDE:

Well, the investigation was not completed. That was my impression. If you recall from the papers, we had briefed Minister Mthethwa on the status of various of these high-profile cases. It was just a status report, and it was soon afterwards. I think I indicated in that report that these cases were in the process of being finalised. It's in that

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information note that you will see. Just as
my memory serves me now, as you ask me
questions, I'm being reminded. Therefore, the
investigation was not complete, because in the
info note I mentioned that the investigations 5
were in the process of being completed.

MR JULY: If KHUBA says the investigation was completed
but there was new evidence that came up, would
he be right in that? He said: I had
completed the investigation, but there was 10
this new evidence about the cellphones in
relation to SIBIYA, which needed to be
tightened up.

MR McBRIDE: From memory my understanding is that it was
new analysis of cellphone records, and 15
additional statements and warning statements.
I don't know whether I knew it at that stage
or subsequently, now that we have had a chance
to go through the report in detail because of
this unhappiness in this matter. What I must 20
also add is this, just as you get my mind
going - and I have mentioned it in the papers
at court also - that I had briefed the
Minister on this matter on 4 August. That's
our present Minister Nhleko. On 4 August, 25

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when we had our first one-on-one, I briefed him about this case. I briefed him that I was concerned about this case, and that it appears that Crime Intelligence people tried to implicate a number of Generals from the HAWKS 5
falsely. I raised that with him then. I raised it with ADVOCATE MATHENJWA from the Reference Group. Then I raised these issues with the Minister in an info note, I think on the 26th, when he had asked for the docket I 10
think on the 24th. I think on 26 November - he gave me two days to give the docket and all exhibits, and so on. I felt uncomfortable about that, because I know MATHENJWA was looking for them, because he had phoned KHUBA, 15
but I was advised: Let's give everything to the Minister, because you don't want to appear to be obstreperous or anything, so give the Minister the docket.

MR JULY: So the docket you were going to give to the 20
Minister.

MR McBRIDE: He asked for the docket. In fact, the Minister asked for the docket, he asked for all exhibits, colour photos - that's what he asked - which made me kind of uncomfortable, 25

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because I wasn't sure who it was going to and why he wanted it. But I gave him everything. I gave him the whole copy and I sealed it for him and signed every page so that he had it. Remember, we were plagued also by leaks. Now that I have been able to check, there were lots of leaks. That's why, when we took the docket and the report which I wrote - which I signed and we gave to the NPA, we got it directly to the National Director of Public Prosecutions, because of the leaks that were coming out of the NORTH GAUTENG DPP. 5 10

MR JULY: I want to clarify this point. At one stage you gave the docket to the Minister.

MR McBRIDE: Yes. 15

MR JULY: At what point did you give it to the NPA?

MR McBRIDE: 14 April 2014. Yes, that's the date signed. The 14th or 13th, so it was like eight months before the Minister asked for it. I think the Minister was not even appointed as Minister yet, when we submitted the full docket to the National Director of Public Prosecutions. 20

MR JULY: So the Minister asked for this somewhere in November?

MR McBRIDE: In November. On 22 or 23 December, when 25

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DRAMAT was suspended, and the Minister's
spokesperson made a statement that as a result
of the IPID report the Minister had suspended
DRAMAT, I got a fright, because there is no
way that it could be like that based on our 5
report that I gave to the Minister - the one
and only report, and which is the same one I
gave to the NPA - that the Minister could have
come to that conclusion.

Of course, later on it became clear that the 10
Minister said he disagrees with our report.
Now, I'm not sure whether his disagreement
with the report is merely an opinion at a
stage when the NPA hadn't made a decision. I
heard our Minister speaking in Parliament, but 15
I just kept quiet, because I had briefed him.
Then on 8 January 2015, in CAPE TOWN, I met
the Minister, and I said to the Minister:
Minister, this decision has caused confusion.
I said: Minister, I have met with Dramat and 20
his lawyers, I met in the presence of my
provincial head in the Western Cape, and we
told him we can't discuss the case. But I
confirmed, as I did on a previous occasion,
that they are not suspects from our point of 25

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view. But I told the Minister: Minister, I
have spoken to Dramat, and he is willing to
assist you to de-escalate this issue. That's
what I told him. The Minister said: That's
a good idea, I'll think about it. I wasn't 5
sure how he had come to the decision to
suspend, based on our report, because it
couldn't have been from our report. There is
no link between that.

At that meeting I also briefed the Minister on 10
other investigations concerning KwaZULU NATAL,
the Provincial Commissioner and the National
Commissioner's negligence of duty. Then the
Minister said by the 13th or 14th, which was
a few days after, he wanted a full report, 15
making recommendations on the Provisional
Commissioner, KZN and the National
Commissioner. So I prepared those reports and
then met him later on in January - I can't
remember when - and I gave him the 20
recommendations.

MR JULY: Maybe before you proceed, Mr McBride, did you
know that KHUBA and somebody else went to
fetch the docket from the NPA or DPP SOUTH
GAUTENG? Before it came to you, it was 25

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already with the DPP SOUTH GAUTENG for a decision.

MR McBRIDE: Well, it couldn't have been because there were no warning statements in it. It couldn't have been sent for a decision, because no docket goes to the NPA for decision without warning statements or such things. 5

MR JULY: Let me tell you what we have been told, because we are not in a court of law here, and I don't intend to trick you, but KHUBA says he went to fetch the docket. CHAUKE says the docket was with a certain MR VAN ZYL, SC because he got it from the NPA. 10

MR McBRIDE: I don't know any of that. I wouldn't have known who was sitting with it, and stuff like that. The only issue I knew was MOSING had the docket. That's all I knew. At some stage in between - and at some stage there was a leak, long before I was appointed in IPID, in November 2013 in MAIL & GUARDIAN or whichever newspaper, but there was a leak talking about this issue. Obviously I didn't have an acute interest in it then, but it was in the newspapers. On this issue of KHUBA fetching a docket, I wouldn't know. If he fetched a 15 20 25

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docket on this day, I'm not in a position to
negate anything he says he did, nor would I do
it for the sake of it. All I know is there is
one report, with one set of dockets, which I
signed. There is only one report I know. I 5
think just in fairness, when our Minister
asked for the docket, he said: All progress
reports and final recommendations - or final
report. So he asked for all of that, the
progress reports and the final document. For 10
me the investigation had been finished then,
and the docket was with the NPA. I think
where the confusion came in is that the
Minister may have forgotten that I told him on
4 August that it had already been submitted to 15
the NPA for decision. I think that might have
caused some confusion.

MR JULY: What you are saying you had with you at the
time was an inconclusive report?

MR McBRIDE: No, no, I'm not saying that. Mr July, please 20
let's be honest with each other. I didn't say
that. I said I got one final report which I
signed. I didn't say it was an inconclusive
report.

MR JULY: No, no, no, no. 25

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MR McBRIDE: So there was no inconclusive report, there was a final report, which was prepared by KHUBA and signed by SESOKO.

MR JULY: Maybe I should have said at the discussions, when you were discussing it and were looking at this report which had bad language. That's the one I'm talking about. 5

MR McBRIDE: No, it was a final report with bad language. There was no interim or progress report, or anything like that. If you look at the time lines, you will see the report was given to me, signed by these guys, I think on the 9th, and I signed it on 13 or 14 April, something like that. I can't remember the exact sequence. I think I received the report in April, but there were a few days between receiving it and when I signed it. 10 15

MR JULY: If KHUBA is lying, that you called him two days after you signed it - you called him and asked for the report ... 20

MR McBRIDE: No, no, I could not have called KHUBA, and I'll tell you why, because I didn't have his number. I could not have called him. I only got his number recently, when this started, so I could not have called KHUBA directly. 25

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MR JULY: Okay, let me put it this way, that you met with him to discuss a report.

MR McBRIDE: No, no. There were many high-profile matters. KHUBA was also involved in the CATO MANOR investigation. So there is CATO MANOR, there are a lot of other cases. One case I asked for a briefing on was PHIYEGA's report - and I think KHUBA might have been involved in that one also at the investigation stage. So I asked for a briefing on all the issues, which anyone who is heading an organisation should do. 5

MR JULY: I think you have said this, but you have never had sight of any other report? 10

MR McBRIDE: Look, a report comes to me, it's signed by the Head of Investigations and by the investigator. I signed it. 15

MR JULY: It came to you already signed?

MR McBRIDE: Yes, it was signed by the two people. That's the report I signed, the one with the corrected language and spelling. 20

MR JULY: KHUBA then says the three of you were working on a report, which is different from what you are saying. You were working on a report, there was to-ing and fro-ing before the actual 25

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signing, and you were involved in that.

MR McBRIDE: No, no, this is not true. I looked at the spelling, and, as I indicated to you, the questions indicated to me are what the crimes are, what the elements are of that crime, who was involved and at what stage. Because it is over a period. If you want my opinion on issues, I can give you my opinion. My opinion was, and still is, quite firmly - and I stand by that report I signed; I stand by it - there was no crime committed by anybody until the time the ZIMBABWEANS were arrested. There was no crime committed. 5

MR JULY: No crime committed by anybody ...

MR McBRIDE: By anybody that I was aware of, or that the evidence shows on that issue. 15

MR JULY: I don't think we will then have to take you through the report of 22 January, because you have never seen this report.

MR McBRIDE: Which one? 20

MR JULY: The one which was submitted by KHUBA on 22 January.

MR McBRIDE: The one that has KHUBA's signature on it?

MR JULY: Yes.

MR McBRIDE: I had never seen that report until this 25

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hullabaloo started here.

MR JULY: In the same breath then ...

MR McBRIDE: No, I had never seen that report.

MR JULY: In the same breath then, we can't ask you
about the inconsistencies that exist between 5
the two because you don't know anything about
that?

MR McBRIDE: Well, KHUBA can tell you about that. KHUBA
can tell you about inconsistencies in the
report. I don't even think there are 10
inconsistencies, there is additional evidence.
One report is longer than the other. One
report has additional information to the other
one. One report has an analysis of cellphone
records and it has warning statements, which 15
is a normal thing. So I wouldn't say
inconsistencies, I would maybe say a change of
analysis. I know in one case they had to send
a statement to be analysed, to say whether the 20
guy was truthful or not, because of evidence
which came out from a cellphone, where people
placed SIBIYA at the scene, and then from
SIBIYA's cellphone records he could not have
been on the scene. Then they had to look at
other people's statements again and analyse 25

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them. Out of that was a protest which showed that if these guys lied about SIBIYA being on the scene, where else have they lied.

MR JULY: Then, to be fair to you about the inconsistencies, although we know you know 5 nothing about this report, I think we can't conclude this conversation without showing you the inconsistencies.

MR McBRIDE: No, I don't want to look at them because then I would be interfering in the investigation. 10 So I don't want to look at them, because if there are inconsistencies in a document which I did not have at the time of signing the final report, you can't question me on that.

MR JULY: No, no, I thought you said there are no 15 inconsistencies.

MR McBRIDE: No, your definition of inconsistency - you must talk to the investigator about that. Talk to KHUBA about it. My view was they were not inconsistencies, it is additional analysis 20 and additional evidence. That's what I'm saying. So I'm not conceding to you that - look, Mr July, you're a lawyer, you have your brief, and when you put something to me about inconsistencies, I'm saying from what I have 25

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been told and have been informed, and what the analysis says, there is additional information and additional analysis. That's all I'm saying, and a review of initial assumptions. If I can go through it, there are some statements made which point to people being involved in a crime. Then later on, with additional information, new information, new analysis, a different assumption needs to be made, so there is a review of that. I understand - and after the suspension of DRAMAT I then asked KHUBA: Did you make a mistake anywhere in your statement? I asked him: Is there anything where there is a problem? I even asked about this other report and when it was signed. Because at some stage our spokesperson said the media were asking about a report, and when is this decision going to be made. Our view was: Let the NPA decide. Then he had a report. So I asked: Where did you get this report from, and is it signed? It has "signed" written, but it's not signed. Then I said: Well, it's got no status if it is not signed. I signed only one report. I only signed one report. There is

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only one report with my signature on.

MR JULY: Anything else, Mr McBride, that you would want to share with us?

MR McBRIDE: No, no, no, I think I have said everything. You can ask me additional questions and you can call me back. What I would like to add, is there is a notion somehow that there has been some impropriety on this issue. As far as I'm aware there is none. If I look at DRAMAT and SIBIYA, before I came to IPID I knew about them, but I had never sat like this - like I'm sitting with MR TOM - and looked at DRAMAT or SIBIYA. I know DRAMAT's background, it's similar to mine. My father was on ROBBEN ISLAND with him. So I know him, and that he was involved in the taking down of PAGAD, but I didn't know the guy until I came to IPID. There is no reason for me, in a democratic SOUTH AFRICA, to want to do any favours for anyone in an independent investigative body. There is no reason to want to help anybody on this issue. We work on the evidence that is there.

But I will even go so far as to say there is no court in this country that will be able to

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convict DRAMAT and SIBIYA. There is no evidence against them. This evidence of people receiving - a simple question was this: Three Crime Intelligence people arrested the ZIMBABWEANS. Those three went with MALULEKE 5
to take them across. I don't hear anyone saying: The Crime Intelligence Heads must be suspended. No-one is saying that.

There is another issue I want to add on this. There were assaults made on the ZIMBABWEANS. 10
I had asked MR KHUBA and MR SESOKO: Why aren't you recommending charges when there is evidence from statements saying there were assaults on these guys and police were present? They said: Let's wait for the NPA 15
decision on this, and then we can add the charges after. Even afterwards, when the report was with the NPA, I asked MR KHUBA a number of times: Please can you start 20
preparing the charges on the assaults, and get warning statements on that. That's what I did. I'm just sending a message because I'm late for my other meeting.

MR JULY:

I think we are finished. Thank you.

THE INTERVIEW ADJOURNS

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STATEMENT OF LIEUTENANT COLONEL NDANDULENI RICHARD MADILONGA

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

(1)

I am a police officer in the South African Police Service holding a rank of Lieutenant Colonel with persal No B481932-2, stationed at Thoboyandou SAPS as a commander of crime prevention, contact number 015950 1049 or 0766 906 426.

(2)

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

(3)

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

(4)

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

(5)

When I approached them, one of them introduced himself to me as the leader of the group and he said to me he is a Superintendent Ncube from the Homicide Unit in Harare. He then requested me if they could not find a place and sit down and discuss. I then took them to my office and sat down for discussion. We then went to my office together with his colleagues. Superintendent Ncube told me that he is going to Pretoria to meet General Dramat. He said to me maybe I knew about the Chief Superintendent who had been murdered. He said that the suspects are in Gauteng and he had organised with General Dramat to assist them in tracing the suspects.

(6)

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

(7)

I phoned General Dramat on his cell phone and he responded by saying that he is aware of the Zimbabwean police and I must let them come. I used my landline if I did not use my official cell phone. I took the Zimbabwean police's passports and taken them to the immigration office to be stamped. The registrations of their vehicles were also documented. I handed their stamped passport and gate pass and they cross the entry gate into South Africa.

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(8)

For the period of two weeks, I never heard anything from Superintendent Ncube and his group. After two weeks I received a call from Superintendent Ncube who told me that he was in town and he wanted to say goodbye. I went to town and met with them in front of Tops bottle store. They bought liquor and they left to the border. I 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.

(9)

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

(10)

While I was on the front passenger seat heading to the border gate, he told me that the Zimbabwean police whom I 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 me that he was sent by his big bosses to assist in deporting them because we do 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.

(11)

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

(12)

When we 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 us. We could not even hand the documents that Captain Maluleke gave me to the Immigration officers of Zimbabwe because of the commotion. I knew that they were police officers because I had been working at the border for a long time and I knew them. I even saw the vehicles that crossed two weeks ago when Superintendent Ncube entered the country. One of the Zimbabwe police came and thanked us and said that we must not use the other gate but use the one we used when we entered.

(13)

Captain Maluleke told me that what happened is top secret and people must not know of what happened. Captain Maluleke drove me back to where he found me and I entered into my car and drove home. In 2012 of which I cannot remember the month and date, Captain Maluleke phoned and told me that there is a person from Head Office who will be coming for investigation and that I must cooperate with him. Later a person came to

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 MR Meeboye MP
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Thohoyandou and he had draft statement. He told me that there is a problem with the operation which was once done by the Hawks and they would like my statement to be in a particular format. He told me that the statement is for covering up and the parliament has some issues about the operation. I read the statement and realize that it was to close the gaps and not a true reflection of what happened.

(14)

I know and understand the content of this statement

I have no objection in taking the prescribed oath

I consider the prescribed oath to be binding on my conscience

Deponent's signature:

AK Mubhoye 0701

Date:

2013-04-08

I certify that the above statement was taken down by me and the deponent has acknowledges that he knows and understand the content of this statement which was sworn or affirmed before me and the deponent's signature was placed thereon in my presence at Thohoyandou on the 2013-04-08 at 14:50.

Commissioner of oath:

INNOCENT HUMBUKAYI KHUSA

Signature:

Innocent Humbukayi Khusa

Rank:

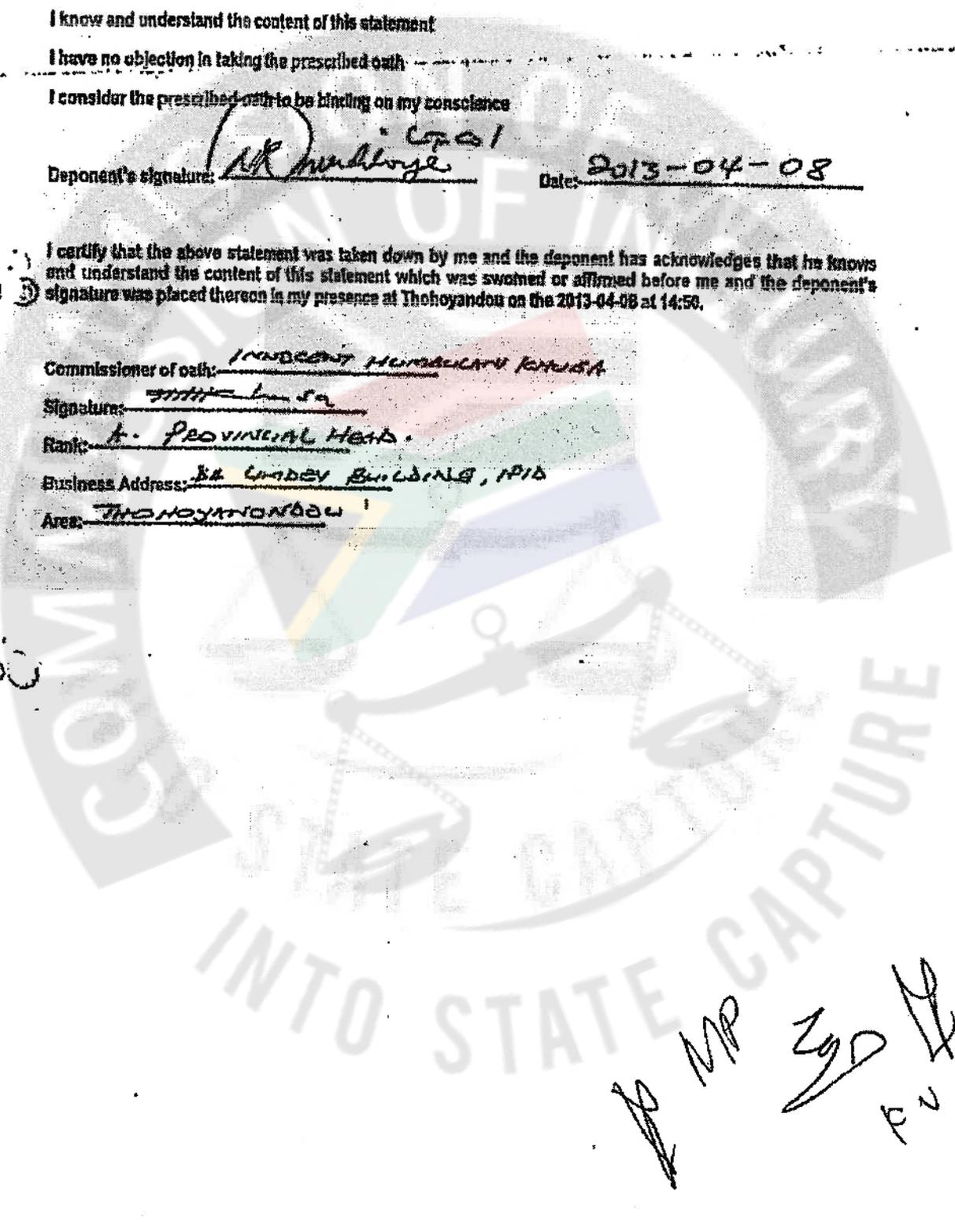
A. PROVINCIAL HEAD.

Business Address:

12 UNDER BUILDING, PIB

Area:

THOHOYANDOU



MP
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EV



SAP 21

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Private/Privats Bag X 1500 SILVERTON 0127

Verwysing Referensie	147/1
Navrag Enquiries	Lt Col L. Verser Capt ML Makoleke
Telefoon Telephone	(012) 846 4307 032 772 8818
Faksnommer Fax number	(032) 846 4138

THE SECTION HEAD
TACTICAL OPERATIONS MANAGEMENT SECTION
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
ORGANISED CRIME
HEAD OFFICE
SILVERTON

2011-02-04

- A. The Head Directorate for Priority Crime Investigation Head Office SILVERTON Att: Maj Gen Hlatshwayo
- B. The Deputy National Commissioner Directorate for Priority Crime Investigation Head Office SILVERTON Att: Lt Gen Dramat
- C. The Deputy Provincial Commissioner Crime Intelligence Head Office Att: Lt Gen Toka

CONSOLIDATED SUCCESS REPORT: MOST WANTED FUGITIVES; WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010 AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI @ NDEYA: ZIMBABWEAN NATIONAL AND OTHERS

- A. 1. On 2010-11-06, Zimbabwean Police visited office the Directorate for Priority Crime Investigation (HAWKS) and held a meeting with the Deputy National Commissioner Dramat about their Nationals who shot and killed one of their Senior officers and robbed his service firearm and are suspected to be in South Africa.
- 2. Five (5) suspect were alleged to be involved in the murder of the Senior official, and seriously wounded more than five patrons who were in the restaurant.
- 3. Captain ML Maluleke was tasked to trace and arrest the suspects around Johannesburg and other parts of Soweto.
- 4. TACTICAL OPERATIONS MANAGEMENT SECTION: GAUTENG
 - 4.1 Captain ML Maluleke with the assistance of TOMS Gauteng Province managed to track and trace most wanted fugitives namely: DUMISANI WITNESS NDEYA VUDHLA who was arrested. Three (3) sleepless nights in succession were utilised to effect arrest and the suspect was later successfully taken to Zimbabwe.

(Handwritten signatures and initials)

RJM-0808

5. CRIME INTELLIGENCE PRETORIA CENTRAL CLUSTER

- 5.1 On 2011-01-12, members of Crime Intelligence Pretoria Central Cluster traced the third suspect, GORDON @ GUUDEN DUBE and upon the arrest of the suspect, a firearm believed to be linked was recovered. Ballistics results established that the firearm is that of the murdered senior Superintendent in Zimbabwe.
6. This office will request the SAPS management to recognise the outstanding work performed in assisting the Zimbabwean Police to finalise their matter.
7. The following members participated in successfully arresting the wanted suspects and assistance to Zimbabwean Police:

PERSONAL NUMBER	RANK	INITIALS AND SURNAME
DPCI: TOMS: HEAD OFFICE		
0627239-8	Captain (Team Leader)	ML Mchuluka
CRIME INTELLIGENCE: PRETORIA CENTRAL CLUSTER		
0537881-3	Constable	ED Mkesibe
7109683-3	Constable	M Rikhotso
2117678-8	Constable	PR Mokobu
7070860-6	Constable	SDD Sombhane
TACTICAL RESPONSE TEAM: GAUTENG PROVINCE		
7003646-6	Constable	TJ Seletela
7039850-0	Constable	SJ Phaswana
7039751-1	Constable	JM Moatshe
7039487-9	Constable	MN Mehale
7038468-0	Constable	NH Tshabalala
7039559-4	Constable	LA Kgopa
7059430-8	Constable	A Nxumalo
7039533-1	Constable	MS Mokoatlo
7039606-0	Constable	AD Takalani

B & C 1. For your information.

L. Verster
 LIEUTENANT COLONEL
 COMMANDER: TACTICAL OPERATIONS MANAGEMENT SECTION
 DIRECTORATE FOR PRIORITY CRIME INVESTIGATION: HEAD OFFICE
 L VERSTER

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"NM4"

Ref: 3/2/1

INFORMATION NOTE

- A. The Deputy National Commissioner
Directorate for Priority Crime Investigation
- B. Divisional Commissioner
Directorate for Priority Crime Investigation
- C. The Head
Directorate for Priority Crime Investigation
- D. The Project Centre
Directorate for Priority Crime Investigation

*Col Verster,
Thanks
Convey our gratitude
to Capt Maluleka
for excellent job.*
*E. K. ...
BRIGADIER
EAMADWA*

SUCCESS REPORT: TACTICAL OPERATIONS MANAGEMENT SECTION DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

1. On 5/11/2010 a legal mutual request from Zimbabwean police was received for the tracing of fugitives.
2. Captain Maluleka was assigned the task to assist in tracing fugitive who committed Armed Robbery and attacked Zimbabwean police official.
3. On the 2010-11-23 the team succeeded in arresting the following:

STATION & CAS NO.	CHARGE	SUSPECTS ARRESTED	SEIZURES
Ref no. 28/3/5	Murder and Robbery	Prichard Tshomo alia Chuma	N/A

4. A, B and C for your information.

[Signature]
LIEUTENANT COLONEL
SECTION HEAD: TACTICAL OPERATIONS MANAGEMENT SECTION
PRIORITY CRIME INVESTIGATION: HEAD OFFICE: SILVERTON
L VERSTER

Information note compiled by:
Telephone number:
Date:

Captain M.L. Maluleka
012 848 4226/082 772 9518
2010-11-24

Information note passed by:
Telephone number:
Date:

Lt Colonel L. Verster
012 848 4307/082 778 2838
2010-11-24

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Ref: 3/2/1

INFORMATION NOTE

- A. The Deputy National Commissioner
Directorate for Priority Crime Investigation
- B. Divisional Commissioner
Directorate for Priority Crime Investigation
- C. The Head
Directorate for Priority Crime Investigation
- D. The Project Centre
Directorate for Priority Crime Investigation

**SUCCESS REPORT: TACTICAL OPERATIONS MANAGEMENT SECTION
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION**

1. On 5/11/2010 a legal mutual request from Zimbabwean police was received for the tracing of fugitives.
2. Captain Malufeka was assigned the task to assist in tracing fugitive who committed Armed Robbery and attacked Zimbabwean police official..
3. The team succeeded in arresting the following:

STATION & CAS NO.	CHARGE	SUSPECTS ARRESTED	SEIZURES
Ref no. 26/3/3	Murder and Robbery	Dumisani Witness Vudhla @ Ndeya or Nkosi - ID unknown Shepherd Duma ID unknown	2 x cellular phones

4. Interpol is already notified.
5. A, B and C for your information.

SECTION HEAD: TACTICAL OPERATIONS MANAGEMENT SECTION
PRIORITY CRIME INVESTIGATION: HEAD OFFICE:
PJ SELINDU

LIEUTENANT COLONEL

Information note compiled by:
Telephone number:
Date:

Cap.
012 1
2010-

Information note perused by:
Telephone number:
Date

Lt Colo
012 848
2010-11

*Noted
Thank you
ID's*

*SG Lebaya
2010-11-18*

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[Signature]

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[Signature]

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**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 Government's 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 FUTURE 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.

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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 members 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

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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. Maluleke 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.

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- 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 Nyon'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 Nyon. 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".

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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

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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 in 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



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 Madliona, 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 Mooka of legal services. Upon our arrival we greeted him and I discovered that Mr Mooka 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 Mooka'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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MP

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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: INDEPENDENT H KHWIKH

DATE: 2015/03/20

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: MADISA P. UH
PLACE: _____ RANK: DIRECTOR: LITIGATION SERVICES
IPID

INDEPENDENT POLICE INVESTIGATIVE
DIRECTORATE
2015 -03- 23
PRIVATE BAG X981
PRETORIA
0001

STATE CAPTURE
INTO STATE CAPTURE

[Signature] MP [Signature] OPS







ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X9525, Polokwane, 0700, 66 A Market Street, Ferric Building, 2nd Floor, Polokwane
Tel.: (015) 291 8800 Fax: (015) 295 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 Sibiya. The case was reported as result of parliamentary question by Cope Member of Parliament and an article by Sunday Times. The case was referred to the Independent Police Investigative Directorate by Civilian Secretariat for further investigation.

2. SUMMARY OF ALLEGATIONS

The following allegations were made:

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

3. CONSTITUTIONAL AND STATUTORY MANDATE

- 3.1 Section 206(8) 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, Maqhawe and Witness standing when they were approached by two unknown Black males. One of them produced an appointment card and the other produced a firearm and ordered them to lie down. He will further state that one of the Police Officer then took out a paper and started reading names like Mthelisi Sibanda, Godi Dube, Prichard Chuma and John. He asked

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

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

12 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 Sibiya coming out of a black BMW and gave instruction that they should be taken to Orlando SAPS.

4 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

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

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

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

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

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

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

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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.

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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.

112
Andrew Mark Sampson: He will state that he is a White Male self employed as a Project Manager of House Constructions. He knew Maghawe Sibanda as a sub-contractor on his building sites. He will state that Mr. Sibanda vanished for a week and resurfaced again. He was informed by Mr. Sibanda that his disappearance was as result of his arrest in connection with the alleged murder of a Zimbabwean Colonel. He was taken to Beit Bridge but released along the way and he had to find his way back because he did not have money and his cell phone was confiscated by the police. He will state that he was requested by Mr. Sibanda to call the said police Captain for his cell phone. He called the police Captain and he confirmed that the cell phone will be returned. He does not know whether such phone was finally returned to Mr. Sibanda.

124
Sibongile Mcofu: 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.

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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.

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

1) 2) **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.

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

4.2 STATEMENTS OF MEMBERS AT ORLANDO POLICE STATION

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

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20/11/2011
Brigadier Mthokozelwa Zanzwa: He will state that he is a Station Commander of Orlando Police Station. He became aware of the allegation of deportation of Zimbabwean foreign Nationals in 2012. He will state that as part of his own investigation he perused the registers to check if there were indeed Zimbabwean nationals detained at Orlando Police Station. According to OB 279/11/2010 the said Foreign Nationals were arrested by Captain M L Maluleke. He also discovered that the Foreign Nationals were detained until 08/11/2010. The procedure is that when a person is arrested and is suspected to be illegal immigrant, Home Affairs official is called to verify the status of the person before he or she is taken to Lindela for deportation. He does not know why the procedure was not followed by the police in this

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

1176 **Thomas Pixana Seteane:** He is a member of SAPS stationed at Orlando. On 06/11/2010 Captain Maluleke came to the holding cells with four foreign national namely Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma. The four Foreign Nationals were registered on the OB and cell register. He will state that it was for the first time for him to experience a situation where a member of DPCI arrest and detain a person for being an illegal immigrant.

1177 **Padile Abrina Papp:** 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

1178 **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.

1179 **Peter Ndwanjwe:** He will state that he is an Assistant Director with the Department of Home affairs in Soweto. He started knowing about the incident involving four Zimbabwean Foreign Nationals in 2012 when he was contacted by Mr. M Matthews who is a Chief Director at their Head Office. He will further state that the four Zimbabwean nationals were not supposed to be deported because from 20/09/2010 to 31/12/2010 there was DZP which is Dispensation for Zimbabwean Project initiated by the Minister to allow all Zimbabweans without legal documents to stay in the country for 90 days in order to apply for legal documents. There is no Zimbabwean who was supposed to be deported on the basis of illegal documents during that period.

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

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

1180 **Job Jackson:** He will state that he is an Acting Deputy Direct responsible for the day to day running of Lindela Holding facility. In his statement he outlined the process

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

131 **Potlawa 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**^{Bondy's}: 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.

152 **Richard Peter Eiberg**: He state that he is an Immigration Officer based at Beit Bridge. He will further state that when SAPS bring an illegal foreigner at Port of Entry they must hand in a Body Receipt form and not the Detention Warrant. The Warrant of Detention is not a deportation document and must not be produced or stamped at Port of Entry. He will dismiss the allegation that the stamp used on the documents claimed to be Home Affairs documents by the police is a deportation stamp.

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

4.4 STATEMENTS OF MEMBERS OF SAPS IN LIMPOPO

AC 77 **Ndanduleni Richard Madlona**: He will state that he is a Police Officer in the South African Police Service holding a rank of Lieutenant Colonel stationed at Thohoyandou SAPS as a Commander of Crime Prevention.

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

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

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

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

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

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

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

The following day after the departure of Zimbabwean police, he received a call from Captain Maluleke who is also known as "Cowboy". It was on 08 November 2010 between 16 and 17:00, when he called and introduced himself as Cowboy and asked as to who is Cowboy. He said that he is a Captain Maluleke and was with him at Paart 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.

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153 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.

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

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

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

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

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

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

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

150 **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.

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

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

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

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

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

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

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.

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

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

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

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Johannes Manti 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.

A164

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

A173

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

A178

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.

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Plantinah Mokoobu: 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

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

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

168 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.

1975 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 Godi 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.

Wierde boes
STATEMENTS OF DIEPSLOOT SAPS MEMBERS REGARDING GORDON DUBE

A 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 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.

1773 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.

4 Sindy Dais 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 Rikotso 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 Cpatain Malukele 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 Bail 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 Bail 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 Wierdabru Police Station uncovered the following:

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

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

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

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

Facts?

5.2 DOCUMENTARY 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 Beit Bridge and also claimed overtime. On 28/01/2011 he went to Bait Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.

nz 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

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

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

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

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

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

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

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

Secret

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.

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

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

? } **Bait Bridge Movement data:** The data entails information pertaining to the entry and exit of people who were identified by Colonel Madifonga 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 CRIMINALPROCEDURE ACT.

Cell phone 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.

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

Cell phone records of Lt Colonel Neethlin (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 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 Sibiya, Warrant Officer Makoe and Constable Leburu.
 - Cellphone data interpretation report and mapping. * NR
- 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 Sibiya wherein General Sibiya was appointed as a coordinator regarding cooperation between two countries. The obligation to assist Zimbabwe in tracing wanted suspects emanate from the agreement of the same meeting as cited in success reports addressed to General Dramat and other senior officials.
 - There is enough evidence that shows that General Dramat did not only know about the operation that led to renditions of Zimbabwean Nationals but sanctioned it through the following ways;
 - The Zimbabwean police came into the country for the purpose of arresting the wanted Zimbabwean Nationals and Lt General Dramat directed that they be allowed to proceed since they were coming to see him. The statement of Lt Colonel Madilonga clearly spell out that the police from Zimbabwe were received by him and he contacted General Dramat who confirmed that they were coming to him. Colonel Madilonga's version is corroborated by Brigadier Makushu and Colonel Radzilani. The cellphone records of general Dramat and Beit bridge Telekom records (Col Madilonga's extension) show that General Dramat received a call from 015534 6300 at 20h56 on 04/11/2010. This corroborates the version of Madilonga, Lt Col Radzilani and Brigadier Makushu about the call made in connection with the Zimbabwean police. According to Lt Col Madilonga he was informed that the purpose of the Zimbabwean police to enter into the
- 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 NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS. The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI offices about the Nationals who shot and killed one of their senior officers. He appointed Captain Maluleke to be a lead person during the operation.
 - Evaluation of the above findings: The success report signed by Leonie Verster was traced to Lt Col Maluleke's laptop as picked from the retrieved deleted data. The report was amended on 26/01/2011 and 31/01/2011 before it could be emailed to a female officer, Warrant Officer Thabiso Mafatla on 09/02/2011 at 14h32. There is no material difference between the document retrieved from the laptop and that found at the Hawks offices during investigation. This proves that Leonie Verster did not generate success report but only signed the report drafted by Captain Maluleke. The date of the meeting between Zimbabwean Police and General Dramat which took place on 05/11/2010 coincide with the date of the 4th of November 2010 which according to cellphone records, General Dramat was called at 20h56 by Lt Col Madilonga seeking permission to allow Zimbabwean Police to enter into the country. Since the Zimbabwean Police where 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.
- 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

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. *PFMA?*

- 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. However it is not clear whether Lt General Dramat received the photos.
- He was kept informed of the developments in the operations that led to the arrest of wanted Zimbabwean Nationals: The cellphone records of General Sibiya shows 30 SMS sent to General Dramat at various milestones of the operation. He also received an SMS from Captain Maluleke shortly after the arrest of Zimbabwean Nationals. He never responded to any of the SMS which may suggest that they were only informing him of the progress.
- Report to parliament in response to the allegation: A copy of the letter sent by Zimbabwean authority to Col 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.

- Revised Act
Conclusion*
- * There is evidence and witnesses corroborate each other that General Sibiya was both at the scene and planning venue. The meeting held between IPID and General Dramat on 2013/03/07 confirmed that General Sibiya was appointed to be the Head of TOMS which he created to trace wanted suspects. The telephone records of both Captain Maluleke and Major General Sibiya show interaction between them at various milestone of the operation. Following suggest it is highly probable that Major General Sibiya was involved;
- LS*
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**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 X1

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 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 06 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 W/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

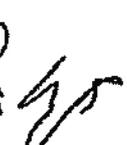
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Johannesburg Central police station (who were seconded to Diepsloot police station at the time and requested by Maluleke to provide support during the operation). The victim was taken directly to the offices of the DPCI head office in Pretoria, where 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. SUMMARY 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

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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 Belt 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 therefore 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

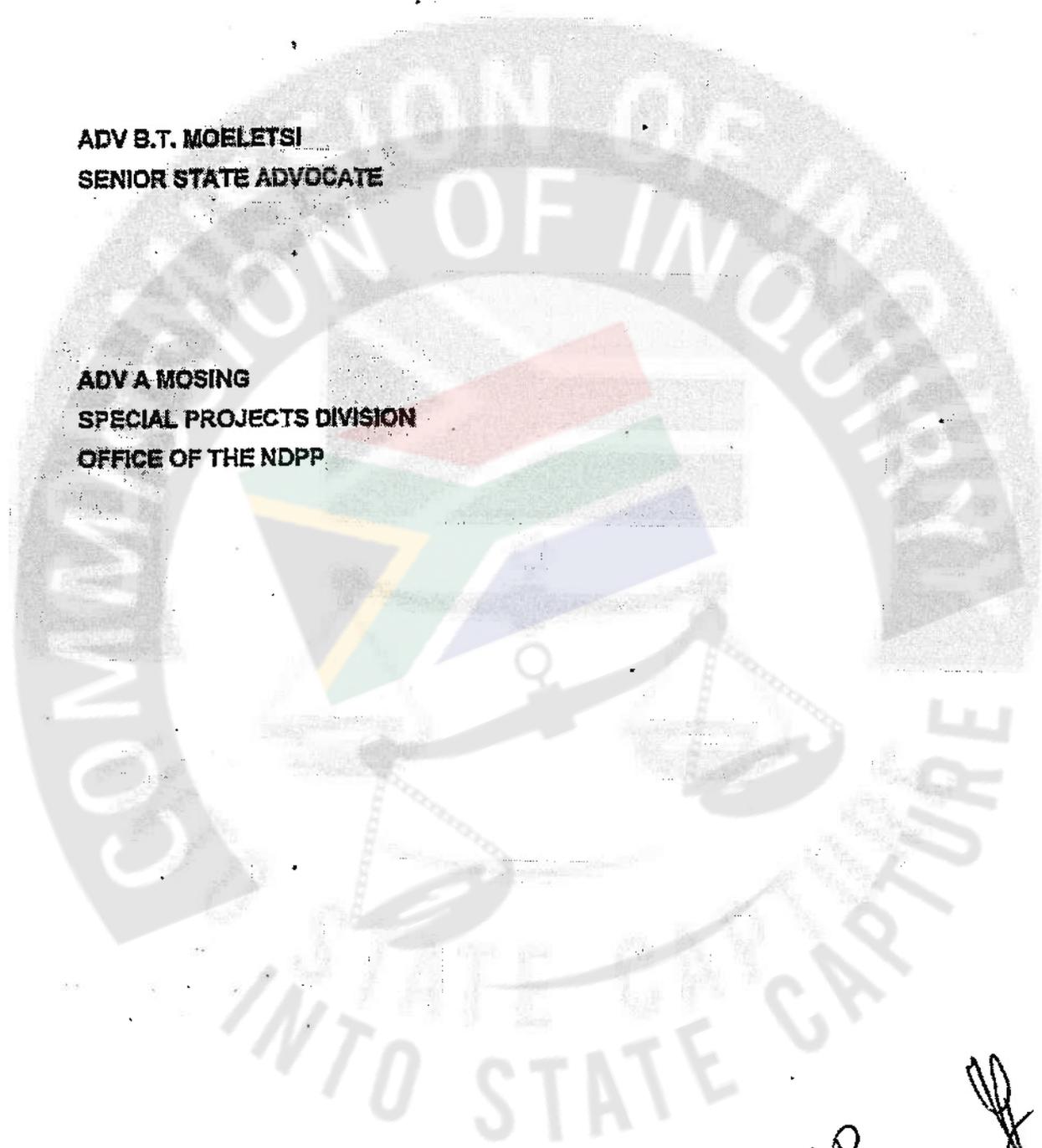
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uttering in respect of the home affairs documents that were submitted to the Civilian Secretariat and others.

Kind regards

ADV B.T. MOELETSI
SENIOR STATE ADVOCATE

ADV A MOSING
SPECIAL PROJECTS DIVISION
OFFICE OF THE NDPP



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RJM-0878

Office of the National Director of Public Prosecutions

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INTERNAL MEMORANDUM

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

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

SUBJECT : DIEPSLOOT CAS 390/07/2012

DATE : 14 FEBRUARY 2014

Handwritten notes:
 - 7/6 - internal DPP
 - * 3/11 - The DPP's secretary
 - * 3/11 - The DPP's secretary

Handwritten note:
 * 18/6 Khube: Mc B... gave decision, took back to IPII. Will phone back.

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

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

Handwritten notes:
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 - 18/6 Khube
 - 18/6 Khube
 - 18/6 Khube
 - 18/6 Khube

2. I trust you find the above in order.

Handwritten notes:
 6x Seven Arch files and 1x other file handed to IPII Khube for IPII
 084 7022 741

Kind Regards (18762485) (The Head: Mosing)

ADV. A. MOSING
 SPECIAL PROJECTS DIVISION
 OFFICE OF THE NDPP
 DIEPSLOOT CAS 390/07/2012

accompanied by Glen Angus
 083 5655 320

on 7 March 2014

Handwritten signatures and dates:
 - [Signature]
 - [Signature]
 - [Signature]

SS 65

Office note

IN RE: SO-CALLED RENDITION MATTER (PROJECT X)-DIEPSLOOT CAS 990/07/2012

DPP JHB REF: 9/2/4/1 (2014/236)

1. BACKGROUND -TIMELINE

- a. Received internal memorandum from the Head Special Projects Division, Office of the NDPP dated 14 February 2014. The exact date of receipt is unclear as no official stamp or date had been affixed to this effect.
 - b. According to office note by adv Van Zyl SC this must have been late in February 2014.
 - c. Before any decision could be taken by this office messrs Khuba and Angus from IPID collected all the dockets from Van Zyl SC on 7 March 2014 and signed for receipt thereof.
 - d. On 18 June 2014 Van Zyl SC phoned mr Khuba who told him that his head mr McBride had instructed him that the dockets must be returned to the NDPP and it was duly done
 - e. On 25 June 2014 Van Zyl SC once again spoke to mr Khuba who informed him that it was never his intention to return the dockets to him.
 - f. On 27 June 2014 adv Mosing of the Special Projects Division of the Office of the NDPP told Adv Van Zyl SC that the dockets were never returned to him.
 - g. These series of events were then brought to the attention of the NDPP by letter dated 3 July 2014.
 - h. On 20 August 2014 the NDPP officially responded to the letter by the DPP Adv Chauke, by apologising for the late response and indicating that he, the NDPP, is in the process of considering the matter and that Adv Chauke may close his file.
 - i. On 31 March 2015 the NDPP wrote another letter to the DPP informing him that he had subsequently referred the matter to the DPP North Gauteng who recommended that the accused including Dramat and Sibiya be prosecuted for *inter alia* kidnapping and defeating the ends of justice. The letter of the DPP Pretoria is dated 6 March 2015.
 - j. This letter of the NDPP *inter alia* states that the matter is now returned to Johannesburg because the matter now resorts under the jurisdiction of the DPP Johannesburg since 1 December 2014 as from that date Diepsloot falls under Johannesburg North (Ranburg) in terms of Government Notice No 861 of 31 October 2014. The NDPP also indicated that further investigation should be conducted in the matter.
 - k. On 1 April 2015 the Head: National Prosecution Services (NPS) send a letter to the DPP Johannesburg to conduct specific further investigation.
 - l. On 10 April 2015 Adv Chauke requested me to advise him on certain aspects after I have looked at the documentation in this matter.
2. It is clear that this matter is being regarded as a "hot potato" and therefore the case is being sent from pillar to post.

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2. There are certain legal issues that need to be address before we even go to the facts of the matter.

4. DISCUSSION OF MATTER

a. JURISDICTION

- i. It is trite law that jurisdiction cannot be conferred retrospectively.
- ii. When these crimes were committed during 2011 all these crimes resorted under the jurisdiction of the DPP North Gauteng. Even the court appearances were done at Atteridgeville falling under the DPP Pta's area of jurisdiction.
- iii. The demarcation altered the position as from 1 December 2014. It does not alter the jurisdictional position prior to 1 December 2014, which to my mind remains with the DPP Pretoria. This fact cannot now conferred jurisdiction on the DPP Jhb for all crimes committed prior to 1 December 2014 especially where decisions were previously take by the DPP Pta or prosecutors resorting under him.
- iv. Furthermore the majority of crimes were committed under the jurisdiction of Pretoria and not Johannesburg. It furthermore seems that crucial phone calls implicating Dramat, were also made between Beit Bridge and Pretoria, falling within the jurisdiction of Pretoria.
- v. We must also clearly distinguish between Court jurisdiction and Prosecutor jurisdiction. The best way to explain this is by way of example. The Regional Court jurisdiction is in accordance with the boundaries of the provincial province, Gauteng. This means for instance that it will be within the jurisdiction of the court being the Regional Division of Gauteng (meaning the whole province). On the other hand the prosecutors' jurisdiction has been divided with reference to the seats of the two High Courts in this province of Gauteng. The fact that the DPP of Pta is appointed in the provincial division of the High Court, does not give him more or concurrent jurisdiction over the cases falling within the jurisdiction of the DPP of Jhb being the local Division. These areas are two distinct areas and the DPP Pta cannot overrule decision taken by the DPP of Jhb merely because he is appointed at the Provincial Division of the High Court in Pta. If that would have been the case, it would never have been necessary for the DPP Pta to request permission to centralize matters from Jhb within his area of jurisdiction. Therefore it means that a specific court might have jurisdiction to do the trial based on the principal of concurrent jurisdiction but that the prosecution's jurisdiction must also be established through with reference to the specific area of jurisdiction. There is no such thing as "concurrent jurisdiction" with reference to the jurisdiction of a DPP. In the old days there were indeed instances where two cities would have concurrent jurisdiction. However at that stage only one DPP or Attorney-General was appointed for the whole area and the smaller area was being controlled by a Deputy who fell under the control and supervision of the AG of DPP. That is a totally different

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scenario than the current one. It is therefore my opinion that the DPP Pta . has no concurrent jurisdiction on any matters falling under the DPP Jhb and that the DPP Jhb is totally independent from any interference by his Pretorian colleague.

b. FUNCTUS OFFICIO

- i. I am also of the view that a prosecutor can very seldom resort to a claim of being *functus officio*. Prosecutors are frequently taking decisions and by virtue of this they can alter their decision at any stage, especially in view of new evidence coming to their attention or representations being lodged. This happens on a daily basis at all prosecutor's offices and is nothing strange.
- ii. The fact that a file has being closed therefore does not bar the DPP or prosecutor to revisit the decision initially taken. This can be done and in fact is being done frequently at this office.

c. POWERS OF NDPP

- i. It must be established whether the NDPP has any inherent powers to prosecute or not. Are the powers of the NDPP curtailed to reviewing decision taken by his subordinates, the DPPs or does he possess inherent power to prosecute.
- ii. In order to answer this we must look at the relevant legislation empowering the NDPP.
- iii. The Constitution dictates in sec 179(1)(a) that the NDPP heads the national prosecuting authority. Sec 179(2) states that the national prosecuting authority has the power to institute criminal proceedings on behalf of the state ect.
- iv. Sec 179(5)(c) gives him the power to intervene in a prosecution and subsection (d) the power to review any decision of a DPP after consulting the relevant DPP.
- v. The NPA act, no 32 of 1995 echoes these provisions. Sec 20 states that the power to institute and conduct prosecutions vests in the prosecuting authority and all subordinate officials shall exercise these powers under the control and direction of the NDPP.
- vi. Sec 22 of the NPA Act specifically deals with the powers of the NDPP.
- vii. He heads the national prosecuting authority
- viii. Have authority over ALL the powers conferred or imposed by the Constitution or any other Act.
- ix. It is therefore clear that the NDPP has inherent and original powers to prosecute.
- x. Sec 22(2)(c) of the NPA act gives the NDPP the power to review a decision to prosecute or not after consultation with the relevant DPP and after taking representations of the accused, the complainant and ANY other person or

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- xi. The question now is whether the NDPP may consult other DPPs and not only the relevant DPP, when reviewing the decision? In principle there can be no objection for the NDPP in order to take a decision, to ask other DPPs for a recommendation provided that the relevant DPP is also consulted as required. In terms of the sec 22(3) he may even direct that an offence be decided and prosecuted within the jurisdiction of another DPP.
- xii. Sec 22(4)(a)(i) and (ii) gives the NDPP wide powers to ask for reports and submissions from a DPP.
- xiii. It therefore seems that the NDPP is entitled to request a report from this office in order to assist him in taking a final decision in this matter.
- xiv. In para 3 of his letter to Adv Chauke dated 31/03/2015, he request the DPP to urgently advise him on his decision. Although the phrase is a bit ambiguous it is capable of a construction that the DPP make a recommendation to the NDPP in the same vein as the DPP of North Gauteng has done. This matter is one of those matters where the NDPP has to exercise his inherent and original powers and where he should take the final decision.

E. RECOMMENDATION

- a. I therefore am of the view that this office cannot pass the bug back to the NDPP on the score of jurisdiction or even that the DPP Pta has taken a decision because it is clear that Pretoria only made a recommendation to the NDPP.
- b. However before any decision is taken the required further investigating must be conducted as instructed by the NDPP as well as the subsequent letter from the Head of the NPS.
- c. The way forward is to draft a letter to the new investigating officer, apparently now someone at the DPCI, to investigate further in line with the queries issued by the NDPP and the NPS. How any subordinate /O from DPCI can investigate a case against the National and Provincial Heads of the DPCI, is beyond comprehension.

~~Dr~~

INTO STATE CAPTURE

Mr H. S.S. 65



ETWATWA CAS 25/07/12

BONGANI HENRY VENDE 36 years old ID no. 7506165879080 residing at 381 Thafeni Section Tembisa with Tel. no. 082 487 6008 and no. 7058391-9 Sergeant in South African Police Service stationed at Johannesburg Crime Intelligence Office at no.1 Commissioner Street, Tel.: (011) 497 7125 states under oath in English:

1.

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 General Sibiya who is the Provincial Commander of Hawks in Gauteng Province. Members of Crime Intelligence who worked with me at the Task Team were W/O Jawuke, W/O Ndobu and Constable Campbell.

2.

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 Sibiya wanted us to meet at four ways to go and search for suspects in a case which a Colonel was killed. I went to four ways with Constable Desmond Campbell who was also part of "TOMS" Task Team. On our arrival at fourways Shopping Center W/O Makwe introduced two African Males as our police counterparts from Zimbabwe Police.

3.

The time W/O Makwe introduce the two policemen from Zimbabwe, I realized that the Colonel that was killed was from Zimbabwe and not of South African Police. W/O Makwe informed us that the two police officers came to us via the office of General Dramat who is National Head of DPCI. Maj. General Sibiya was sitting in a navy BMW vehicle busy on his cellphone and I could not manage to greet him.

4.

While still waiting at our meeting point at Diepsloot, Capt Cowboy Makuleke went to the residential area of the wanted suspects with W/O Jawuke and Constable Leburu Radebe to identify the house of the suspects. Captain Cowboy Makuleke is based at DPCI Head Office and Constable Leburu Radebe is based at the DPCI Gauteng under Major General Sibiya and they were also in "TOMS" Task Team.



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5.

Captain Cowboy Maluleke came back to where we were gathered to collect us to the identified place of the suspects and said that he left Cst. Leburu Radebe and W/O Jawuke to observe the car which was starting or parked outside the suspect's house. While Captain Cowboy Maluleke was still informing us how to drive to the shack, Cst. Radebe called him and said that we should hurry and come because they have already arrested the suspects.

6.

On our arrival where the suspects were arrested, Captain Cowboy Maluleke searched the men and took their passports. We found four (4) A/Men lying down and the two policemen from Zimbabwe said that the four men were their suspects who robbed and killed a police Colonel in Bulawayo.

7.

The four arrested Zimbabwean men were asked about the outstanding suspects and there was an address to be visited and that address was shown by a suspect who was with Captain Cowboy Maluleke and we all followed Captain Maluleke to trace the outstanding suspect.

8.

On our arrival at the pointed address at Meadowlands, we found the wife of the wanted suspect and she said that it was a while that her husband did not come home and she did not know where he could be found. We searched the shack but also nothing was found. We then went next to the road in Soweto and Captain Cowboy Maluleke said the suspect should be detained at Orlando SAPS as illegal immigrants and not as wanted in Armed Robbery and Murder in Zimbabwe.

9.

On 2010-11-23 I was called by W/O Makwe that we should meet at Shoprite of Diepsloot to go and trace the outstanding suspects in the Zimbabwe Case. On our arrival at Diepsloot Shoprite, Captain Cowboy Maluleke briefed us that the first four suspects that were arrested on 2010-11-05 were killed by police in Zimbabwe and that Zimbabwe is not like South Africa because if you kill a police official there you get killed too.

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10.

I started being worried that people that we arrest in South Africa hoping that they will get fair trial got killed in Zimbabwe and that was not what I wanted. Captain Cowboy Maluleke, Constable Campbell and Constable Leburu-Radebe went to identify the place of the outstanding suspect and they returned after 30 minutes and took us to the identified address.

11.

The wanted suspect was not found at the given address but a woman who was found there did show us another address and the suspect by the name of Pritchard Tshuma was arrested.

12.

The suspect Pritchard Tshuma was searched by Captain Cowboy Maluleke and thereafter we drove to Fourways Shopping Center where we met on the first operation on 2010-11-05. Captain Cowboy Maluleke then requested Constable Campbell to go and detain the suspect at Alexander SAPS. Captain Maluleke wrote the particulars of the Zimbabwe Case in Const. Campbell's diary and he said that they must be detained on that Zimbabwe Case and not as illegal immigrant like the first four suspects who were detained at Orlando SAPS.

13.

I was later informed by Warrant Officer Makwe that the four suspects who were detained at Orlando SAPS were transported to Messina by Captain Cowboy Maluleke and handed over to Zimbabwe Police. That was illegal operation conducted by Captain Maluleke but I believe he was sanctioned by his superiors. He should not have handed the suspects to Zimbabwe Police himself because there are extradition regulations in South Africa that should have been followed. The suspects who were killed in Zimbabwe would be alive if Captain Cowboy Maluleke did not conduct his own illegal extraditions.

14.

Major General Sibiyi who is the commander of Captain Cowboy Maluleke should also have intervene in such situation but it seemed he enjoy the work done by his juniors and condone it. I would like to further say that Major General Sibiyi enjoyed when suspects were tortured and he was always encouraging us to torture suspects when working at "TOMS" Task Team. He uses to say suspects were drinking "muti" when they were tortured or suffocated by plastic bags.

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I know and understand the content of this declaration.

I have no objection to the taking the prescribed oath.

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

H. B. H. YEMDE

I certify that the above statement was written by me and that the deponent has acknowledge that he knows and understand the contents of this declaration. This statement was sworn before me and the deponent's signature was therefore placed in my presence at Pretoria on 2012-05-02 at 15:00.

[Signature]

COMMISSIONER OF OATH

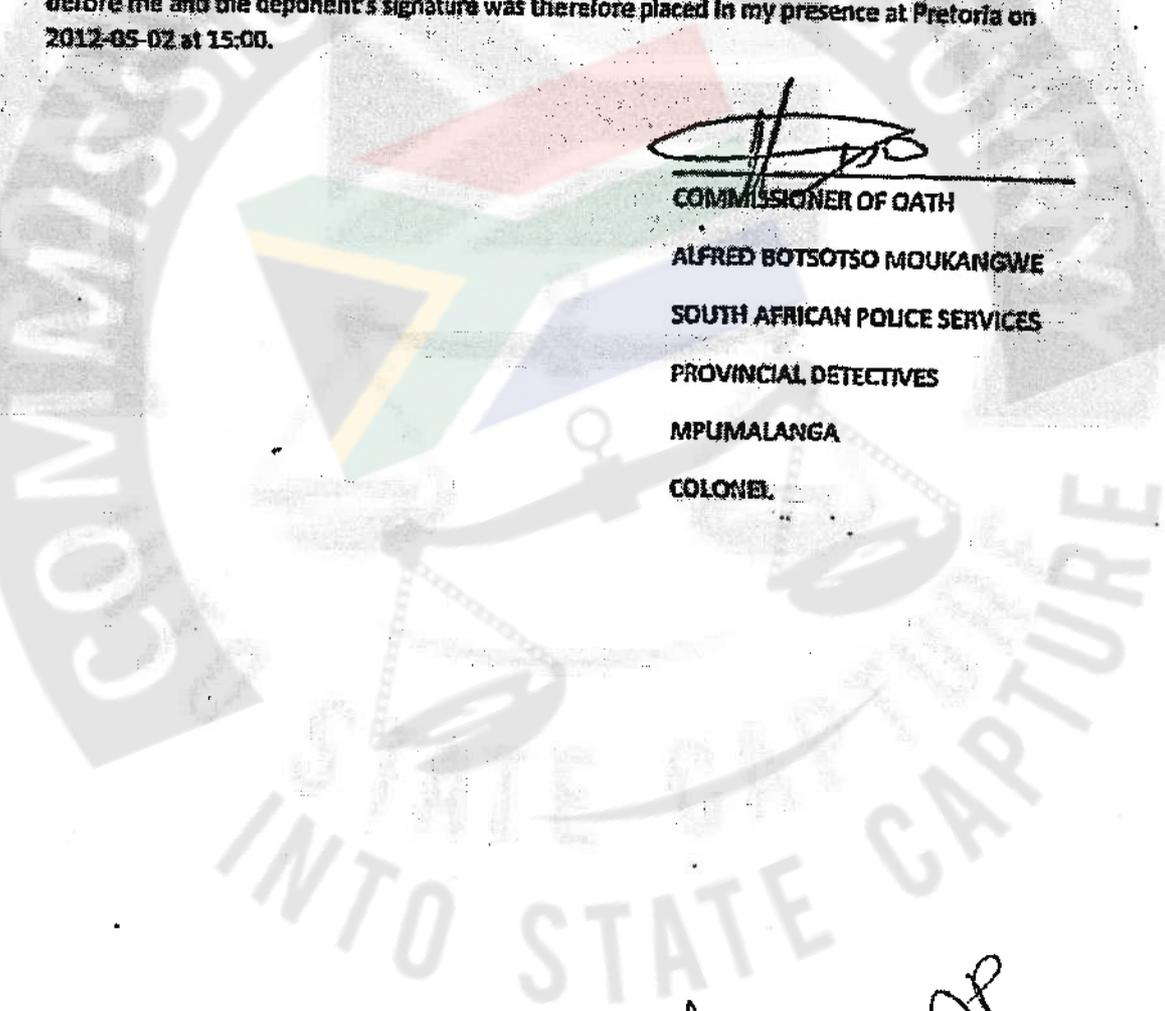
ALFRED BOTSOTSO MOKANGWE

SOUTH AFRICAN POLICE SERVICES

PROVINCIAL DETECTIVES

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COLONEL



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ETWATWA CAS 25/07/12

Peraos JAWUM 38 years old ID: 740929 5330 084 residing at no 5778A Zone 5 Diepkloof Mpendulo Street Soweto with Telephone number: 078 331 3282. States under oath in English

1.

I am No: 1866540-3 Warrant Officer in South African Police Service stationed at Crime Intelligence at No: 01 Ndaba Drive Protea Glen Soweto.

2.

During October 2010 I was nominated to be part of Task Team called 'TOMS' in Gauteng Province and the team operated under the command of Major General Sibiya who is the DPCI Head in Gauteng Province.

3.

On 2010-11-05 in the evening I received a call from Warrant Officer Makwe that our commander Major General Sibiya wanted all 'TOMS' members to meet in Fourways because the was a Colonel who was murdered. I drove to collect Warrant Officer Ndobe and rush to Fourways to meet with other members. On arrival at Fourways Warrant Officer Makwe instructed me to join Captain Cowboy Maluleke and Constable Leburu Radebe to identify they suspects address.

4.

On arrival at the identified house we found a car standing or parked outside the house but there was nobody inside the car. I then held observation with Constable Leburu Radebe and Captain Cowboy Maluleke went back to where we met to collect other members. Before Captain Maluleke could return with other members, the four men come to the vehicle and we arrested them, we ordered the four men to lie down and Constable Radebe called Captain Maluleke and informed him that we have executed the arrest. The four suspects were then searched by Captain Maluleke and their passport confiscated. One of the four suspect said that he was to show the outstanding wanted suspect at Meadowlands and we followed Captain Maluleke's car. On arrival at Meadowlands the suspect could not be found and his wife said that it was long that her husband went away and that she did not know his whereabouts.

5.

The suspects were then detained at Orlando Police Station as illegal immigrants but not on the Zimbabwe murder case as indicated at the beginning of tracing them.

INTO STATE CAPTURE

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6.

On 2010-11-23 the second operation was arranged and I also got the call from Warrant Officer Makwe that our Commander Major General Sibya wanted us to meet at Diepsloot Shoprite. I also participated in the second operation but I did not collect Warrant Officer Hobbs on the second operation. Major General Sibya was also present on the second operation but the two police officers from Zimbabwe were not present.

7.

We went to Diepsloot and the suspect was not found at the pointed house but the woman who was found there took us to the other house further were one African male Pritchard Tshuma was found and arrested for murder of the Colonel in Zimbabwe.

8.

The suspect was then taken to Alexander Police Station by Constable Campbell and detained there on the Zimbabwean murder case and not as illegal immigrant like the first four suspects who were detained at Orlando Police Station in Soweto.

9.

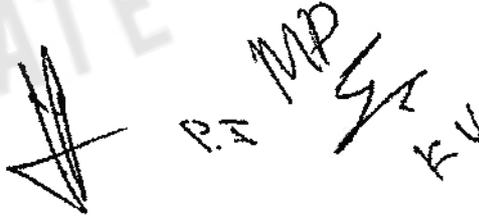
On the second meeting on 2010-11-23 before we could start with the operation we were briefed by Captain Makweke that the first four suspects that we arrested on 2010-11-05 were killed in Zimbabwe by the Zimbabwean police. He said that it was a good thing because Zimbabwe is not like South Africa where we play with criminals who kills policemen.

10.

On 2011-03-29 I was sick and I did not go to work. During that day I got message from Constable Campbell that he wanted us to meet so that he could brief us about the meeting that was held in Major General Sibya's Office at Park Town that day. I met with Constable Campbell and he said Major General Sibya told them that they have obtained warrant of arrest for Lieutenant General Mdluli and that he was just waiting for President to give him a go ahead. Constable Campbell further said that Major General Sibya instructed them to go to Vosloorus and harass Colonel Killer Kimba and disarm him while still with Constable Campbell, I got a call from Warrant Officer Makwe that Major General Sibya wanted us to meet at Vosloorus and I told Warrant Officer Makwe that I was ill and that I will not participate in illegal activities of harassing another policemen.

11.

Warrant Officer Makwe was very angry that I told him that I would not participate in unlawful procedures of harassing and disarming Colonel Kimba, and he dropped his phone at my ears. He phoned again after a while and asks me what I was saying and I told him that I know that his phone was on a speaker and I did not want to speak with him anymore. Warrant Officer Makwe said that what he was



 P.T. MP SR KV

S. Lwatha CAS 25/07/12

telling me it was an instruction from Major General Sibya and it must be carried out, after I refused to go to disarm and harass Colonel Killer Ximba a case docket was registered against me that I wanted to kill Major General Sibya.

I know and understand the content of this declaration.

I have no objection to the taking the prescribed oath.

I consider the prescribed oath to be binding to my conscience

P. Jo 1/12

I certify that the above statement was written by me and that the deponent has acknowledged that he knows and understand the contents of this declaration. This statement was sworn before me and the deponent's signature was therefore placed in my presence on 2012-05-02 at Pretoria at 15:30.

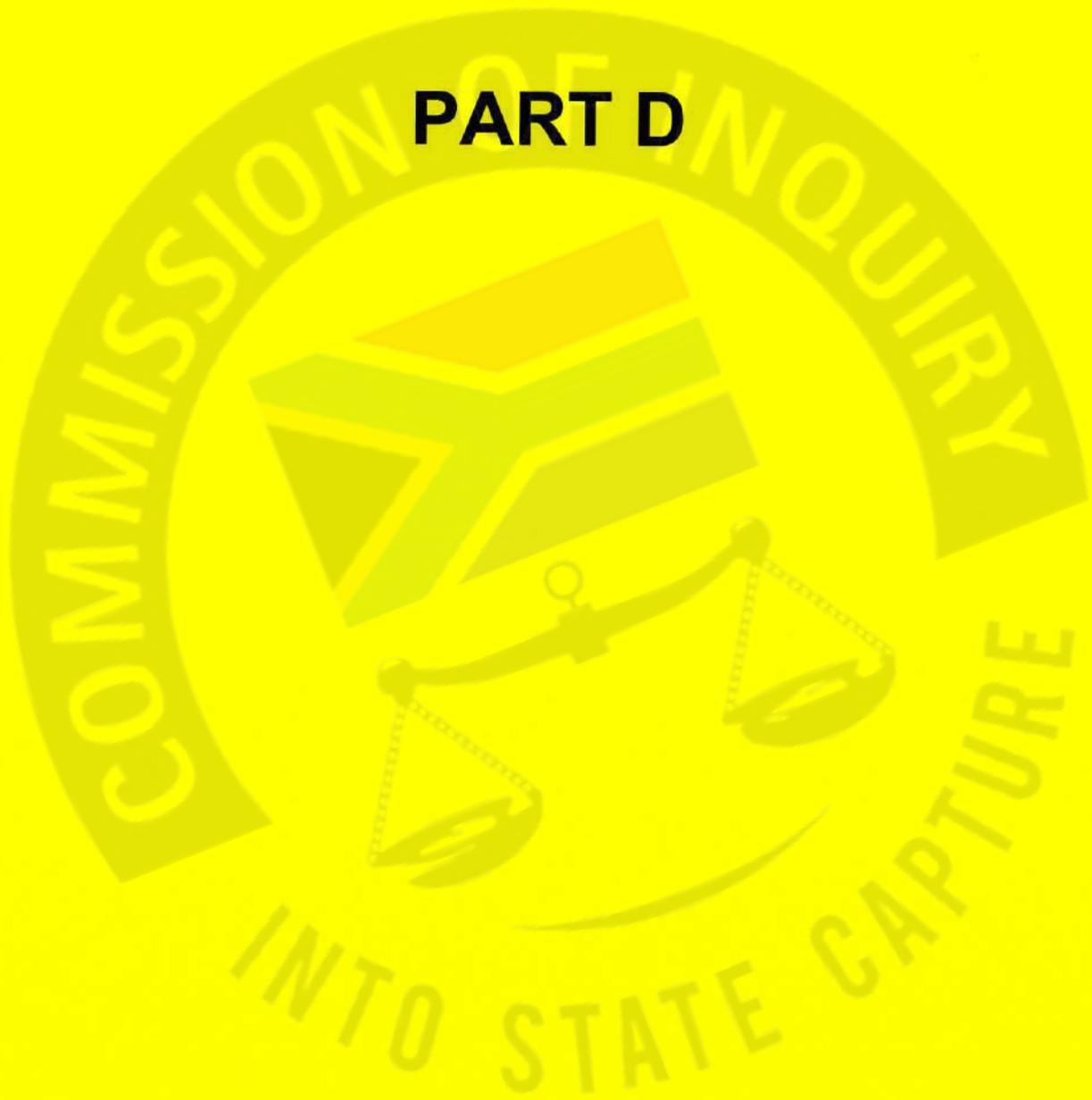
[Signature]

COMMISSIONER OF OATH
ALFRED BOTSOTSO MOKANGWE
SOUTH AFRICAN POLICE SERVICES
PROVINCIAL DETECTIVES
MPUMALANGA
COLONEL



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PART D





**MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA**

Private Bag X463 PRETORIA 0001, Tel: (012) 393 2800, Fax: (012) 393 2819/20 • Private Bag X9080 CAPE TOWN 8000, Tel: (021) 467 7021, Fax: (021) 467 7033

To: **Mr Robert McBride**
Executive Director
Independent Police Investigative Directorate

Dear Mr McBride

Re: **NOTICE OF INTENTION TO PLACE YOU ON PRECAUTIONARY
SUSPENSION WITH FULL PAY**

1. This notice serves to inform you that I intend placing you on precautionary suspension with full pay and benefits for a period not exceeding 60 calendar days.
2. There are serious allegations which have been made against you, some in the media, prima facie alluding to possible acts of serious misconduct by yourself as the Head of the Independent Police Investigative Directorate ("IPID").
3. On 8 March 2014, you were appointed as the Executive Director of IPID in terms of section 6 of the Independent Police Investigative Directorate Act 1 of 2011 ("the Act").
4. In terms of the Act, you are required to perform your responsibilities set out in section 7 of the Act with a level of independence and impartiality, and to do so without any fear, favour or prejudice.
5. During or about January 2015, you are alleged to have breached your statutory responsibility to act with independence and impartiality in that you

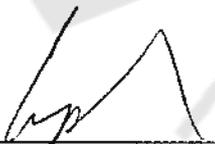
informed Lieutenant-General Dramat and Major-General Sibiya through their legal representatives in writing that they had been cleared by the IPID investigation regarding IPID's investigation into the illegal rendition of Zimbabwean nationals by the officers employed in the Directorate for Priority Crime Investigation ("DPCI").

6. When you did so, you allegedly knew very well that IPID did not clear Lieutenant-General Dramat and Major-General Sibiya because you had in your possession the original report by IPID dated 22 January 2014 which recommended that Lieutenant-General Dramat and Major-General Sibiya be criminally charged with kidnapping and defeating the ends of justice.
7. When I invited you to explain your conduct regarding the aforesaid, you failed to disclose to me that there were two IPID reports the conclusions of which were contradicting each other.
8. When the Sunday Times broke the story about the existence of the two IPID reports in the Sunday Times of 1 March 2015, you addressed a letter to the Parliamentary Portfolio Committee on Police requesting them to convene an urgent Portfolio Committee meeting in order for you to explain to them the existence of the two IPID reports. When you addressed a letter to the Portfolio Committee aforesaid; you knew that I had already commissioned Werksmans Attorneys to conduct an investigation on the existence of the aforesaid two IPID reports, and your conduct was designed to undermine my authority and oversight responsibility as the Minister of Police. Further, that such actions from your side, put the commissioned investigation in jeopardy.
9. You are also alleged to have interfered with the investigation I have commissioned by failing to grant Mr Innocent Khuba permission to meet with the investigators to assist them in shedding light on the existence of the two conflicting IPID reports, both of which were signed by him. You also instructed lawyers to inform the investigators that Mr Khuba will not meet with them. When you conducted yourself in the aforesaid manner, you had the intention to interfere with the investigation given the fact that you were already

conflicted because the second IPID report dated March 2014 was also co-signed by you.

10. During the week of the 15th of February 2014, you visited the Provincial offices of DPCI in Gauteng, and removed from Major-General Sibiya's office a device the description of which is yet unknown from the safe where Major-General Sibiya had kept it under locks. At the time you removed the said device from the safe, you knew that Major-General Sibiya was on suspension and the plausible reason for your conduct was to temper with evidence that might be incriminating to Major-General Sibiya; yourself and/or Lieutenant General Dramat.
11. Because of the seriousness of these allegations, given the most senior position you occupy at IPID, the possible interference with the investigation and the tempering with evidentiary material, I intend placing you on precautionary suspension with full pay for a period not exceeding 60 calendar days, pending an investigation into the above mentioned allegations and possible disciplinary enquiry against you.
12. I therefore give you an opportunity to make written representations as to why I should not place you on suspension aforesaid.
13. Your written representations should reach my office by no later than close of business on Thursday, 12 March 2015.

Yours faithfully


Nkosinathi Phiywayinkosi Thamsanqa Nhleko
Minister of Police

10 MARCH 2015



RJM-0189



ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X841, Pretoria, 0001, 114 Madiba Street, City Forum Building, Pretoria
Tel: (012) 399 0070 Fax: (012) 399 0144

RM 2. "RM 2"

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Honourable Minister NTP Nhleko, MP
MINISTER OF POLICE
WACHTHUIS
Pretoria
0001

By Hand

12 March 2015

Dear Honourable Minister,

RE: URGENT APPLICATION TO THE NORTH GAUTENG HIGH COURT

1. I refer to your "Notice to place me on precautionary suspension with full pay", dated 10 March 2015, which notice I received on 11 March 2015 at approximately 7h30.
2. I have deposed to an affidavit setting out comprehensively the grounds why I should not be suspended and a copy of this affidavit is attached hereto, for your attention.
3. Without detracting from the specificity in the affidavit and for your ease of reference, I summarise the reasons below:
 - 3.1. No particularity of the alleged serious allegations in the media against me is provided. I cannot reasonably be expected to respond to such a vague allegation and, in any event, such allegations cannot properly form the basis for my suspension. I do, however, confirm that I have not committed any wrongdoing;
 - 3.2. I have never breached my responsibility to act with independence and impartiality. As more fully set out in the affidavit, any communications with the legal representatives of Lieutenant General Dramat and Major General Sibiya were reasonable and entirely in keeping with my responsibilities. There is no basis for the allegations that have been made in this regard;
 - 3.3. The Minister was at all relevant times fully aware of the existence of preliminary and final IPID reports. As more fully set out in the affidavit, the Minister has chosen to rely on recommendations contained in a preliminary report. I remain available to address any concerns that the Minister may have in relation to the preliminary and final reports;

RJM-0190

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ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

3.4. I have not undermined the Minister's authority on oversight responsibility. As more fully set out in the affidavit, I remain committed to report fully to the Minister and Parliament. The Minister's Investigation into IPID (and the NPA) is, however, impeding on IPID (and the NPA's) independence and expertise and I have acted responsibly in this regard by refusing to grant my permission for IPID's officials to be interviewed by the appointed investigators. I remain willing to engage with the Minister in respect of the investigation, and, specifically to ensure that there are sufficient safeguards to protect IPID;

3.5. As more fully set out in the affidavit, there is no factual basis for the allegation that I tampered with evidence. I, at all relevant times, acted in accordance with my statutory mandate.

4. For these reasons, I am firmly of the belief that my suspension is, notwithstanding the aforesaid grounds, a foregone conclusion.
5. I also believe that my suspension would not be in the best interest of IPID, of which I am the head and for which I am responsible.
6. I have, accordingly, instructed IPID's attorneys to launch an urgent application out of the North Gauteng High Court for appropriate relief, including interdicting you from suspending me.
7. I confirm that the application is in the process of being issued and will be served on the State Attorney shortly.

Yours faithfully,

Mr RJ MCBRIDE
EXECUTIVE DIRECTOR
INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

DATE: _____

INTO STATE CAPTURE

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MP



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG HIGH COURT, PRETORIA)

Case Number: 6588/2015

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES NO

(2) OF INTEREST TO OTHER JUDGES: YES NO

(3) REVISED:

18/3/15 *[Signature]*

DATE SIGNATURE

In the matter between:

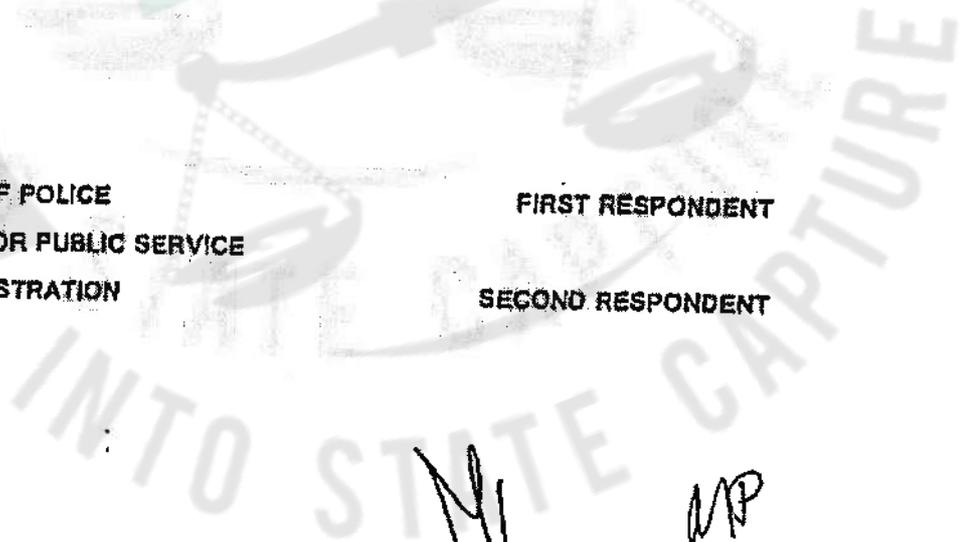
THE INDEPENDENT POLICE
INVESTIGATIVE DIRECTORATE
ROBERT MCBRIDE

FIRST APPLICANT
SECOND APPLICANT

And

MINISTER OF POLICE
MINISTER FOR PUBLIC SERVICE
AND ADMINISTRATION

FIRST RESPONDENT
SECOND RESPONDENT



[Handwritten initials]

[Handwritten initials]

JUDGMENT

Fabricius J,

1.

The Applicants herein launched an application in the Urgent Court on 13 March 2015 in which they, as per part A thereof, sought an order which would interdict and restrain First Respondent from suspending the Second Applicant from his position as the Executive Director of the Independent Police Investigative Directorate. Costs of two Counsel were also sought. The Respondents were given one day to file an Answering Affidavit and the First Respondent did indeed so, but without dealing with the merits of the factual allegations made in the Founding Affidavit, together with its annexures, which almost comprise of 400 pages. The Interim Interdict was sought pending the final determination of part B of the application in which the following relief would be sought:



MP

1. "It is declared that the decision of the First Respondent (The Minister of Police) to initiate a process to suspend the Second Applicant from his position as Executive Director of the First Applicant (The Independent Police Investigative Directorate) is unlawful and invalid and the decision is set aside.

2. It is declared that the following provisions are unconstitutional and unlawful to the extent that they purport to authorize the Minister of Police to suspend or remove from office the Executive Director of the Independent Police Investigative Directorate;

- 2.1 Section 6(6) of the Independent Police Investigative Directorate Act No 1 of 2011;
- 2.2 Section 17(1) and section 17(2) of the Public Service Act, 1994; and
- 2.3 Paragraph 2.7(2) of Chapter 7 and paragraph 18 of Chapter 8 of the Senior Management Service Handbook, 2003.

A cost order was also sought.


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2.

Second Applicant alleges that on 11 March 2015 he was given a letter by the First Respondent as a notice to inform him that the Minister intended placing him under precautionary suspension with full pay and benefits for a period not exceeding 60 calendar days. Details of the alleged serious misconduct committed over a course of time were then given, and it was concluded that:

"Because of the seriousness of these allegations, given the most senior position you occupy at IPID, the possible interference with the investigation and the tempering (sic) with evidential material, I intend placing you on precautionary suspension with full pay for a period not exceeding 60 calendar days, pending an investigation into the abovementioned allegations and possible disciplinary enquiry against you."

Second Applicant was given an opportunity to make representations as to why he should not be suspended and he was given until the close of business on 12 March 2015 to do so.



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3.

In the Founding Affidavit Second Applicant said that he appreciated that the Respondents would have very little time to answer this application but, if they required such further time, he would be prepared to accord it on the condition that the Minister would not suspend him pending the outcome of the application under part A.

The Minister had not suspended the Second Applicant at the time the application was heard, but Applicant's Counsel, Mr Budlender, submitted that this was no obstacle to him inasmuch as the application was launched not only to protect the Second Applicant's rights, but also to preserve the independence and effective functioning of IPID, and to prevent further unlawful ministerial interference without delay. It was alleged that IPID was an indispensable, constitutionally required investigative body, which was mandated to investigate police misconduct and offences. Its investigations



extended to the highest offices in South Africa. It therefore had to be given substantial protections to carry out its mandate without political interference.

The Executive Director was at the very heart of IPID's ability to function effectively to fulfil its constitutional mandate, and was critical to ensuring the proper conduct of investigations by IPID. Should a suspension be effected, such an act would have immediate deleterious consequences for the effective functioning of IPID, so it was submitted. This was especially so in the current political climate, and given the extent of ministerial interference in the Independent Institutions in the criminal justice sector. I am paraphrasing this allegation in the Founding Affidavit, and it is noticeable that no details were given of what was meant by the "current political climate" and what actual facts underlay the submission that the Minister interfered in the Independent Institutions in the criminal justice sector. The following was then said in the Founding Affidavit: "The suspension of the Executive Director would, in all likelihood, be followed by the Minister's appointment of a new acting Executive Director, who could fundamentally undermine the effective

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functioning of the institution and impede high-profile investigations. This is demonstrated by the events that followed the suspension of the Head of the Directorate for Priority Crime Investigation (the DPCI or the Hawks) Lieutenant-General Dramat, and the appointment of Major-General Ntsemeza as an acting National Head of the DPCI. These events are detailed in the Founding Affidavit filed by the Helen Suzmann Foundation in the Constitutional Court on 25 January 2015.* This was annexed to the Founding Affidavit. Those events are all in the public domain, and have been the subject matter of litigation in this Court. I do not intend dealing with the judgments relevant to those proceedings. They speak for themselves.

5.

In part B of the Founding Affidavit it was alleged that initiation of the process to suspend Second Applicant was unlawful and unconstitutional, on the grounds that the Minister did not have the power to suspend the Executive Director of IPID, as this would contravene the independence of IPID



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enshrined under *Section 206 (6) of the Constitution*. Alternatively, even if the Minister had the power to suspend the Executive Director, the Minister had exercised his power unlawfully by creating a reasonable perception that IPID's independence was under threat. It further alleged that the Minister's decision was vitiated by ulterior purpose or improper motive and bad faith. It was also said that his decision was irrational and unreasonable. It was submitted that the review under part B was brought on the basis of the principle of legality and the *Promotion of Administrative Justice Act 3 of 2000 (PAJA)*. I must say at this stage that *s. 6 (6) of the IPID Act* gives the Minister the power to remove the Executive Director from office on account of misconduct. Does this mean that he can also suspend him in the interim? His appointment is made by the relevant Parliamentary Committee upon nomination by the Minister. Does this mean that only this Committee can suspend him lawfully? The Act is silent on these topics.

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6.

The First Respondent said in his Answering Affidavit that he did not intend dealing with the merits of the application at this stage, but would oppose it on the basis that the Second Applicant had not been suspended and that he had made written representations which he was considering, and that in any event he had not met the requirements of an interim interdict because he had not demonstrated irreparable harm if the relief that he sought was not granted on an urgent basis. The application was therefore premature and ill-conceived. The First Respondent also stated that he was aware of the fact that IPID performs a critical statutory and constitutional function which requires stability in order for it to optimally perform its statutory obligation. It was submitted that Second Applicant would have alternative remedies in due course, and if he were to be suspended it would be with full pay and benefits and only for the limited time of 60 days. It was also open for Applicant to approach the CCMA or the relevant Bargaining Council depending on how he framed his cause of action. He denied that the balance of convenience favoured the Applicant at all, inasmuch as particular sections of the Act that were sought to be attacked had

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been in operation for a number of years, and that the Applicant could not say that he wished to remain immune from any steps pertaining to allegations of misconduct against him whilst he intended challenging the constitutionality of legislation which did confer powers of him to play the particular oversight role. What would happen after suspension, if it was decided upon, was currently merely of a speculative nature. As a result, it was submitted that Applicant had not made out a case for the relief sought in part A.

7.

I do not intend dealing with the likelihood or otherwise of the relief sought in part B of this application being granted or not. However, there is merit in the submission that these type of bodies should be independent, but at the same time I am also aware of the fact that independence is one of degree, depending upon the relevant context of the legislation applicable.

See: *Van Rooyen vs The State 2002 (5) SA 246 (CC)*

Also, to prevent abuse of power, which is obviously and sadly part of human nature, someone has to guard the guardian. "Quis custodiet ipsos custodes" the Roman

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poet Juvenal asked in one of his Satires. He lived in the first century AD. As opposed to that realistic view (some call it sceptical), Plato (The Republic) was overly optimistic when he opined that it was absurd that city fathers would require oversight. This was his view some 500 years before Juvenal expressed his more practical view. I am merely mentioning this because I do believe that part B is arguable, and it does have reasonable prospects of success. That is in my view one of the requirements in the present context having regard to the test laid down in *Airrod Express (Pty) Ltd vs Chairman Local Road Transportation Board Durban* 1986 (2) SA 663 (AD).

8.

I am not convinced that the decision of the First Respondent and the decision whether to suspend Second Applicant or not, is of an administrative law nature. However, Applicants' Counsel said, while we briefly debated this issue, that the Minister's decision not only affected the Second Applicant, but also the public at large. See in this particular context *Chirwa vs Transnet Ltd and Others* 2008 (4) SA 367 (CC) and *Provincial Commissioner, Gauteng: SAPS vs Nguni* [2013] 2 All

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 [Signature]

SA 262 (SCA) at 269 par. 18. I do however not need to decide this debate in the present instance, because it is well established that the lawfulness of public power is subject to scrutiny by the Courts. See: *National Treasury Infra at par. 44*, and *Pharmaceutical Manufacturers Association of South Africa In re Ex Parte President of the Republic of South Africa and Others 2000 (2) SA 574 (CC) at par. 17.*

9.

The requirements for an interdict have been set out throughout the decades of our illustrious common-law history. In *National Treasury and Others vs Opposition to Urban Tolling Alliance 2012 (6) SA 223 CC*, Moseneke DCJ again repeated them, and emphasized that under the test of *Setlogelo vs Setlogelo 1914 AD 221* as later refined in *Webster vs Mitchell 1948 (1) SA 1188 (WLD)*, a particular claimant must establish not merely that he has a right to approach a Court in order to review a decision (administrative decision), but it must be a right to which, if not protected by an interdict, irreparable harm would ensue. Quite apart from the right to review and to set aside impugned decisions, an Applicant would have to demonstrate a *prima*



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facie right that is threatened by impending or imminent irreparable harm. A right to review an impugned decision does not require any preservation *pendente lite* because obviously it does exist.

10.

In the context of a Minister exercising powers invested in him by a statute it was said in *Gool vs Minister of Justice and Another 1955 (2) SA 682 CPD* that in the absence of allegations of *mala fides*, a Court would not readily grant such an interdict. A Court would only grant such an interdict in exceptional circumstances and when a strong case has been made out for relief. This is not surprising. Subject to the principle of legality and the separation of powers between the executive, the legislative and the judiciary, a Court must ask itself not whether an interim interdict against an authorized State functionary is competent, but rather whether it is constitutionally appropriate to grant the interdict. See: *National Treasury supra* at *par. 66*.



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11.

In the context of the question of the balance of convenience, Mr Budlender submitted that the stronger the prospects of success were, the less the balance of convenience arose. I accept that, but I must also consider to which extent an order at this stage would disrupt legislative functions authorized by law. It is clear that while a Court has power in this context, it would not readily exercise it except when a proper and strong case has been made out for the relief and then only in the clearest of cases. This was also emphasized in the *National Treasury* decision *supra par. 66*. I may just add that I am also aware that the *National Treasury* case is distinguishable from the present facts as a policy decision of the Government is not attacked, but nevertheless the Court's *dicta* relating to the requirements for urgent interdicts are of general application. What is important in the present instance is that if the order were to be granted now, pending a likely very lengthy process under part 8, including proceedings before the Constitutional Court, the Applicant would in reality be immune from disciplinary steps in the interim, no matter what



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further serious evidence against him might emerge. I agree with Mr Mokhari SC on behalf of First Respondent that this cannot be in the interests of justice.

12.

I have also had the occasion to write a judgment about the requirements of Interim Interdicts in *AFRISAKE NPC vs City of Tshwane Metropolitan Municipality and Others* under case number *74192/2013* dated 14 March 2014 (not reported). I also emphasized that the proper question would be whether an Applicant in Interdictory proceedings required an order now so as to protect a right which he would otherwise not be able to protect at all. One does not require an Interdict *pendente lite* to protect a right which one can in any event protect in future by, amongst others, litigation in due course. It is an absolute minimum requirement that irreparable harm must be shown to exist before the Court can grant such an Interdict, and in the present context the constitutional desirability of such an Interdict weighs heavily on my mind. A Court is not to disrupt legislative functions where authority is exercised within the bands of legislation and the Constitution. See: *Doctors for Life*

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International vs Speaker of National Assembly and Others 2006 (6) SA 416 CC at

par. 69.

13.

The Second Applicant has not yet been suspended. He has made representations which the Minister will consider. What the outcome will be, I do not know. An interdict cannot be aimed at the past. Ordinarily that would be the end of the matter, except insofar as the Second Applicant alleges that the public at large is also affected by the decision because of the important oversight role that the First Applicant plays. What will happen if he is suspended, in the context of his temporary successor, I also would not know and cannot speculate. I cannot simply accept as a given that such person would be open to unlawful manipulation or that the public would perceive this to be so. Fortunately vigorous debates are held in the press about such appointments and the background of such persons. The fact of the matter is of course that the Applicants do have the right to approach the Court for the relief in part B. That right has not been taken away from them and cannot be taken away from them. It also requires no interdict in the interim. I am not satisfied that the

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Applicants have shown that they will suffer irreparable harm in the meantime. If actual harm does arise on some or other ground, whilst an application for the main relief is pending, nothing would stop them from approaching Court for appropriate relief.

Mr Budlender has accepted that this is not an ordinary case, and that he would have to show more than a *prima facie* right, and indeed would have to make out a very strong case, on analogy of the *dicta* that I have referred to in the *National Treasury* decision *supra*. In that context he submitted that the whole process was presently unconstitutional and caused harm not only to the Second Applicant but to the general public at large. The Second Applicant was not an ordinary employee, and if the Minister was under the apprehension that he could continue to act without lawful statutory authority, the harm would be on-going. On that basis he was entitled to urgent relief and the Applicants had a right which needed to be protected now. I do not agree for the reasons stated. The Applicants can exercise all the rights that they rely on in the future in due course. They do not require an urgent interdict now to

INTO STATE CAPTURE

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safeguard such rights. I am aware of the fact that a Court has a power to grant this relief but that is not the issue in my view at all.

See: President of South Africa and Others vs United Democratic Movement and Others 2003 (1) SA 472. It was held therein that the High Court has jurisdiction to grant interim relief designed to maintain status quo or to prevent violation of a constitutional right where legislation was alleged to be unconstitutional and reasonably feared that it might cause irreparable harm of a serious nature. Such interim relief should be granted only, it was held, where strictly necessary in the interest of justice. In determining the interest of justice in such a context, the Court had to balance the interests of persons seeking interim relief against the interest of others who might be affected by the grant of such relief. Such interim relief should be strictly tailored to interfere as little as possible with the operation of legislation.

14.

The facts do not support the relief sought, nor do the applicable legal considerations.

The application is not urgent.



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It is accordingly struck off the Roll.

15.

In my view the application in due course under part B is not without merit, and it is accordingly not appropriate that I make a cost order against the Applicants.

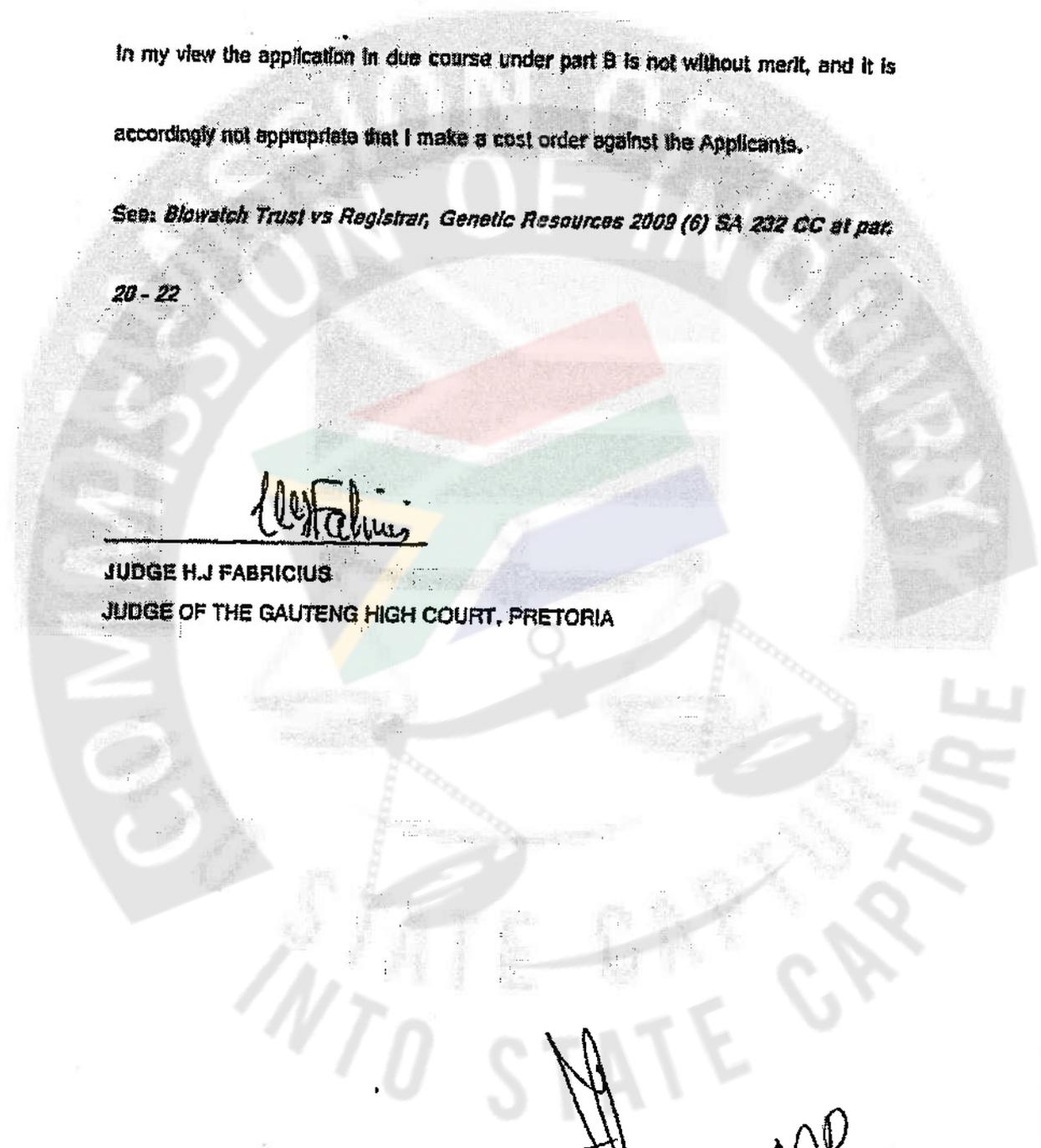
See: *Blowatch Trust vs Registrar, Genetic Resources 2009 (6) SA 232 CC* at par.

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H.J. Fabricius

JUDGE H.J. FABRICIUS
JUDGE OF THE GAUTENG HIGH COURT, PRETORIA



Case no.: 6588/15

Counsel for the Applicants:

Adv S. Budlender

Adv J. Bleazard

Instructed by: Adams & Adams Attorneys

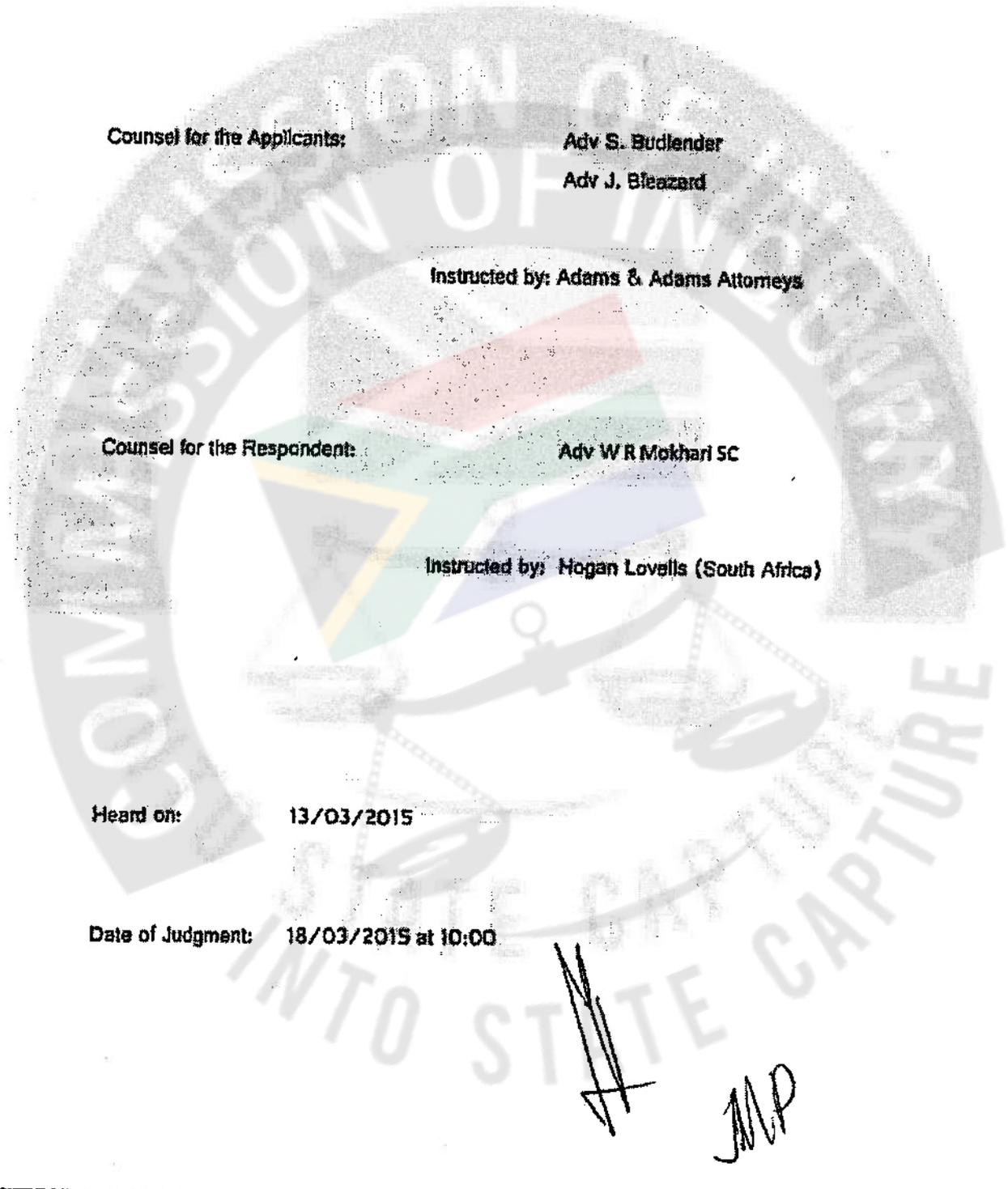
Counsel for the Respondent:

Adv W R Mokhari SC

Instructed by: Hogan Lovells (South Africa)

Heard on: 13/03/2015

Date of Judgment: 18/03/2015 at 10:00







MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA

Private Bag X463 PRETORIA 0001, Tel: (012) 303 2000, Fax: (012) 303 2810/20 • Private Bag X0000 CAPE TOWN 8000, Tel: (021)-487 7021, Fax: (021) 487 7033

Mr Robert McBride
Executive Director
Independent Police Investigative Directorate
Pretoria

24 March 2015

Dear Mr McBride

RE: Your Precautionary suspension with full pay and benefits

I refer to the notice of intention to place you on precautionary suspension, dated 11 March 2015, as well as the allegations contained in the said notice which must be read as if incorporated in this letter. In the said notice I requested you to make written representations to me by no later than close of business on Thursday, 12 March 2015 as to why I should not place you on precautionary suspension on the basis of the allegations set out in the said notice.

Your written representations, accompanied by a supporting affidavit or a sworn statement were received by my office on Thursday, 12 March 2015. I would like to thank you for having positively responded to my request to make written representations, which has assisted in making my decision. I have considered your representations and sworn statement.

I have also taken into account that you have admitted that you refused Mr. Innocent Khuba permission to cooperate with the investigation, commissioned by myself, as the Minister of Police, currently conducted by Werksmans Attorneys.

Furthermore, you have also admitted to have removed a device from the safe in Major-General Sibya's office whilst he was on suspension. I have taken into account your reasons for having acted in the matter aforesaid and I am not persuaded by those reasons.

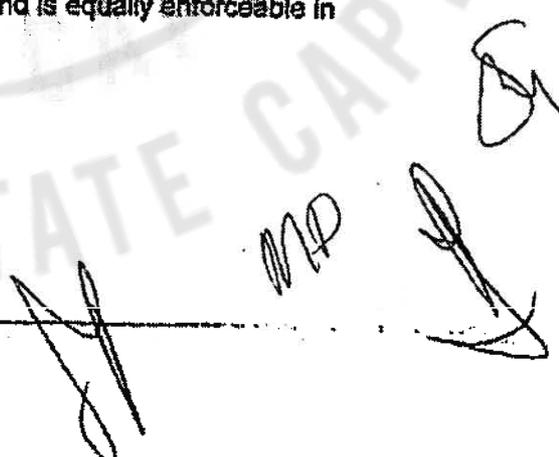
Prima facie, your actions were intended to interfere with the ongoing investigation into the existence of two IPID investigation reports and any possible acts of defeating the ends of justice. These matters require to be investigated in an environment which is free from interference, intimidation and possible interference with investigations and possible witnesses.

The matters that are being investigated are of a very serious nature and directly implicate you as the most senior official within the IPID. It is important that when these matters are being investigated, and in order to preserve the independence, integrity and good name of the IPID, given the important Constitutional and statutory function it performs in our Constitutional state, you are placed on precautionary suspension.

As you are aware that I have the power in terms of section 8(b)(a) of the Independent Police Investigative Directorate Act 1 of 2011 to remove the Executive Director from office on account of misconduct. Inherent in the power aforesaid, is the power to suspend and institute disciplinary proceedings when allegations of misconduct are levelled against the Executive Director.

The Public Service Act, 1994, and chapter 7 of the Senior Management Handbook are equally applicable to you in relation to a decision to place you on precautionary suspension and same have been accordingly invoked by me. Besides, the common law right of employer to suspend is equally enforceable in this regard.

INTO STATE CAPTURE



I have reason to believe that if you are not placed on precautionary suspension, you are likely to interfere with the investigation, as you have prima facie already shown to have done, and there is a potential to deter potential witnesses from cooperating with the investigation as you have prima facie shown to have done, including the possibility of tampering with the evidentiary material. Your suspension is precautionary in nature and it is for a period of 60 calendar days pending the investigation and possible disciplinary proceedings.

I therefore place you on precautionary suspension with immediate effect, on full pay and benefits for a period of 60 calendar days pending the investigation and possible disciplinary enquiry.

You are entitled to take with you your personal belongings except items, equipment or goods which belong to IPID, utilised specifically for the performance of your day to day duties.

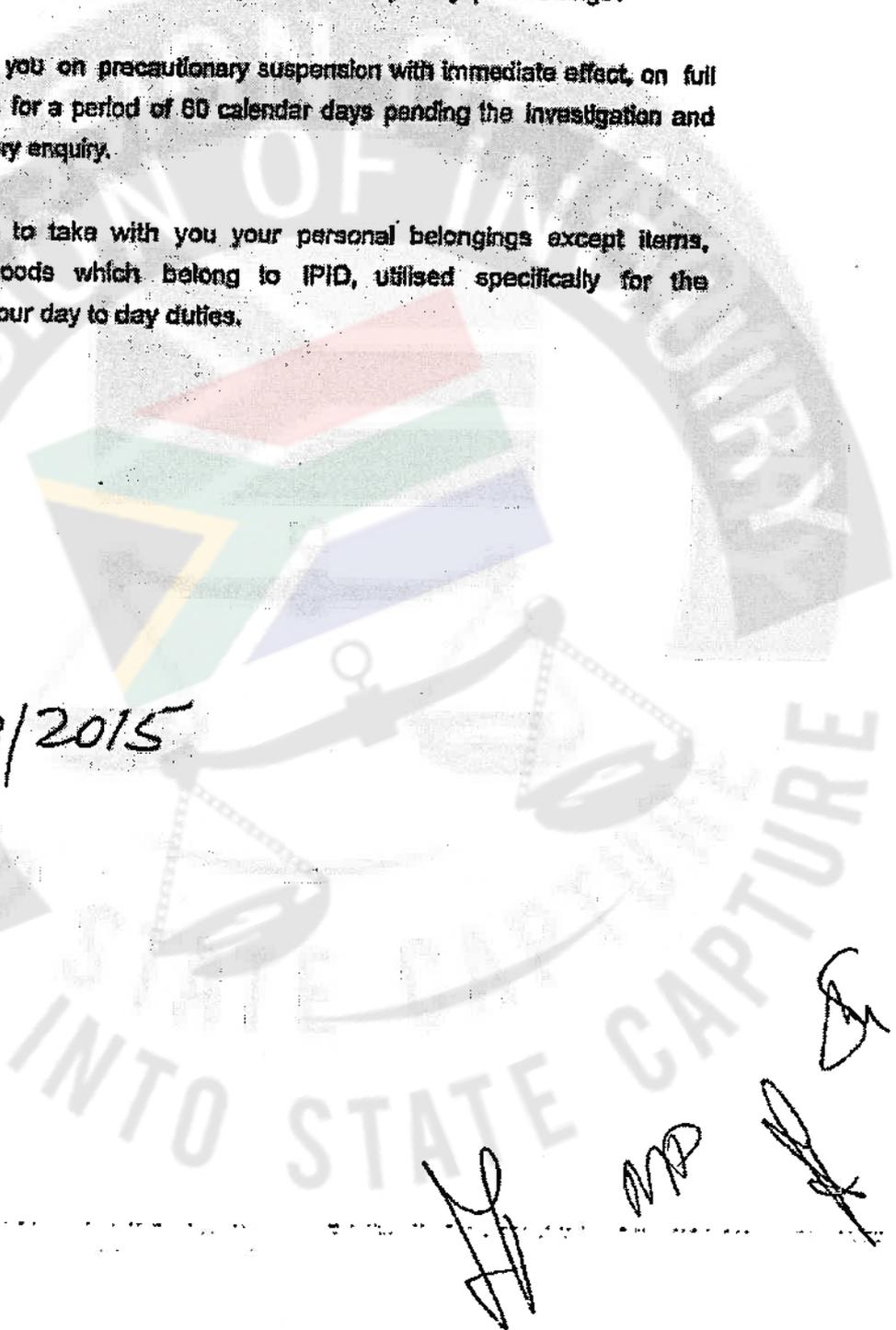
Yours faithfully,



NP Ntseko

Minister of Police

Date: 24/03/2015





IN THE DISCIPLINARY HEARING

In the matter between:

THE MINISTER OF POLICE
(Independent Police Investigative Directorate)

Employer

and

ROBERT McBRIDE

Employee

CHARGE SHEET

Charge 1

1. During or about March to April 2014, you instructed and/or advised Mr Innocent Khuba to alter the recommendations contained in the final report dated 22 January 2014 to the National Prosecuting Authority ("the NPA") in respect of complaint number CCN2013030375 ("the report"). The report covered the issue of the rendition of Zimbabwean nationals to security officers of Zimbabwe by certain members of the South African Police Service. You also in addition to the alteration of the recommendations, deleted from the original report or omitted from the second report ("March 2014 report") incriminating facts or evidence implicating Dramat and Sibiya in the renditions of Zimbabwean nationals, alternatively you instructed Khuba or Sesoko or both to delete or omit such incriminating facts or evidence.

2. The specific respects in which you instructed and/or caused the alteration of the report are the following:

2.1 The findings and recommendations in respect of Mr Anwar Dramat. The original final report to the NPA recommended the criminal prosecution of Mr Dramat. After your improper interference, the "new report" recommended that there should be no criminal prosecution of Mr Dramat.

2.2 The findings and recommendations in respect of Mr Shadrack Sibiya. In the original final report to the NPA it was recommended that criminal charges be pursued against Mr Sibiya. Subsequent to your improper interference the "new report" recommended that there must be no criminal charges pursued against Mr Sibiya.

2.3 The findings and recommendations in respect of the other three junior officers, Makoe, Radebe and Nkosi that they be criminally charged were altered and no mention of their names is found in the "new report".

2.4 Your conduct aforesaid constituted an improper interference with the administration of justice as you intended to defeat the ends of justice by ensuring that Lieutenant-General Dramat; Major-General Sibiya and the three other junior officers are not criminally charged despite the recommendations by the IPID report that was signed by Innocent

Khuba on 22 January 2014, and submitted to the National Prosecuting Authority ("NPA") by Innocent Khuba and his investigation team for a warrant of arrest to be issued against the aforesaid officers and for criminal prosecution to be initiated against them.

Charge 2

3. During March 2014 you instructed Innocent Khuba to collect the docket which contained the IPID report dated 22 January 2014, and on 18 March 2014 another report which makes no reference to the original report of 22 January 2014 was signed by Khuba, yourself and Sesoka purporting to alter the findings of the original report. In the new report, critical and material information which implicated Lieutenant-General Dramat and Major-General Sibiya was omitted for no reason other than to unduly influence the decision of the NPA on whether or not to prosecute.
4. The altering of the original report and the deletion of material facts implicating Lieutenant-General Dramat and Major-General Sibiya without reference to the original report was intended to create the impression that the 18 March 2014 report was in fact the final report, when you knew or ought to have known that in law once the IPID had submitted its report to the NPA for a decision in terms of the IPID Act, the production of the new report contradicting the original report is unlawful and constitutes undue influence and therefore improper:

- 4.1 You were aware that the report submitted by the Independent Police Investigative Directorate (“IPID”) to the NPA in January 2014 was final.
- 4.2 You were aware that the reason it had been handed over to the NPA was for a decision to be made as to the prosecution or otherwise of the persons implicated in acts of criminality mentioned in the report.
- 4.3 You were aware that the IPID had discharged its duty in relation to the investigation and the recommendations were final.
- 4.4 You failed to inform the NPA that you had altered the original report or that you have produced a new contradictory report; and
- 4.5 By failing to inform the NPA about your conduct aforesaid, you sought to mislead the NPA with the sole purpose of interfering with its administration of justice.

Charge 3

5. In your letter of 26 November 2014, purporting to reply to the request by the Minister of 24 November 2014, you withheld the existence of the original final report and created the false impression that the only report which existed was “the new report” which had been revised under your instruction. Your conduct was intended to misrepresent to the Minister the true state of facts which constitutes gross misconduct and/or gross dereliction of duty.

Charge 4

6. After the Minister initiated an enquiry, having appointed Werksmans attorneys to conduct same, you instructed Mr Khuba not to attend an interview which had been arranged by Werksmans' attorneys. Your conduct aforesaid was intended to interfere with the investigation conducted by Werksmans.

Charge 6

7. During January and February 2015 respectively, you intentionally, alternatively, grossly negligently misrepresented to Lieutenant-General Dramat's and Major-General Shadrack Sibiya's attorneys that Dramat and Sibiya had been cleared by the IPID report in the Zimbabwean rendition investigation when you knew or ought to have known that IPID had submitted its final report in January 2014 to the NPA for NPA to prosecute or make a decision to prosecute Dramat, Sibiya and other officers implicated in the report.

Charge 7

8. You have lied to the investigators ("Werksmans") when they interviewed you in that you told the investigators that you have never seen the January 2014 report and that you only saw the second report ("March 2014 report") which you signed on 18 March 2014, whereas in your founding affidavit deposed to

by yourself on 12 March 2015, you attached both reports and alleged that a thorough analysis of the evidence was done before the drafting of the second report and that the conclusions reached in the first report, which you called an interim preliminary report were not sustainable.

In respect of all the above allegations:-

- You violated section 206(6) of the Constitution, which guarantees the independence of IPID from the police. Your decision to instruct Khuba or Sesoko or both or made the alteration of the report was calculated to or likely to undermine the independence, impartiality and effectiveness of IPID in relation to the police.
- You violated sections 4(1) and (2) of the Independent Police Investigative Directorate Act 1 of 2011 ("the Act") which guarantees the independence of IPID from the police, in that the effect of your decision was to protect members of the South African Police Service implicated by the IPID original and final report dated 22 January 2014 from prosecution by the NPA.
- You attempted to defeat the ends of justice in that whereas you were aware that IPID has submitted its final report to the NPA in January 2014 for the NPA to make a decision on whether to prosecute those implicated in the report, you recalled the docket with the report from the NPA on or about 5 March 2014 with the sole purpose of altering the findings and recommendations of the original report and delete or omit incriminating

evidence from the original report in order to project those implicated in the original report.

- You violated the provisions of section 179 of the Constitution which guarantees the independence of the NPA in that you interfered and/or sought to interfere with the performance of prosecutorial functions by the NPA.
 - You abused the powers vested in you by virtue of the provisions of section 7 of the Act.
9. Accordingly, you should be found guilty of all of the above mentioned charges preferred against you.

Dated at **Johannesburg** on this the **6th** day of **May 2015**

W R Mokhari SC
Initiator and Pro-Forma Prosecutor



IN THE DISCIPLINARY HEARING

ROBERT MCBRIDE

Applicant / "Employee"

and

THE MINISTER OF POLICE

Respondent / "Employer"

NOTICE OF MOTION

KINDLY TAKE NOTICE that the applicant intends to make application on a date to be determined by the Chairperson for a ruling in the following terms:

- 1 The disciplinary hearing is stayed pending the final determination of the constitutional challenge launched in the High Court, Gauteng Provincial Division, Pretoria, case number 6588/15.
- 2 In the alternative, the disciplinary hearing is stayed pending Cabinet's designation of a chairperson in terms of clause 7(3)(b) of the Disciplinary Code and Procedures of the Public Service.
- 3 In the further alternative, the disciplinary hearing is postponed to allow the applicant adequate time to prepare his defence to the charges, the terms of such postponement to be negotiated between the parties.

INTO STATE CAPTURE

MP

TAKE NOTICE FURTHER that the accompanying affidavit of Robert McBride will be used in support of this application.

TAKE NOTICE FURTHER that the applicant has appointed the offices of ADAMS & ADAMS ATTORNEYS, as set out below, as the address at which he will accept service of all process in these proceedings.

TAKE NOTICE FURTHER that if you intend opposing this application you are required to notify the applicant's attorney in writing (and by email at jac.marais@adamsadams.com) on or before 9h00 on 21 May 2015.

DATED at PRETORIA this 20th day of May 2015.

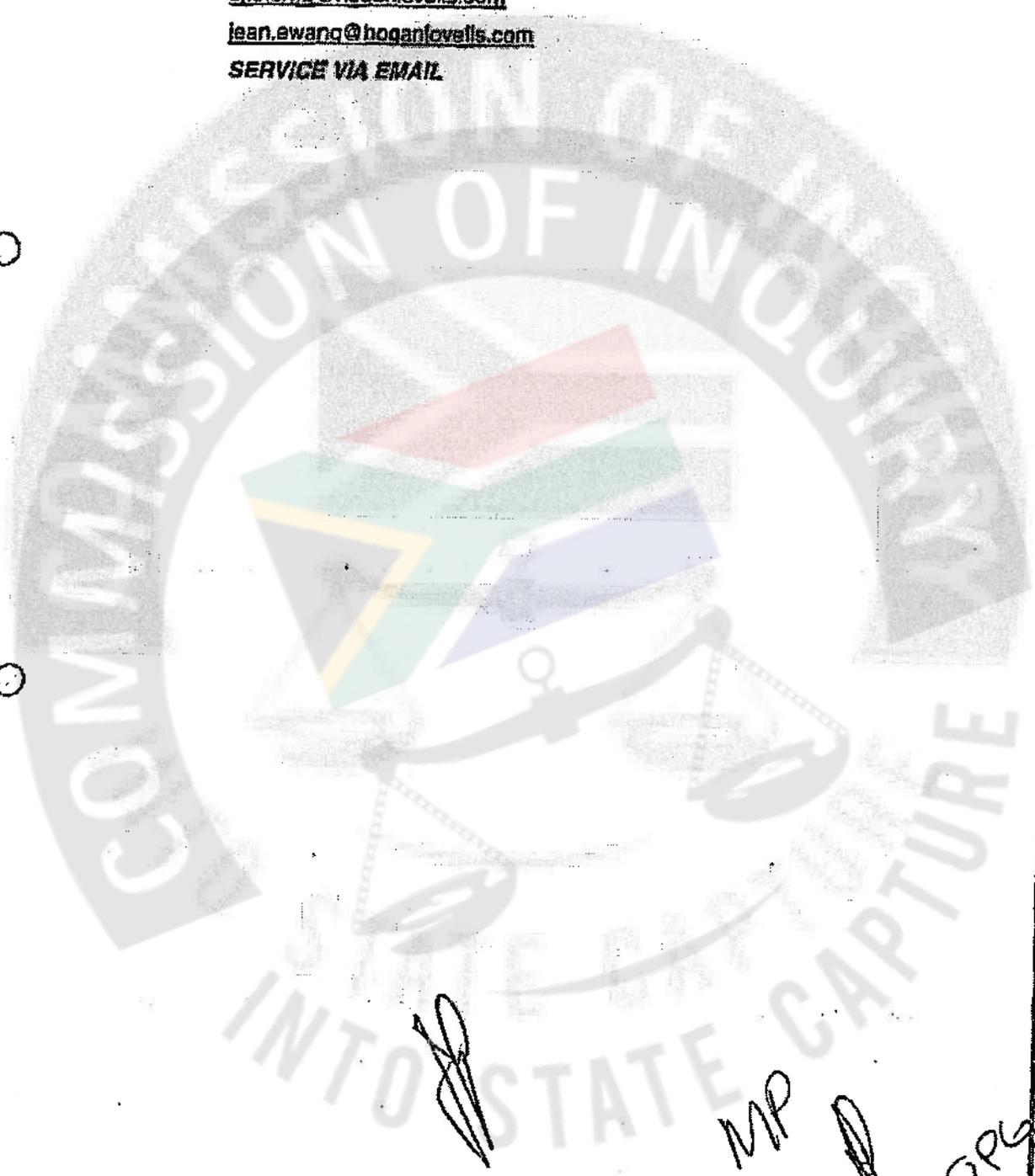


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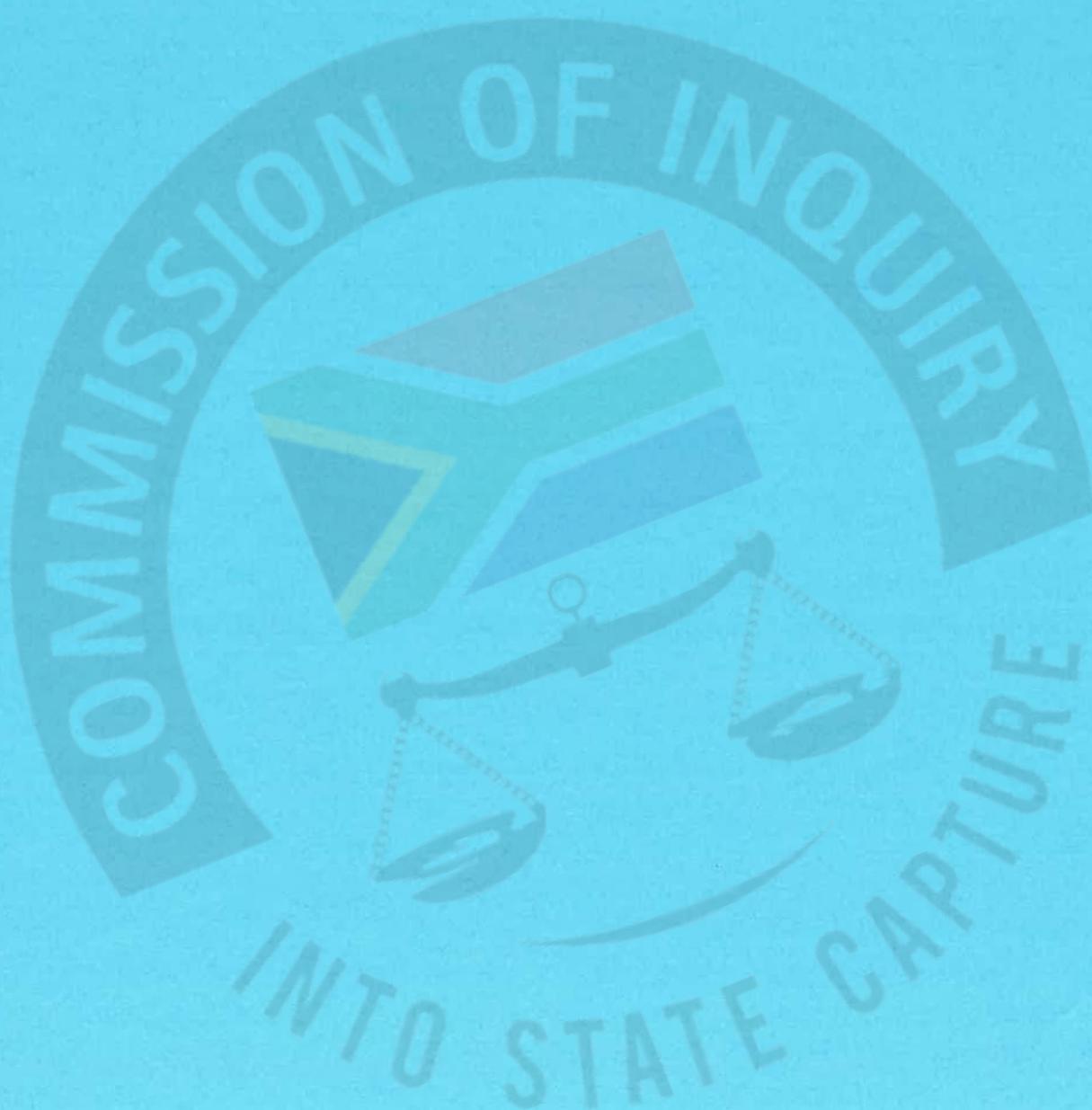


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OPY





CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 255/15

In the matter between:

ROBERT McBRIDE

Applicant

and

MINISTER OF POLICE

First Respondent

**MINISTER FOR PUBLIC SERVICE AND
ADMINISTRATION**

Second Respondent

and

HELEN SUZMAN FOUNDATION

Amicus Curiae

Neutral citation: *McBride v Minister of Police and Another* [2016] ZACC 30

Coram: Mogoeng CJ, Bosielo AJ, Cameron J, Froneman J, Jafa J, Khampepe J, Madlanga J, Mhlantla J, Nkabinde J and Zondo J.

Judgments: Bosielo AJ (unanimous)

Heard on: 17 May 2016

Decided on: 6 September 2016

Summary: Confirmation proceedings — independence of police complaints body — section 206(6) of the Constitution — decision by Minister to suspend and institute disciplinary proceedings against Executive Director of the Independent Police Investigative Directorate invalid and set aside

MP

Declaration of invalidity — section 6(3)(a) and 6(6) of the Independent Police Investigative Directorate Act 1 of 2011 — sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act, Proclamation 103 of 1994 — regulation 13 of the IPID Regulations

ORDER

On application for confirmation of the order of the High Court of South Africa, Gauteng Division, Pretoria:

1. It is declared that the following provisions are invalid to the extent that they authorise the Minister of Police to suspend, take any disciplinary steps pursuant to suspension, or remove from office the Executive Director of the Independent Police Investigative Directorate—
 - 1.1. section 6(3)(a) and 6(6) of the Independent Police Investigative Directorate Act 1 of 2011;
 - 1.2. sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act, Proclamation 103 of 1994;
 - 1.3. regulation 13 of the IPID Regulations for the Operation of the Independent Police Investigative Directorate (GN R98 of Government Gazette 35018 of 10 February 2012), (IPID Regulations).
2. Parliament is directed to cure the defects in the legislation within 24 months from the date of this order.
3. Pending the correction of the defect(s):
 - 3.1. Section 6(6) of the Independent Police Investigative Directorate Act 1 of 2011 is to be read as providing as follows:

AS *MP*

"Subsections 17DA(3) to 17DA(7) of the South African Police Service Act 68 of 1995 apply to the suspension and removal of the Executive Director of IPID, with changes as may be required by the context."

- 3.2. Sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act, Proclamation 103 of 1994 and regulation 13 of the IPID Regulations are declared inconsistent with section 206(6) of the Constitution and shall not apply to the Executive Director of the Independent Police Investigative Directorate.
4. It is declared that the decision of the Minister of Police to suspend Mr Robert McBride from his position as Executive Director of the Independent Police Investigative Directorate is invalid and is set aside.
5. The order in paragraph 4 is suspended for 30 days in order for the National Assembly and the Minister of Police, if they so choose, to exercise their powers in terms of the provisions referred to in paragraph 3.1 above.
6. It is declared that the decision of the Minister of Police to institute the disciplinary inquiry against Mr Robert McBride, which was to commence on 21 May 2015, is invalid and is set aside.
7. The Minister of Police is directed to pay the costs of Mr Robert McBride, including the costs of two counsel.

JUDGMENT

BOSIELO AJ (Mogoeng CJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Mhlantla J, Nkabinde J and Zondo J concurring):



MP

BOSIELO AJ

Introduction

[1] On 4 December 2015, acting in terms of section 172(1)(a) of the Constitution,¹ the High Court of South Africa, Gauteng Division, Pretoria (High Court) declared several sections of the Independent Police Investigative Directorate Act (IPID Act)² inconsistent with the Constitution and invalid. These were section 6(3)(a) and 6(6) of the IPID Act; sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act;³ and regulation 13 of the IPID Regulations for the Operation of the Independent Investigative Directorate (IPID Regulations),⁴ which were found to be inconsistent with section 206(6) of the Constitution and thus invalid, to the extent that they purport to authorise the Minister of Police to suspend, take disciplinary steps pursuant to the suspension, or remove from office the Executive Director of the Independent Police Investigative Directorate (IPID).⁵

[2] For this declaration of invalidity to have legal force, it must be confirmed by this Court in terms of section 172(2)(a) of the Constitution.⁶ Hence the application to this Court.

[3] The applicant is Mr Robert McBride, the Executive Director of IPID since 3 March 2014. He has been on precautionary suspension since 24 March 2015 –

¹ Section 172(1), in relevant part, provides:

“When deciding a constitutional matter within its power, a court—

(a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency.”

² 1 of 2011.

³ Proclamation 103 of 1994.

⁴ Independent Police Investigative Directorate Act, 2011 Regulations for the Operation of the Independent Police Investigative Directorate, GN 98, GG 35918, 10 February 2012.

⁵ *McBride v Minister of Police and Another* [2015] ZAGPPHC 830; [2016] 1 All SA 811 (GP); 2016 (4) BCLR 539 (GP) (High Court judgment).

⁶ Section 172(2)(a) reads:

“The Supreme Court of Appeal, a High Court or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a provincial Act or any conduct of the President, but an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court.”

BOSIELO AJ

pending a disciplinary inquiry to be initiated against him by the Minister of Police. The first and second respondents are the Minister of Police and the Minister of Public Service and Administration respectively. Only the Minister of Police (Minister) participated in the proceedings before us. The Helen Suzman Foundation (HSF), a non-governmental organisation whose main objective is to defend the values that underpin our constitutional democracy and to promote respect for human rights and the rule of law, was admitted as *amicus curiae* (friend of the court) and presented oral submissions before us.

[4] Section 206(6) of the Constitution provides for the establishment of an independent police complaints body by national legislation.⁷ Pursuant to this section, Parliament established IPID. Its primary duty is to investigate any alleged misconduct or offence committed by a member of the police service. IPID's independence is further bolstered by section 4 of the IPID Act which provides that the Directorate functions independently from the South African Police Service (SAPS).⁸

[5] However, this must be contrasted with section 206(1) of the Constitution, which provides for a member of the Cabinet to be responsible for policing and the determination of national policing policy.⁹ Allied to this is section 6(3)¹⁰ of the IPID

⁷ Section 206(6) of the Constitution reads:

"On receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police service in the province."

⁸ Section 4 of the IPID Act reads:

- "(1) The Directorate functions independently from the South African Police Service.
- (2) Each organ of state must assist the Directorate to maintain its impartiality and to perform its functions effectively."

⁹ Section 206(1) of the Constitution provides:

"A member of the Cabinet must be responsible for policing and must determine national policing policy after consulting the provincial government and taking into account the policing needs and priorities of the provinces as determined by the provincial executives."

¹⁰ Section 6(3) provides:

"In the event of an appointment being confirmed—

MP

BOSIELO AJ

Act which makes IPID's Executive Director subject to the laws governing the public service as well as section 6(6)¹¹ which authorises the Minister to remove the Executive Director from office on specified grounds. But this section is silent on oversight of the Minister's action by Parliament.

[6] Mr McBride's primary submission is that the cumulative effect of these pieces of legislation is that IPID does not have sufficient safeguards to ensure that its Executive Director and IPID, as an institution, are able to act with sufficient independence. The gravamen of this submission is that these provisions are inimical to any notion of the independence of the Executive Director as demanded by both the Constitution and the IPID Act.

[7] Although the Minister opposed the application in the High Court, before us he made qualified, albeit far-reaching, concessions. The Minister accepted that the impugned provisions do not provide adequate protection of the independence of IPID. As a result, he supported the confirmation of invalidity as per paragraph 1 of the order of the High Court. But he opposed confirmation of paragraphs 3, 4, 5 and 6 of the High Court's order. These, in part, sought to read section 17DA(3) to 17DA(7) of the South African Police Service Act¹² (SAPS Act) into section 6(6) of the IPID Act –

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- (a) the successful candidate is appointed to the office of Executive Director subject to the laws governing the public service with effect from a date agreed upon by such person and the Minister; and
 - (b) such appointment is for a term of five years, which is renewable for one additional term only."

¹¹ Section 6(6) reads:

"The Minister may, remove the Executive Director from office on account of—

- (a) misconduct;
- (b) ill health; or
- (c) inability to perform the duties of that office effectively."

¹² 68 of 1995. Section 17DA reads, in relevant part:

"(3)

- (a) The National Head of the Directorate may be removed from office on the ground of misconduct, incapacity or incompetence on a finding to that effect by a Committee of the National Assembly.




BOSIELO AJ

pending the expiry of 12 months or correction of the defect(s) by the Legislature, whichever should occur first. The other part of the opposed order has the effect of insulating the Executive Director from the application of sections 16A(1),¹³ 16B,¹⁴

- (b) The adoption by the National Assembly of a resolution calling for that person's removal from office.
- (4) A resolution of the National Assembly concerning the removal from office of the National Head of the Directorate shall be adopted with a supporting vote of at least two-thirds of the members of the National Assembly.
- (5) The Minister—
- (a) may suspend the National Head of the Directorate from office at any time after the start of the proceedings of a Committee of the National Assembly for the removal of that person; and
 - (b) shall remove the National Head of the Directorate from office upon adoption by the National Assembly of the resolution calling for the National Head of the Directorate's removal.
- (6) The Minister may allow the National Head of the Directorate, at his or her request, to vacate his or her office—
- (a) on account of continued ill-health; or
 - (b) for any other reason which the Minister deems sufficient.
- (7) The request in terms of subsection (6) shall be addressed to the Minister at least six calendar months prior to the date on which the National Head of the Directorate wishes to vacate his or her office, unless the Minister grants a shorter period in a specific case."

¹³ Section 16A(1) reads:

"An executive authority shall—

- (a) immediately take appropriate disciplinary steps against a head of department who does not comply with a provision of this Act or a regulation, determination or directive made thereunder;
- (b) immediately report to the Minister the particulars of such non-compliance; and
- (c) as soon as possible report to the Minister the particulars of the disciplinary steps taken."

¹⁴ Section 16B reads:

"Discipline

- (1) Subject to subsection (2), when a chairperson of a disciplinary hearing pronounces a sanction in respect of an employee found guilty of misconduct, the following persons shall give effect to the sanction:
 - (a) In the case of a head of department, the relevant executive authority; and
 - (b) in the case of any other employee, the relevant head of department.
- (2) Where an employee may lodge an internal appeal provided for in a collective agreement or in a determination in terms of section 3(5), a sanction referred to in subsection (1) may only be given effect to—
 - (a) if an internal appeal is lodged, after the appeal authority has confirmed the sanction pronounced by the chairperson of a disciplinary hearing; or
 - (b) if no internal appeal is lodged, after the expiry of the period within which the appeal must have been lodged.

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17(1)¹⁵ and 17(2)¹⁶ of the Public Service Act. The Minister also opposed the setting aside of the decision to suspend Mr McBride from his position as Executive Director of IPID, and institute disciplinary proceedings against him. It is to be noted that the High Court suspended the effect of these two orders, pending parliamentary intervention.

-
- (3) The Minister shall by regulation make provision for—
- (a) a power for chairpersons of disciplinary hearings to summon employees and other persons as witnesses, to cause an oath or affirmation to be administered to them, to examine them, and to call for the production of books, documents and other objects; and
 - (b) travel, subsistence and other costs and other fees for witnesses at disciplinary hearings.
- (4) If an employee of a department (in this subsection referred to as 'the new department'), is alleged to have committed misconduct in a department by whom he or she was employed previously (in paragraph (b) referred to as 'the former department'), the head of the new department—
- (a) may institute or continue disciplinary steps against that employee; and
 - (b) shall institute or continue such steps if so requested—
 - (i) by the former executive authority if the relevant employee is a head of department; or
 - (ii) by the head of the former department, in the case of any other employee.
- (5) In order to give effect to subsection (4), the two relevant departments shall co-operate, which may include exchanging documents and furnishing such written and oral evidence as may be necessary.
- (6) If notice of a disciplinary hearing was given to an employee, the relevant executive authority shall not agree to a period of notice of resignation which is shorter than the prescribed period of notice of resignation applicable to that employee."

¹⁵ Section 17(1) reads:

"(a) Subject to paragraph (b), the power to dismiss an employee shall vest in the relevant executive authority and shall be exercised in accordance with the Labour Relations Act.

(b) The power to dismiss an employee on account of misconduct in terms of subsection (2)(d) shall be exercised as provided for in section 16B(1)."

¹⁶ Section 17(2) reads:

"An employee of a department, other than a member of the services, an educator or a member of the Intelligence Services, may be dismissed on account of—

- (a) incapacity due to ill health or injury;
- (b) operational requirements of the department as provided for in the Labour Relations Act;
- (c) incapacity due to poor work performance; or
- (d) misconduct."



MP

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[8] Central to this application is the crisp question: whether, in the light of the applicable statutory framework, IPID enjoys adequate structural and operational independence, as envisaged by section 206(6) of the Constitution, to ensure that it is effectively insulated from undue political interference.

Background

[9] At the time when Mr McBride took office on 3 March 2014, there was a political storm brewing over the alleged unlawful rendition of four Zimbabwean nationals in November 2010 and January 2011. Lieutenant-General Anwa Dramat (General Dramat), then the head of the Directorate for Priority Crime Investigation (DPCI) and Major General Sibiya (General Sibiya), then the provincial head of, Gauteng, were allegedly implicated in these unlawful renditions.

[10] IPID initiated an investigation into this matter overseen by Advocate Mosing (Mr Mosing), of the National Prosecuting Authority (NPA), assisted by Mr Innocent Khuba (Mr Khuba), the Provincial Head: IPID, Limpopo. On 22 January 2014, IPID issued its first report (January report) which concluded that General Dramat and General Sibiya were involved in the illegal renditions of the Zimbabweans. It recommended that criminal charges be brought against them.

[11] Mr Khuba explained in his affidavit that because he regarded the January report as provisional, he continued with his investigations. His investigations gave birth to a second report, dated 18 March 2014 (March report), which was signed by Mr Khuba; Mr Matthews Sesoko, Chief Director: IPID Investigation and Information Management (Mr Sesoko); and Mr McBride. Contrary to the first report, the second report concluded that there was no evidence implicating General Dramat and General Sibiya in the illegal renditions of the Zimbabweans. As a result it recommended that no criminal charges be brought against them. This report was submitted to the National Director of Public Prosecutions (NDPP) for a decision on possible prosecution on 13 April 2015.

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BOSIELO AJ

[12] Faced with the glaring discrepancies in the two reports, the Minister suspected serious tampering. As a result, he commissioned Werksmans Attorneys (Werksmans) to investigate the two reports. Relying on the January report and the investigation by Werksmans, the Minister invoked his powers in terms of section 6(6) of the IPID Act, the Public Service Act and Chapter 7 of the Senior Management Services Handbook (SMS Handbook), and placed Mr McBride on precautionary suspension on 24 March 2015. Acting on the strength of section 6(6)(a) of the IPID Act read with the provisions governing disciplinary proceedings under the Public Service Act and the IPID Regulations, the Minister served Mr McBride with a notice to attend a disciplinary enquiry.

In the High Court

[13] The Minister's actions stung Mr McBride into a defensive mode. Mr McBride instituted an urgent application before the High Court, firstly for an interim interdict to restrain the Minister from suspending him, and secondly, for an order declaring section 6(3)(a) and 6(6) of the IPID Act, regulation 13 of the IPID Regulations, sections 16A(1), 16B, 17(1) and (2) of the Public Service Act (only insofar as they apply to the Executive Director of IPID), paragraphs 2.5, 2.6, 2.7(1) – (5) of Chapter 7 and paragraphs 18-19 of Chapter 8 of the SMS Handbook (impugned provisions) constitutionally invalid and setting them aside. In addition, Mr McBride sought an order to review and set aside the decision by the Minister to suspend him as the Executive Director of IPID and to institute disciplinary proceedings against him.

[14] Relying on section 206(1) of the Constitution, the Minister opposed this application. He asserted that this section gives him the power to oversee the police as the Cabinet member responsible for policing. The disciplinary proceedings he had instituted against Mr McBride were therefore lawful as they are authorised by section 206(1). He contended further that sections 6(3)(a) and 6(6) of the IPID Act authorised him to invoke the laws governing the public service to remove the Executive Director of IPID from office. He also relied on sections 16A(1), 16B, 17(1)

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BOSIELO AJ

and 17(2) of the Public Service Act, which authorise him to take appropriate disciplinary proceedings against Mr McBride as head of IPID.

[15] The High Court found that the independence of IPID is expressly guaranteed and protected under section 206(6) of the Constitution, which is "significant and decisive".¹⁷ Furthermore, the High Court reasoned that, given that IPID performs overlapping anti-corruption functions with the DPCI, it must be afforded at least the equivalent protections that the Constitution requires for the DPCI.¹⁸ In *Glenister II*,¹⁹ this Court found that the independence of the DPCI was an implicit constitutional requirement, flowing from section 7(2) of the Constitution and the threat to South Africa posed by endemic corruption. The High Court found that inasmuch as the DPCI is independent despite there being no express constitutional entrenchment of its independence, by parity of reasoning "the effect of the constitutional entrenchment of the independence of IPID is that the *operational and structural independence of IPID must be at least as strongly protected as that of the DPCI*".²⁰

[16] The High Court went further to hold that IPID's constitutionally guaranteed independence requires more stringent protection. This is because, unlike the DPCI which is situated within SAPS, IPID is institutionally and functionally independent from SAPS.²¹ Another reason presented by the High Court as to why the principles pronounced in *Glenister II* extend to IPID is that, having found that the DPCI requires adequate independence from Executive interference in that case, it would be subversive of IPID not to afford it the same level of independence as the DPCI. As IPID has oversight and accountability responsibilities over the DPCI, affording the DPCI adequate independence without doing the same for IPID appears to be self-

¹⁷ High Court judgment above n 5 at paras 15-6.

¹⁸ Id at para 20.

¹⁹ *Glenister v President of the Republic of South Africa and Others* [2011] ZACC 6; 2011 (3) SA 347 (CC); 2011 (7) BCLR 651 (CC) (*Glenister II*).

²⁰ High Court judgment above n 5 at para 17.

²¹ Id at para 21.

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defeating. In this regard, the High Court held that IPID's oversight role over the DPCI would be compromised and might create room for political interference to seep through and render the DPCI's independence nugatory.²²

[17] Crucially, the High Court held that section 6(3)(a) and 6(6) of the IPID Act, sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act and regulation 13 of the IPID Regulations are inconsistent with section 206(6) of the Constitution. This was based on the fact that the impugned sections do not provide for parliamentary oversight in relation to the suspension, discipline or removal of the Executive Director and that they afford the Minister unilateral powers and the sole discretion to terminate the Executive Director's tenure. Furthermore, the Minister is entitled to discipline the Executive Director on the same basis as any head of department in the public service, without any special oversight or protection. The High Court found that this amounts to inadequate security of tenure for a national head of an independent body investigating police misconduct, including corruption.²³ Hence it declared the impugned sections inconsistent with section 206(6) of the Constitution and invalid. However the declaration of invalidity was suspended for 12 months to allow Parliament to remedy the defects.

[18] As an interim measure, the High Court read section 17DA of the SAPS Act into section 6(6) of the IPID Act, with the other impugned provisions being read as having no application to the Executive Director of IPID. The decisions to suspend and institute a disciplinary inquiry against Mr McBride were set aside – with the order setting aside the Minister's decision to suspend Mr McBride being itself suspended for 30 days to allow the National Assembly and the Minister to exercise their powers in terms of section 17DA (as it was read into section 6(6) of the IPID Act), should they so choose. All of these orders were referred to this Court for confirmation.²⁴

²² *Id* at para 24.

²³ *Id* at para 46.

²⁴ The full order of the High Court was as follows:



MP

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The issues

[19] The issues are as follows:

1. It is declared that the following provisions are unconstitutional and unlawful to the extent that they purport to authorise the Minister of Police to suspend, take any disciplinary steps pursuant to suspension, or to remove from office the Executive Director of the Independent Police Investigative Directorate:
 - 1.1 Sections 6(3)(a) and 6(6) of the Independent Police Investigative Directorate Act, No. 1 of 2011;
 - 1.2 Sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act, 1994; and
 - 1.3 Regulation 13 of the IPID Regulations for the Operation of the Independent Police Investigative Directorate (GNR 98 of Government Gazette 35018 of 10 February 2012) ("IPID Regulations").
2. The declaration of invalidity in paragraph 1 is suspended for a period of 12 months from the date of the order to enable Parliament to correct the constitutional defect(s).
3. Pending the correction of the defect(s), or the expiry of the 12-month period, whichever occurs first:
 - 3.1 Section 6(6) of the Independent Police Investigative Directorate Act, No. 1 of 2011 is to be read as providing as follows:

"Sub-sections 17DA(3) to 17DA(7) of the SAPS Act apply to the suspension and removal of the Executive Director of IPID, with such changes as may be required by the context"; and
 - 3.2 Sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act, 1994 and regulation 13 of the IPID Regulations, shall be read as having no application to the Executive Director of the Independent Police Investigative Directorate.
4. It is declared that the decision of the Minister of Police to suspend the Applicant from his position as Executive Director of the Independent Police Investigative Directorate is unlawful and invalid and the decision is set aside.
5. It is declared that the decision of the Minister of Police to institute the disciplinary inquiry against the Applicant, which was to commence on 21 May 2015, is unlawful and invalid and the decision is set aside.
6. The order in paragraph 4 is suspended for 30 days in order for the National Assembly and the Minister of Police, if they so choose, to exercise their powers in terms of the provisions referred to in paragraph 3.1 above.
7. All of the above orders are referred to the Constitutional Court for confirmation and shall have no force unless and until confirmed by the Constitutional Court.
8. The First Respondent is directed to pay the costs of the Applicant, including the costs of two counsel.
9. The First Respondent is ordered to pay the costs of the Helen Suzman Foundation, including the costs of two counsel.
10. The First Respondent is ordered to pay the costs of the Council for the Advancement of the South African Constitution.



MP

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- a) Should the declaration of constitutional invalidity of the impugned sections be confirmed?
- b) Should the decision by the Minister to suspend Mr McBride and institute the disciplinary proceedings, taken in terms of the laws governing the Public Service, be allowed to stand and continue?
- c) Is the order granted by the High Court a just and equitable remedy as contemplated by section 172(1)(b) of the Constitution?
- d) Costs.

Should invalidity be confirmed?

[20] I pause to observe that a day before the hearing, the Minister filed a draft order with the Registrar of this Court. This draft order was foreshadowed in his written submissions. It reads thus:

1. The orders of constitutional invalidity granted by the High Court of South Africa (Gauteng Division, Pretoria) in respect of sections 6(3)(a) and 6(6) of the Independent Police Investigative Directorate Act 1 of 2011 ('IPID Act'), and Regulation 13 of the Regulations for the Operation of the Independent Police Investigative Directorate GN R 98 GG No 35018 (10 February 2012) ('IPID Regulations') are confirmed;
2. The orders of invalidity in paragraph 1 above are suspended for a period of 18 months to enable Parliament to cure the constitutional defect;
3. Pending the enactment of legislation by Parliament, or the expiry of the 18 month period in paragraph 2 above:
 - 3.1 Section 6(6) of the IPID Act is to be read as providing as follows:
'Sub-sections 17DA(3) to 17DA(7) of the South African Police Service Act 68 of 1995 to apply to the suspension and removal of the Executive Director of the Independent Police Investigative Directorate, with such changes as may be required by the context'; and



MP

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- 3.2 regulation 13 of the IPID Regulations, shall be read as having no application to the Executive Director of the Independent Police Investigative Directorate;
4. It is declared that the decisions to suspend, and institute disciplinary proceedings against the Applicant are invalid;
 5. The decisions in paragraph 4 above are not set aside;
 6. It is declared that, in terms of paragraph 3.1. above, and section 17DA(3) of the SAPS Act as applied to the Executive Director of IPID, the relevant Portfolio Committee of the National Assembly is deemed to be seized with the disciplinary proceedings already instituted against the Applicant;
 7. The First Respondent is directed to pay the costs of the Applicant in the High Court, including those occasioned by the employment of two counsel; and
 8. There is no order as to the costs of the confirmation proceedings before this Court."

[21] It is clear from the draft order that the Minister made a qualified concession. But he supports the confirmation of the declaration of invalidity in respect of the orders in paragraphs 1 to 4 only. However, he resists the setting aside of his decision to suspend Mr McBride from his position as the Executive Director of IPID as well as to institute disciplinary proceedings against him. Despite conceding their invalidity, he nonetheless urged us to endorse the disciplinary proceedings already underway and for them to be deemed to be undertaken by the relevant Portfolio Committee of the National Assembly.

[22] As appears from the Minister's draft order, the Minister supports confirmation by this Court of the declaration of invalidity in respect of section 6(3)(a) and 6(6) of the IPID Act and regulation 13 of the IPID Regulations. Although the Minister supports the declaration of invalidity in respect of his decision to suspend and institute disciplinary proceedings against Mr McBride, he requests that the decision not be set aside but that the relevant Portfolio Committee of the National Assembly be deemed

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BOSIELO AJ

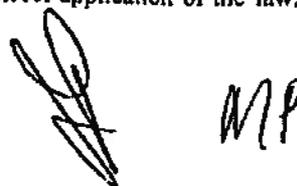
to be seized with the disciplinary proceedings already underway. But the Minister requests that the disciplinary proceedings against Mr McBride be allowed to proceed to finality – thus validating the proceedings the Minister concedes are invalid.

[23] As already stated, section 172(1)(a) of the Constitution provides that when a court decides a constitutional issue within its powers, it must declare any law or conduct inconsistent with the Constitution invalid to the extent of such inconsistency. This section is couched in peremptory terms. It is therefore a constitutional imperative. This Court has a duty to satisfy itself that the declaration of invalidity of the various impugned sections was properly made.²⁵ It also has to satisfy itself whether the impugned sections are inimical to the independence of IPID. This requires this Court to examine each of the impugned provisions to determine whether they are congruent with, or subversive of, IPID's independence as demanded by section 206(6) of the Constitution.

[24] IPID is an independent police complaints body established in terms of section 206(6) of the Constitution. Section 4(1) of the IPID Act requires it to function independently of SAPS. This is to ensure that IPID is able to investigate cases or complaints against the police without any fear, favour or prejudice or undue external influence. Section 4(2) of the IPID Act requires that each organ of state assist the Directorate to maintain its impartiality and to perform its functions effectively. Importantly, section 2 of the IPID Act requires IPID to play an oversight role over SAPS and Municipal Police Services. Given the nature, scope and importance of the role played by police in preventing, combating and investigating crime, IPID's oversight role is of cardinal importance. This is aimed at ensuring accountability and

²⁵ *Matatiele Municipality and Others v President of the RSA and Others* [2006] ZACC 2; 2006 (5) SA 47 (CC); 2006 (5) BCLR 622 (CC) at paras 66-7. Notably, in *CUSA v Tao Ying Metal Industries and Others* [2008] ZACC 15; 2009 (2) SA 204 (CC); 2009 (1) BCLR 1 (CC) at para 68, this Court held:

"Where a point of law is apparent on the papers, but the common approach of the parties proceeds on a wrong perception of what the law is, a court is not only entitled, but is in fact also obliged, *mero motu*, to raise the point of law and require the parties to deal therewith. Otherwise, the result would be a decision premised on an incorrect application of the law. That would infringe the principle of legality."



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transparency by SAPS and Municipal Police Services in accordance with the principles of the Constitution.²⁶

[25] IPID is headed by an Executive Director who is nominated by the Minister in terms of section 6(1) of the IPID Act. This nomination must be either confirmed or rejected by the Parliamentary Committee within a period of 30 parliamentary working days.

[26] The Executive Director's responsibilities are set out in section 7 of the IPID Act. They include: providing strategic leadership to the Directorate;²⁷ appointing provincial heads of each province;²⁸ appointing such staff as may be necessary to enable the Directorate to perform its functions in terms of the Act;²⁹ giving guidelines concerning the investigation and management of cases by officials within the respective provincial offices, the administration of national and provincial offices and the training of staff at national and provincial levels;³⁰ referring criminal cases revealed as a result of an investigation to the NPA for criminal prosecution and notifying the Minister of such referral;³¹ ensuring that complaints regarding disciplinary matters are referred to the National Commissioner and where appropriate, the Provincial Commissioner;³² once a month submitting a summary of disciplinary matters to the Minister and providing the Secretary with a copy thereof;³³ and keeping proper records of all financial transactions, assets and liabilities of the Directorate,

²⁶ One of the objects of the IPID Act is set out in section 2(g) as follows:

"to enhance accountability and transparency by the South African Police Service and Municipal Police Services in accordance with the principles of the Constitution."

²⁷ Section 7(1).

²⁸ Section 7(2).

²⁹ Section 7(3)(a).

³⁰ Section 7(3)(e)(i)-(iii).

³¹ Section 7(4). In terms of section 7(5), the NPA must notify the Executive Director of its intention to prosecute, whereafter the Executive Director must notify the Minister thereof and provide a copy to the Secretary.

³² Section 7(6).

³³ Section 7(7).

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ensuring that the Directorate's financial affairs comply with the Public Finance Management Act³⁴ and, preparing an annual report in the manner contemplated in section 32.³⁵ The Executive Director is also the accounting officer of the Directorate. Evidently, his duties are extensive and wide.

[27] This must be seen against section 7(7) of the IPID Act which requires the Executive Director to submit a summary of disciplinary matters to the Minister. In addition, section 32 requires the Executive Director to prepare and submit an annual report in the form prescribed by the Minister within five months of the end of the financial year to the Minister. Evidently, this is intended to ensure that the Executive Director accounts to the Minister about the activities within IPID. This is probably because the Minister, as the political head of the police, bears political responsibility for the police.

[28] But does this on its own undermine IPID's independence to a point where it offends section 206(6) of the Constitution? No. The fact that IPID is required by both the Constitution and the IPID Act to be independent does not mean that it cannot be held accountable. Like all other organs of state, IPID must be accountable for its actions. To be insulated from undue political interference or control does not mean that IPID should be insulated from political accountability. Accountability is one of the important values enshrined in our Constitution – a basic tenet for good governance. Hence the requirement that it must submit reports about its activities to the Minister who in turn will place them before Parliament. This Court explained this apparent conundrum in *Glenister II* as follows:

“The second general point we make is that adequate independence does not require insulation from political accountability. In the modern polis, that would be impossible. And it would be averse to our uniquely South African constitutional structure. What is required is not insulation from political accountability, but only

³⁴ 1 of 1999.

³⁵ Section 7(1)(a)-(c).

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insulation from a degree of management by political actors that threatens imminently to stifle the independent functioning and operations of the unit.³⁶

[29] Section 6(3)(a) of the IPID Act makes the Executive Director subject to the laws governing the public service. In terms of the Public Service Act, section 16A(1)(a) authorises the executive authority to take appropriate disciplinary steps against the head of the department and to report such non-compliance to the Minister. Section 16B in turn authorises the institution of disciplinary proceedings against such a head, whilst section 17(1) vests the power to dismiss in the relevant executive authority. Is this statutory regime compatible with the independence of IPID and its Executive Director as envisaged by section 206(6) of the Constitution? I think not.

[30] It is axiomatic that public servants are government employees. They are beholden to government. They operate under government instructions and control. The authority to discipline and dismiss them vests in the relevant executive authority. This does not require parliamentary oversight. To subject the Executive Director of IPID to the same regime is to undermine or subvert his independence. It is not congruent with the Constitution.

[31] What then does the independence of IPID mean? Does it mean complete or sufficient independence? Admittedly, it is difficult to attempt to define the precise contours of a concept as elastic as this. It requires a careful examination of a wide range of facts to determine this question. Amongst these are the method of appointment, the method of reporting, disciplinary proceedings and method of removal of the Executive Director from office, and security of tenure. However, this Court has had occasion to deal with the independence of a similar institution in *Helen Suzman Foundation*³⁷ and *Glenister II*. Although the two cases deal with the

³⁶ *Glenister II* above n 19 at para 216.

³⁷ *Helen Suzman Foundation v President of the Republic of South Africa and Others* [2014] ZACC 32; 2015 (2) SA 1 (CC); 2015 (1) BCLR 1 (CC) (*Helen Suzman Foundation*).




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independence of the DPCI, whose mandate is different to that of IPID, they offer useful guidelines in giving substance to IPID's constitutionally guaranteed independence – they offer bright lights for us as we traverse this new area.

[32] Grappling with the principle of the independence of the DPCI as a corruption-fighting body, Ngcobo CJ observed as follows in *Glenister II*, with the agreement of the majority:

"The question, therefore, is not whether the DPCI is fully independent, but whether it enjoys an adequate level of structural and operational autonomy that is secured through institutional and legal mechanisms designed to ensure that it 'discharges its responsibilities effectively', as required by the Constitution."³⁸

[33] The Chief Justice also states:

"Ultimately therefore, the question is whether the anti-corruption agency enjoys sufficient structural and operational autonomy so as to shield it from undue political influence."³⁹

[34] To address this vexed issue, the High Court sought guidance from a number of international instruments.⁴⁰ These included: the United Nations Convention against Corruption;⁴¹ the Council of Europe's Commissioner for Human Rights' Opinion on the Independent and Effective Determination of Complaints Against the Police;⁴² and

³⁸ *Glenister II* above n 19 at para 125.

³⁹ *Id* at para 121. See also High Court judgment above n 5 at para 28.

⁴⁰ High Court judgment above n 5 at para 36.

⁴¹ It calls for independent bodies or persons (specialised in combating corruption through law enforcement) that can "carry out their functions effectively and without any undue influence" (article 36). For this, the independent body should have complete discretion in the performance or exercise of its functions and not be subject to the direction or control of a minister or any other party. In principle, it should give an account after its work has been performed when it reports to parliament (rather than the executive).

⁴² The Council of Europe's Commissioner for Human Rights' *Opinion on the Independent and Effective Determination of Complaints Against the Police* (2009), similarly found that:

"An independent and effective complaints system is essential for securing and maintaining public trust and confidence in the police, and will serve as a fundamental protection against

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the AU Resolution on Police Reform, Accountability and Civilian Police Oversight in Africa.⁴³

[35] That Court had recourse to a report by the Organisation for Economic Co-operation and Development titled: *Specialised Anti-corruption Institutions: Review of Models*,⁴⁴ which was cited with approval by this Court in *Glenister II*.⁴⁵ The report proffers the following definition of independence:

"Independence primarily means that the anti-corruption bodies should be shielded from undue political interference. To this end, genuine political will to fight corruption is the key prerequisite. Such political will must be embedded in a comprehensive anti-corruption strategy. The level of independence can vary according to specific needs and conditions. Experience suggests that it is the structural and operational autonomy that is important, along with a clear legal basis and mandate for a special body, department or unit. This is particularly important for law enforcement bodies. Transparent procedures for appointment and removal of the director together with proper human resources management and internal controls are important elements to prevent undue interference."⁴⁶

[36] *Glenister II* expressly stated that this definition was not part of international law, but accepted that it serves as a useful interpretive tool against which IPID's independence may be measured. I have found the criteria adumbrated in this definition to be both useful and illuminating in trying to define and delineate the contours of independence as it pertains to the independence of IPID.

ill-treatment and misconduct. An independent police complaints body . . . should form a pivotal part of such a system."

⁴³ The AU Resolution on Police Reform, Accountability and Civilian Police Oversight in Africa, 2006, calls upon State Parties "to establish independent civilian policing oversight mechanism[s]". In relevant part, the AU Resolution reads:

"[A]ccountability and the oversight mechanisms for policing forms the core of democratic governance and is crucial to enhancing the rule of law and assisting in restoring public confidence in police."

⁴⁴ Available at: <http://www.oecd.org/dataoecd/7/4/39971975.pdf>, accessed on 6 June 2016.

⁴⁵ *Glenister II* above n 19 at para 187.

⁴⁶ *Id* at paras 119 and 188.

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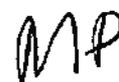
[37] In *Glenister II*, the majority held that a corruption-fighting entity will have the requisite independence if it can be established that the “reasonably informed and reasonable member of the public will have confidence in an entity’s autonomy-protecting features”.⁴⁷ Factors that might be considered in assessing the independence of an institution include security of tenure and remuneration, and the mechanisms in place for accountability and oversight.⁴⁸ Since IPID is entrusted with wide-reaching police oversight powers, the same considerations, at the very least, should be factored in when assessing its independence. In contradistinction to the DPCI, the threshold for satisfying independence in respect of IPID is arguably more stringent given that the Constitution expressly demands its independence.

[38] On the other hand, section 6 of the IPID Act gives the Minister enormous political powers and control over the Executive Director of IPID. It gives the Minister the power to remove the Executive Director of IPID from his office without parliamentary oversight. This is antithetical to the entrenched independence of IPID envisaged by the Constitution as it is tantamount to impermissible political management of IPID by the Minister. To my mind, this state of affairs creates room for the Minister to invoke partisan political influence to appoint someone who is likely to pander to his whims or who is sympathetic to the Minister’s political orientation. This might lead to IPID becoming politicised and being manipulated. Is this compatible with IPID’s independence as demanded by the Constitution and the IPID Act? Certainly not.

[39] To subject the Executive Director of IPID, which the Constitution demands to be independent, to the laws governing the public service – to the extent that they empower the Minister to unilaterally interfere with the Executive Director’s tenure –

⁴⁷ *Glenister II* above n 19 at para 207.

⁴⁸ *Id* at para 210.



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is subversive of IPID's institutional and functional independence, as it turns the Executive Director into a public servant subject to the political control of the Minister.

[40] Without adequate independence, it would be easy for the Minister to usurp the power of the Executive Director under the guise of exercising political accountability or oversight over IPID in terms of section 206(1) of the Constitution. In this case, acting unilaterally, the Minister invoked the provisions of section 16A(1) of the Public Service Act, placed Mr McBride on suspension and instituted disciplinary proceedings against him. Undoubtedly, such conduct has the potential to expose IPID to constitutionally impermissible executive or political control. That action is not consonant with the notion of the operational autonomy of IPID as an institution. Put plainly it is inconsistent with section 206(6) of the Constitution. It follows that it is invalid and must be set aside.

[41] All this should be seen against the extensive powers IPID has to investigate the police. Section 28 of the IPID Act authorises the Directorate to investigate a whole variety of matters involving the police and complaints of assault, torture, rape, discharge of firearms, death while in police custody and as a result of police action. Section 28(1)(g) authorises the Directorate to investigate corruption within the police, whilst section 28(2) empowers the Directorate to investigate systemic corruption within the police force. There have in recent years been alleged instances of police brutality and killings perpetrated against civilians. Undoubtedly, these are very serious matters which affect the public. Naturally, the public has a direct interest in seeing these matters being vigorously pursued and properly investigated. IPID is given this responsibility. It is cast in the role of a watchdog over the police. It is therefore necessary to its credibility and the public confidence that it be not only independent but that it must also be seen to be independent to undertake this daunting task without any interference, actual or perceived, by the Minister.

[42] A question might be asked whether the statutory framework created by the impugned sections conduce to engendering public confidence in the independence of



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IPID. This Court dealt with this issue of public confidence in *Glenister II*,⁴⁹ and reiterated it in *Helen Suzman Foundation*, where it stated:

"This Court has indicated that 'the appearance or perception of independence plays an important role' in evaluating whether independence in fact exists. . . . By applying this criterion we do not mean to impose on Parliament the obligation to create an agency with a measure of independence appropriate to the judiciary. We say merely that public confidence in mechanisms that are designed to secure independence is indispensable. Whether a reasonably informed and reasonable member of the public will have confidence in an entity's autonomy-protecting features is important to determining whether it has the requisite degree of independence."⁵⁰

[43] To my mind, the cumulative effect of the impugned sections has the potential to diminish the confidence the public should have in IPID. As the amicus curiae emphasised in its submissions, both the independence and the *appearance* of an independent IPID are central to this matter. The manner in which the Minister dealt with Mr McBride demonstrates, without doubt, how invasive the Minister's powers are. What exacerbates the situation is that he acted unilaterally. This destroys the very confidence which the public should have that IPID will be able, without undue political interference, to investigate complaints against the police fearlessly and without favour or bias. IPID must therefore not only be independent, but must be seen to be so. Without enjoying the confidence of the public, IPID will not be able to function efficiently as the public might be disinclined or reluctant to report their cases to it.

[44] Based on the above exposition, I conclude that the impugned sections do not pass constitutional muster. It follows that the order of constitutional invalidity by the High Court must be confirmed.

⁴⁹ *Glenister II* above n 19 at para 207.

⁵⁰ *Helen Suzman Foundation* above n 37 at para 31.

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What is a just and equitable remedy?

[45] As I indicated earlier, the Minister conceded that the decisions to suspend and institute disciplinary proceedings against Mr McBride are invalid. However, he pleaded that they should not be set aside but rather be allowed to continue to finality as if they were undertaken by the relevant Portfolio Committee of the National Assembly. The main submission is that the Minister took this decision in good faith as, when he took it, he considered it to be constitutional as the relevant section had not been declared unconstitutional. Furthermore, it was submitted that to set it aside would be disruptive. It would thus not be a just and equitable remedy as the disciplinary proceedings against Mr McBride had already commenced and were partly heard before an independent chairperson. The Minister submitted that setting aside these proceedings would permit Mr McBride to continue working as the Executive Director notwithstanding the fact that there is a prima facie case of gross misconduct against him.

[46] On the contrary, Mr McBride argued that the decisions by the Minister must be set aside. In the main, he contended that it would infringe the rule of law for this Court to preserve the Minister's actions which have been proved to be unconstitutional. In other words it would be untenable, if not invidious, for this Court to countenance an act which has been declared unconstitutional. In essence, he submits that no court can make an unlawful act lawful.

[47] As a counter, the Minister argued that this Court has in the past endorsed the principle that administrative decisions taken under a valid law that is subsequently declared unconstitutional are not automatically invalid but rather "[t]he rule of law requires their preservation". Three decisions of this Court were cited in support of this claim: *Van Rooyen*,⁵¹ *Democratic Alliance*⁵² and *Kruger*.⁵³

⁵¹ *Van Rooyen and Others v the State and Others (General Council of the Bar of South Africa Intervening)* [2002] ZACC 8; 2002 (5) SA 246 (CC); 2002 (8) BCLR 810 (CC) (*Van Rooyen*).

⁵² *Democratic Alliance v President of the Republic of South Africa and Others* [2012] ZACC 24; 2013 (1) SA 248 (CC); 2012 (12) BCLR 1297 (CC) (*Democratic Alliance*).




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[48] I will briefly deal with the three cases to demonstrate that the reliance on them was misguided.

[49] In *Cross-Border Road Transport Agency*, this Court held that the legal consequence which ordinarily flows from a declaration of constitutional invalidity is that the impugned law is invalid from the date of its promulgation.⁵⁴ This is the so-called default position. In other words, the order of invalidity will have immediate retrospective effect unless the order is varied by an order of court. This can be done for a variety of reasons provided it is just and equitable.

[50] In *Van Rooyen*, it is true that, although several provisions of the Magistrates' Courts Act were declared to be invalid, the decisions taken under them were preserved.⁵⁵ This is because the interests of justice demanded this, as it would have caused chaos if all previous magistrates' courts' decisions were overturned. No comparable interests of justice considerations exist in the present case.

[51] Similarly, in *Democratic Alliance*, the invalid decisions by Mr Simelane were preserved as it would have brought about confusion and disorder if all the decisions taken by Mr Simelane were set aside as nullities. Yacoob ADCJ therefore rightly preserved these decisions.⁵⁶

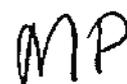
[52] The Minister incorrectly contends that *Kruger* supports the proposition that "an act done pursuant to invalid statutory provisions must nonetheless remain valid in the interests of certainty and to avoid disruption". But the case supports no such general

⁵³ *Kruger v President of Republic of South Africa and Others* [2008] ZACC 17; 2009 (1) SA 417 (CC); 2009 (3) BCLR 268 (CC) (*Kruger*).

⁵⁴ *Cross-Border Road Transport Agency v Central African Road Services (Pty) Ltd and Another* [2015] ZACC 12; 2015 (5) SA 370 (CC); 2015 (7) BCLR 761 (CC) at para 20.

⁵⁵ *Van Rooyen* above n 51 at para 260.

⁵⁶ *Democratic Alliance* above n 52 at para 93.

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proposition. In *Kruger*, the Court preserved the conduct of the Road Accident Fund that had relied on invalid proclamations. This was to avoid disruption and disorder. There must be an interests of justice consideration that overrides the presumption of objective constitutional invalidity.⁵⁷

[53] It is worth noting that Mr McBride is not opposed to his suspension followed by disciplinary proceedings. Furthermore, he has declared his willingness to participate in any process provided it is constitutionally compliant.

[54] In an attempt to obviate the disruption which the Minister feared might ensue if his decisions to suspend and discipline Mr McBride are set aside, the High Court made an order that the declaration of invalidity of the Minister's decision to suspend and institute disciplinary proceedings against Mr McBride be suspended for 30 days in order for the National Assembly and the Minister, if they so choose, to exercise their powers in terms of the provisions referred to in paragraph 3.1 of its order. Mr McBride is amenable to this. I find this to be just and equitable for both parties. It affords the Minister the opportunity, if he so wishes, to restart the process but on a proper basis. At the same time it ensures that Mr McBride's suspension is reasonable as he is still protected by the constitutionally protected presumption of innocence in his favour.

[55] I thus confirm the High Court's reading-in of the relevant provisions of the SAPS Act to operate on an interim basis. Furthermore, I regard a notional severance of the relevant provisions of the Public Service Act and the IPID regulations to be fair and equitable. This is intended to secure the independence of the IPID on an interim basis, until Parliament remedies the defects identified. During this time, the impugned provisions of the IPID Act, the Public Service Act and the IPID Regulations – to the extent that they allow the Minister to suspend, remove or institute disciplinary proceedings against the Executive Director – will remain inoperative.

⁵⁷ *Kruger* above n 53 at paras 69-70.



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[56] The High Court gave adequate consideration to what a just and equitable remedy should be as required by section 172 of the Constitution. Its conclusion was well-reasoned and fully supported by the facts of the case. Accordingly, I confirm the orders of the High Court.

Costs

[57] The general principle is that costs must follow the result. In other words a successful party must be awarded costs. At the hearing, the Minister submitted that, because he made some legal concessions, no costs order should be made in this Court. But he still opposed the matter until late in the proceedings. The Minister's draft order was served and filed at the proverbial eleventh hour, after the parties had already finalised their preparation and incurred high costs. I am therefore of the view that there is no reason to depart from the general rule, costs must follow the result.

[58] In the result, the following order is made:

1. It is declared that the following provisions are invalid to the extent that they authorise the Minister of Police to suspend, take any disciplinary steps pursuant to suspension, or remove from office the Executive Director of the Independent Police Investigative Directorate—
 - 1.1. section 6(3)(a) and 6(6) of the Independent Police Investigative Directorate Act 1 of 2011;
 - 1.2. sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act, Proclamation 103 of 1994;
 - 1.3. regulation 13 of the IPID Regulations for the Operation of the Independent Police Investigative Directorate (GN R98 of Government Gazette 35018 of 10 February 2012), (IPID Regulations).



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2. Parliament is directed to cure the defects in the legislation within 24 months from the date of this order.
3. Pending the correction of the defect(s):
 - 3.1. Section 6(6) of the Independent Police Investigative Directorate Act 1 of 2011 is to be read as providing as follows:

“Subsections 17DA(3) to 17DA(7) of the South African Police Service Act 68 of 1995 apply to the suspension and removal of the Executive Director of IPID, with changes as may be required by the context.”
 - 3.2. Sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act, Proclamation 103 of 1994 and regulation 13 of the IPID Regulations are declared inconsistent with section 206(6) of the Constitution and shall not apply to the Executive Director of the Independent Police Investigative Directorate.
4. It is declared that the decision of the Minister of Police to suspend Mr Robert McBride from his position as Executive Director of the Independent Police Investigative Directorate is invalid and is set aside.
5. The order in paragraph 4 is suspended for 30 days in order for the National Assembly and the Minister of Police, if they so choose, to exercise their powers in terms of the provisions referred to in paragraph 3.1 above.
6. It is declared that the decision of the Minister of Police to institute the disciplinary inquiry against Mr Robert McBride, which was to commence on 21 May 2015, is invalid and is set aside.
7. The Minister of Police is directed to pay the costs of Mr Robert McBride, including the costs of two counsel.



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For the Applicant:

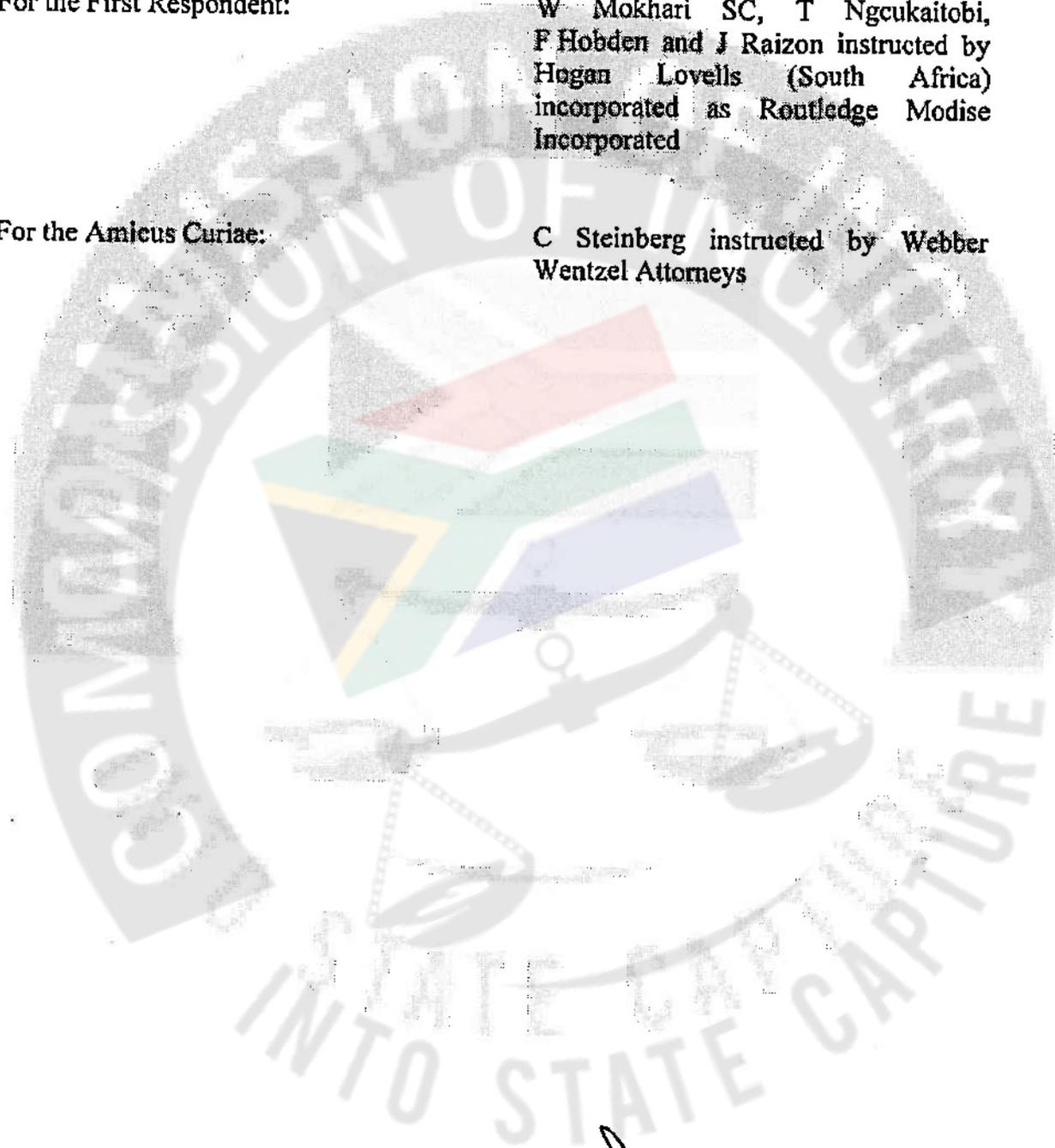
S Budlender and J Bleazard instructed
by Adams & Adams Attorneys

For the First Respondent:

W Mokhari SC, T Ngcukaitobi,
F Hobden and J Raizon instructed by
Hogan Lovells (South Africa)
incorporated as Routledge Modise
Incorporated

For the Amicus Curiae:

C Steinberg instructed by Webber
Wentzel Attorneys



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Minister of Police Mr Nkosinathi Phiywayinkosi Thamsanqa Nhleko clarifies the return of Robert McBride from suspension.

On 06 September 2016, the Constitutional Court declared section 6(3) and (6) of the Independent Police Investigative Directorate (IPID) Act unconstitutional. Section 6(6) of the IPID Act, read with regulation 13 of the IPID Regulations, conferred on the Minister of Police the power to suspend, initiate disciplinary proceedings, and remove the Executive Director of IPID. This means that at the time the Minister took the decision to suspend Mr McBride he acted in terms of a valid law.

The Constitutional Court also set aside the suspension of Mr McBride, but suspended its operation for 30 days to allow Parliament and the Minister to decide on the disciplinary steps against Mr McBride. Subsequent to the Constitutional Court ruling, the Minister of Police (the "Minister") addressed a letter on 7 September 2016 to the Honourable Speaker of the National Assembly (the "Speaker"), requesting her to constitute a committee of the National Assembly or to authorise the Portfolio Committee on Police to initiate disciplinary proceedings against Mr Robert McBride on grounds of misconduct in terms of section 6(6) of the IPID Act 1 of 2011 as amended by the Constitutional Court order in the matter of *Mc Bride vs Minister of Police and Another [2016] ZACC 30*.

The Speaker responded with a letter dated 11 October 2016 received by the Minister on 12 October 2016. In this letter, the Speaker states amongst others, that:

"Subsequent to receiving the letter of 7 September, I requested a legal opinion on the matter to clarify the internal processes to be followed in order to deal with the request. The legal opinion indicated that the

by way of a House Resolution.”

The last paragraph of the letter reads ...*“I have nevertheless referred the request to the Portfolio Committee on Police.”*

On 12 October 2016 a formal referral was made on Announcements, Tabling and Committee Reports that the request by the Minister is referred to the Portfolio Committee on Police for consideration. On 14 October 2016 the Chairperson of the Portfolio Committee on Police issued a statement confirming that the Committee would consider the matter of Mr McBride on Tuesday, 18 October 2016.

On Monday 17 October 2016 the Minister attended a study group caucus wherein he was advised that the matter of Mr McBride had been scrapped off the agenda of 18 October 2016. The Minister was invited to the strategy caucus held on 18 October 2016 in Parliament which he could not attend because the matter had fallen off the agenda of Parliament.

Since Parliament has not taken a decision on the matter and the 30 days suspension period has automatically lapsed, effectively giving Mr McBride the right to return to his position as of the 19 October 2016.

The Minister has written a letter to Mr McBride informing him that in light of his conduct during his suspension and utterances he made about the Minister it is clear that the employment relationship between them is irretrievably broken down. The Minister has subsequently advised Mr McBride to approach the Speaker of the National Assembly for clarity on where he should be reporting under the prevailing circumstances.

The suspension of the IPID Executive Director was based on allegations that he had tampered with a report that recommended criminal charges against two senior South African Police members allegedly implicated in an illegal extradition process of four Zimbabweans.

It must be noted that the Constitutional Court decision did not deal with the merits of the alleged misconduct by Mr McBride.

The Minister places it on record that the suspension and disciplinary process against the IPID Head had to do with the Minister's commitment to the Rule of Law and respect for human rights. In this case the dehumanisation of the African was a major concern and thus it should be for all of us.

Observations

It is extremely concerning as to how the process was handled. For instance;

- Why the letter of 7 September 2016, was only responded to on 11 October 2016, even though the sitting of the House rose on 15 September 2016?
- That while Rule 227(1)(c) empowers a Committee of Parliament to conduct work of this nature, the suggestion that a House resolution was required before the Committee could consider this matter, did not make sense.
- That Parliament announced through Announcements, Tabling and Committee Reports that the matter was referred to the Portfolio Committee on Police but subsequently instructed not to proceed with the matter as a result the matter was struck off the agenda of Parliament.
- That in a matter as serious such as this where human and African lives were lost, we are experiencing a set of behaviour which negates the severity of this matter.
- That to date Parliament has not taken a decision within the timeframe as prescribed by the Constitutional Court Order.

The Minister commits to fulfilling the SAPS's mandate and constitutional obligations towards the strengthening of the South African's criminal justice system.

Issued by: - Sandile Ngidi.

Spokesperson: - Ministry of Police.

Contact: - 079 354 5347





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Enquiries: Mbangwa L

Tel: 012 393 2911

**TO: Leader of Government Business
Speaker of the National Assembly
Chief Whip**

CC: The President of the Republic of South Africa

**CONSTITUTIONAL COURT JUDGEMENT IN RE: MCBRIDE AND
MINISTER OF POLICE**

The above matter bears reference.

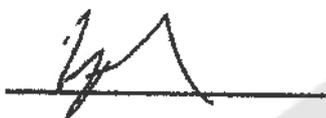
Notably in the past month we have been sitting with a Constitutional Court Order both as legislative and executive arm of government, a matter which required us to address a disciplinary process of Mr McBride. Needless to say the timeframe of this court order lapsed without any resolve, and consequently, left us exposed to operational dysfunctionalities within IPID as in institution. This unfortunate state of affairs also created confusion in the public perception of the action we had rightfully instituted.

This serves to register my concern about the tardy manner in which the whole issue was handled, and also seeks to keep you abreast on how I have decided to account to the South African public and the IPID institution on the matter.

I have been left with no option but to account to the public and hopefully provide a balanced perspective on the matter.

Please find attached the press statement that is being issued in this regard.

Yours faithfully



NPT Nhleko.

Minister of Police

Date: 19 October 2016



PART E





**MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA**

Private Bag X463 PRETORIA 0001, Tel: (012) 393 2800, Fax: (012) 393 2819/20 • Private Bag X9080 CAPE TOWN 8000, Tel: (021) 467 7021, Fax: (021) 467 7033

Mr T Kgamanyama

Free State Provincial Head

Independent Police Investigative Directorate

24 March 2015

Dear Mr Kgamanyama

RE: Your appointment as Acting Executive Director of the Independent Police Investigative Directorate

It is with pleasure to inform you that I, in my capacity as the Minister of Police have, in terms of section 6(4) of the Independent Police Investigative Directorate Act 1 of 2011, decided to appoint you as the Acting Executive Director of the Independent Police Investigative Directorate with effect from 24 March 2015 until further notice.

In appointing you to the aforementioned position, I have taken into account experience, qualifications and I am satisfied that you are suitable to perform the duties and responsibilities of Executive Director in the acting capacity during the absence of the Executive Director.

Yours faithfully,

Nf Nhleko

Minister of Police
24/03/2015

PATENT, TRADE MARK, COPYRIGHT, DESIGN,
COMMERCIAL, PROPERTY & LITIGATION ATTORNEYS

Adams & Adams

EMAIL MESSAGE

To: BoipeloR@commissionsc.org.za

From: Jac.marais@adams.africa

CC: Thando.manentsa@adams.africa
LionelG@commissionsc.org.za
AnneB@commissionsc.org.za
GarthH@commissionsc.org.za
SusanW@commissionsc.org.za
WilliamN@commissionsc.org.za
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Lynnwood Manor, Pretoria, South Africa

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PHONE +27 12 432 6000
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EMAIL mail@adams.africa
WEB www.adams.africa

Our Reference: JSM/TDM/LT3602

Your Reference:

Date: 24 July 2020

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

Johannesburg

ATTENTION: MS BRIGITTE SHABALALA

Dear Sirs

MR ROBERT JOHN MCBRIDE

1. We represent Mr Robert McBride.
2. We were furnished yesterday with three notices of set-down, copies of which are **attached** hereto for your ease of reference. The notices call on Mr McBride to present himself at the State Capture Commission ("SCC") for cross examination, as follows:
 - 2.1. On 27 July 2020, by Mr Nkosinathi Nhlekho;

OFFICES: Pretoria | Johannesburg | Cape Town | Durban ASSOCIATE OFFICES: Angola | Botswana | Burundi | Cameroon (OAPI) | Cape Verde | Egypt | Ethiopia | Ghana | Kenya | Lesotho | Liberia | Libya | Mozambique (ARIPO) | Namibia | Nigeria | Sierra Leone | São Tomé and Príncipe | Swaziland | Tanzania (including Zanzibar) | The Gambia | Zimbabwe

Partners Dario Tanziani Johan du Preez Colin MacKenzie Nelia Hickman Mariëtte du Plessis Samantha Copeling Gérard du Plessis Phil Pla Louis van der Walt Russell Bagnall Simon Brown Grégor Walter Joseph Goedhals Blain de Villiers André Visser Eugene Honey Darren Olivier Nolwazi Gcaba David Scheepers Megan Moerdijk Kelly Thompson Nolo Khechane Janice Galvad Nishi Chetty Lucy Signorelli Steven Yeates Johnny Fiandeiro Leander Opperman Jenny Pienaar Danie Dohmen Alexis Apostolidis Bilkis Doby Debbie Mariott Lauren Ross Dale Healy Mandy Swanepoel Roelof Grové Nicolette Koch James Davies Nicky Garnett Vishen Pillay Godfrey Budell Jac Marais Nthabisheng Phaswana Nishan Singh Pieter Visagie Dieter Welthagen Somaya Khan Danie Strachan Werina Griffiths Sajidha Gamieldeen Jani Cronjé Wilhelm Prozesky Nicolette Biggar Jean-Paul Rudd Andrew Molver Stephen Hollis Alicia Kabiné Alicia van der Walt Andrew Phillips Nondumiso Msimang Wynand Fourie Lita Miti-Qamata Jan-Harm Swanepoel Thando Manentsa Amina Suliman Wensel Britz Kim Rampersadh Kareema Shaik

Senior Consultants Gavin Kotze

Associates Deborah Marsicano Thérèse Davis Claire Bothma Udi Pillay Nicole Smalberger Dakalo Luvhimbí Kerry Wiers Richard Wiers Femke Van Dyk Jean-Louis La Grange Nicole Haworth Jevonne Le Roux Tayyiba Nalla Lisa Van Zuydam Alissa Nayanah Misha Van Niekerk Robyn Müller-Mabusa Shani Van Niekerk Lize-Mari Van Dyk Alicia Heyneke Lavashnee Mandry Deila Roopnarain Donald Makgehle Jameel Hamid Charleen Rupnarain Kagisho Manyashi Ramon Pereira Thembi Khoza Sophia Smallbones Demi Pretorius Christoff Pretorius Shaina Steyn Nicholas Rosslee Thapelo Montlong Portia Manzini Michael Lamont Aslam Patel Maureen Makoko Yingisani Nyambi Lebohlang Mosala Daniel Campbell Esmé Van Rooyen Nalo Gungubele Daniëlle van Rooyen Sisipho Ngoma Mfhozazi Maphumulo Jessica-Jade Faint Sibusile Khusi Wihan Meintjes Anke Olivier-Kok Lethabo Moloto Neale Christy Gabriela Dzeha Thandeka Mhlongo Mzwakhe Poswa Mia de Jager Monique Dippenaar Vianca McCall Kineta Iyavoo Chiraag Maharaj Cohen Grootboom Thembanzi Nkabinde Anri Bezuidenhout Kim Erasmus Michael Bullock Raznae Narayanasami Chanel Tewary Courtney Elson Cheslin Petersen Whitney Govender-Williams Rebone Dikotla Danielle Robbertze Christine Strauss

Chief Operating Officer Dave Forbes

Level 4 BBBEE Contributor rating

- 2.2. On 29 July 2020, by Mr Pretorius;
- 2.3. On 13 August 2020 by Brig Ncube.
3. Although no mention is made in the notices of legal representatives, we understand from Mr McBride that the cross-examination will be conducted by various Senior Counsel.
4. Mr McBride late yesterday retained our services and that of Adv Steven Budlender SC to represent him in the proceedings and, in particular, to advise and represent him in respect of the cross-examination referred to in the notices.
5. We point out that although we had previously represented Mr McBride in various proceedings, it was only yesterday that we were retained to represent him in respect of the planned cross-examination. As you may be aware, until very recently Mr McBride was not employed and not in a position to instruct legal representatives, but his personal circumstances have changed, and he is a position to do so now.
6. We have not yet been furnished with all the relevant material which we would have to consider in order to provide Mr McBride with any meaningful assistance. Mr McBride has also informed us that he has been receiving further documentation from the SCC as late as yesterday (specifically a *"Rendition Report by the Reference Group"*) which he has not seen before, and that there is a proposal that he meet with evidence leaders on Sunday as part of his preparation for cross examination. We will simply not be in a position to get up to speed before Sunday/Monday, or to provide Mr McBride with the assistance that he seeks before then.
7. Although we are mindful of the inevitable inconvenience that will arise, our instructions are to advise that Mr McBride will not be in a position to undergo cross-examination on Monday, 27 July 2020. We reiterate that Mr McBride has no intention to unduly delay the SCC proceedings and that our instructions are to engage with the SCC to ensure that his cross-examination can take place as soon as is practicably possible. We note that, in principle, Mr McBride would be amenable to cross-examination by Mr Nhlekho and Mr Pretorius to take place on the same day as has been set aside for cross examination by Brig Ncube, being 13 August 2020, or on any other suitable date.
8. Although, given the spirit of cooperation with the SCC, it is of lesser relevance under the circumstances, we do point out that Mr McBride is not under subpoena in respect of Monday's planned proceedings. We, however, confirm that Mr McBride remains committed to cooperating with the SCC, and that we look forward to firming up arrangements to ensure that his cross-examination can take place as soon as possible.
9. We thank you in anticipation of your kind acknowledgment of receipt.

Yours faithfully
ADAMS & ADAMS

J S MARAIS
T D MANENTSA
Checked and signed by author and sent electronically



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

AFFIDAVIT: ROBERT JOHN MCBRIDE

I, the undersigned,

ROBERT JOHN MCBRIDE

hereby declare under oath:

- 1 I am an adult male and the Head of the State Security Agency foreign branch, located at Musanda Complex, Delmas Road, Pretoria.
- 2 The facts contained herein fall within my personal knowledge, unless the context indicates otherwise, and are both true and correct.
- 3 Any legal propositions contained herein are based on legal advice received from my legal advisors, whose advice I accept.

PURPOSE OF THIS AFFIDAVIT

- 4 I have received three notices of set-down requiring my appearance before the Commission for purposes of cross-examination, on 27 July 2020, 29 July 2020 and 13 August 2020 respectively.



5 Although I have not been subpoenaed to appear before the Commission on those dates (and there is thus no compulsion for me to appear on those dates), I wish to place on record that I am committed to presenting myself for cross-examination and that I intend to cooperate fully with Commission in order to ensure that the cross-examinations can take place as soon as practicably possible. However, I am unable to appear before the Commission on 27 July 2020 or 29 July 2020.

6 I have not had a sufficient opportunity to prepare myself or my legal representatives for the cross-examinations which I am to undergo on those dates. I wish to be of as much assistance as possible to the Commission and therefore seek some additional time in order to consider new documentation provided to me in the last few days and to prepare comprehensively for the cross-examinations, including obtaining advice from my legal representatives.

7 In this affidavit I wish to explain to the Commission the reasons why I am unable to attend at the Commission on 27 and 29 July 2020 out of respect for its processes.

THE RELEVANT FACTS

8 On 10 July 2020 I received two notices of set down from the Commission as follows:

8.1 That I am required to appear before the commission on 27 July 2020 to be cross-examined by Former Minister of Police, Nkosinathi Nhleko.



- 8.2 That I am required to appear before the commission on 13 August 2020 to be cross-examined by Brigadier Pharasa Daniel Ncube.
- 9 On 13 July 2020 I received a further notice of set down from the Commission indicating that I am required to appear before the Commission to be cross-examined by Advocate Jacobus Petrus Pretorius on 29 July 2020.
- 10 For ease of reference I attach copies of the notices as annexures "RM1", "RM2" and "RM3" respectively. It is my understanding that the cross-examinations will be conducted by various Senior Counsel.
- 11 I wish to re-iterate that I am committed to complying with the Commission's processes and intend to present myself for cross-examination by those referred to in the notices. However, I have not had sufficient opportunity to prepare myself or my legal representatives for the cross-examinations on 27 and 29 July 2020.
- 12 When I received the notices of set down I was not in a position to instruct legal representatives to advise me on the notices or the scheduled cross-examinations. I was employed on a six month fixed term contract, and had no security of income. This position changed when I was appointed into my new position at the State Security Agency on 16 July 2020.
- 13 I am mindful that my new position, within the State Security Agency, is subject to far reaching legal prescripts relating to any public appearances and statements, in particular in respect of giving testimony. Contravention of the applicable rules carries heavy sanctions. I need time to consult with my new employer and to take



legal advice in respect of how these prescripts might impact on my cross-examination at the State Capture Commission. I will do so at the first available opportunity.

- 14 On 23 July 2020, I accordingly retained the services of Adams & Adams attorneys to represent me in these proceedings and to advise and represent me in respect of the cross-examinations mentioned above. I have also instructed Adams & Adams to retain counsel to advise me and to appear on my behalf, if required. This has been done.
- 15 In the short time since their appointment, on 23 July 2020, my legal team has not been able to familiarise themselves comprehensively with the relevant documentation. On the same day I also received new documentation from the Commission which I had not seen before and upon which I will, presumably, be cross-examined. There was a proposal that I meet with the evidence leaders on 26 July 2020 to prepare for the cross-examination on the next day (tomorrow), 27 July 2020.
- 16 I have not had an opportunity in the period of approximately 72 hours since then properly to consider the new documentation provided to me, nor have my legal representatives had an opportunity to consider that information or the other documentation relevant to the cross-examinations. I have thus not had sufficient time to prepare for the cross-examinations proposed for the 27th and 29th of July.
- 17 Immediately after their appointment, I instructed Adams & Adams to engage with the Commission to ensure that the cross-examinations can take place as soon



as practicably possible. On 24 July 2020 Adams & Adams wrote to Ms Brigitte Shabalala on my behalf indicating that:

17.1 I am not in a position to undergo cross-examination on 27 July 2020.

17.2 I have no intention to unduly delay the Commission's proceedings.

17.3 I am, in principle, amenable to all three cross-examinations taking place on 13 August 2020.

18 I attach a copy of the correspondence from Adams & Adams as annexure "RM4".

19 Lastly, and out of respect for the Commission, I point out that in light thereof that I will not be appearing at the Commission on 27 July 2020 or on 29 July 2020, I will not be present at the proceedings on these days. I have just commenced employment at the State Security Agency, and deem it inappropriate to be absent from the office unless I will be appearing at the Commission.

CONCLUSION

20 I am aware of the inevitable inconvenience that will arise as a result of my non-attendance on 27 July 2020. I apologise to all parties concerned for the inconvenience.

21 I have attempted to ameliorate the inconvenience as much as possible by instructing my attorneys to inform the Commission as soon as practicably possible of my position, and to ensure that this affidavit is provided to those parties who wish to cross-examine me on the 27th and 29th of July.



22 I once again re-iterate my commitment to and respect for the Commission's processes and hope that the short delay that is occasioned will allow me to be of even greater assistance to the Commission.

By signing this document, I confirm that the above information is true and correct to the best of my knowledge and belief. I understand that any false information provided may constitute an offence under the law.

By my signature, I confirm that the above information is true and correct to the best of my knowledge and belief. I understand that any false information provided may constitute an offence under the law.

Done at Garsfontein on 14.07.2020

[Signature]

(HANDTEKENING) KOMMISSARIS VAN EDE
(SIGNATURE) COMMISSIONER OF OATHS

WILHEMINA PHATHANE

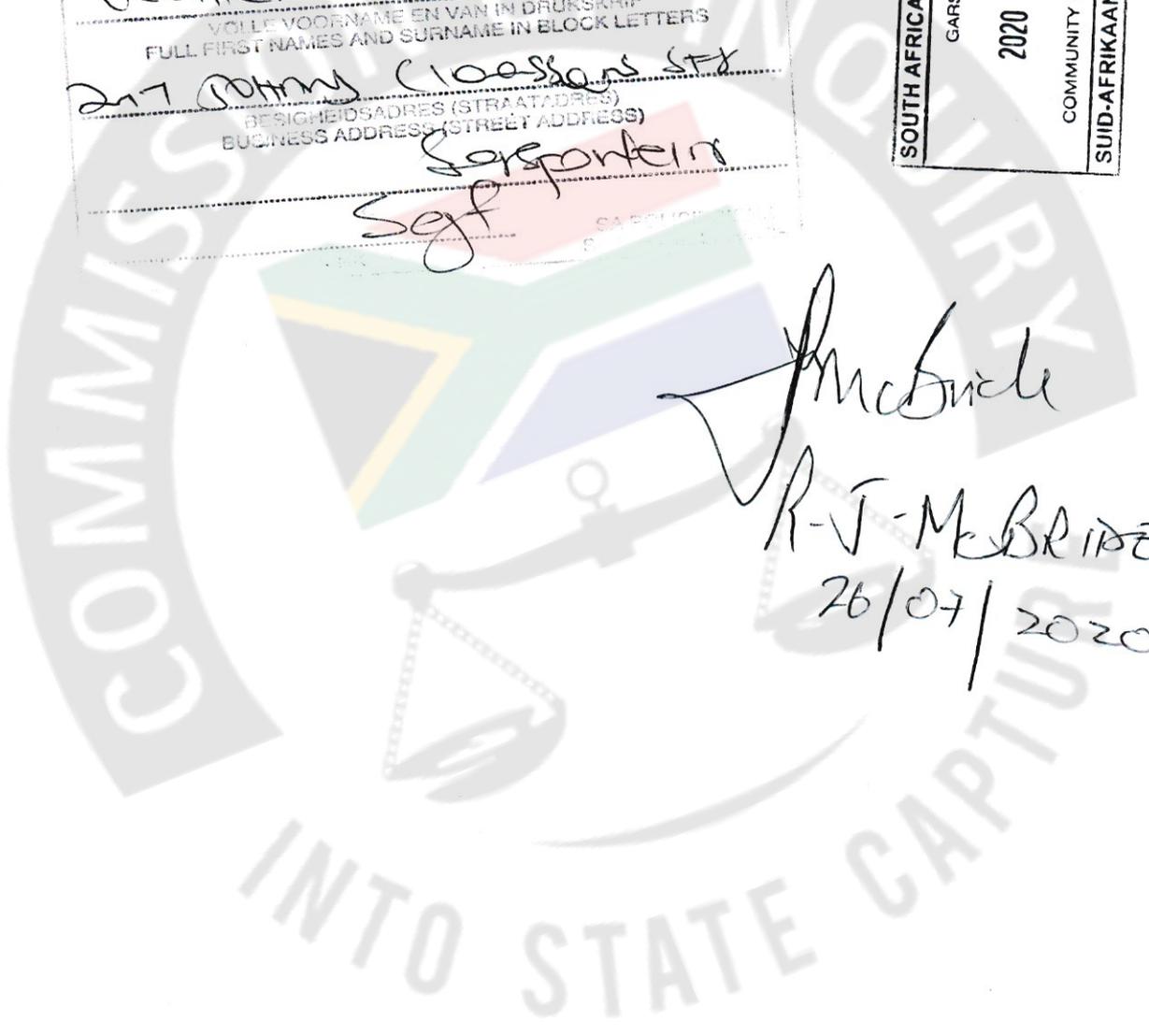
VOLLE VOORNAAM EN VAN IN DRUKSKRIF
FULL FIRST NAMES AND SURNAME IN BLOCK LETTERS

217 JOHNS COASSONS STR
BESIGHEIDSADRES (STRAATADRES)
BUSINESS ADDRESS (STREET ADDRESS)

Garsfontein
Sgt

SOUTH AFRICAN POLICE SERVICE	GARSFONTEIN	2020 -07- 26	COMMUNITY SERVICE CENTRE

[Signature]
R-J-M BRIDE
26/07/2020



[Handwritten mark]

RM 1



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

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

NOTICE OF SET DOWN

MR. ROBERT JOHN MCBRIDE

10 July 2020

To: Mr. Robert John McBride
Email: rjmcbride63@gmail.com

Dear Mr. McBride

1. Please be advised that:

Monday, 27 July 2020 at 10h00

has been set down as the date on which you are required to appear before the Commission to be cross-examined by the Former Minister of Police, Nkosinathi Nhleko.

2. The Commission's hearing venue is located at:
City of Johannesburg Old Council Chamber, 158 Civic Boulevard, Braamfontein.

3. Please contact the Secretariat of the Commission (shannonv@commissionsc.org.za) and (secretary@commissionsc.org.za) regarding any queries relating to this matter.

Yours faithfully



Ms. Brigitte Shabalala

Acting Secretary

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



RM 2



17 Empire Road
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Web: www.sastatecapture.org.za

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

NOTICE OF SET DOWN

MR. ROBERT JOHN MCBRIDE

10 July 2020

To: Mr. Robert John McBride

Email: rjmcbride63@gmail.com

Dear Sir

1. Please be advised that:

Thursday, 13 August 2020 at 10h00

has been set down as the date on which you are required to appear before the Commission to be cross-examined by Brigadier Pharasa Daniel Ncube.

2. The Commission's hearing venue is located at:
City of Johannesburg Old Council Chamber, 158 Civic Boulevard, Braamfontein.

3. Please contact the Secretariat of the Commission (shannonv@commissionsc.org.za) and (secretary@commissionsc.org.za) regarding any queries relating to this matter.

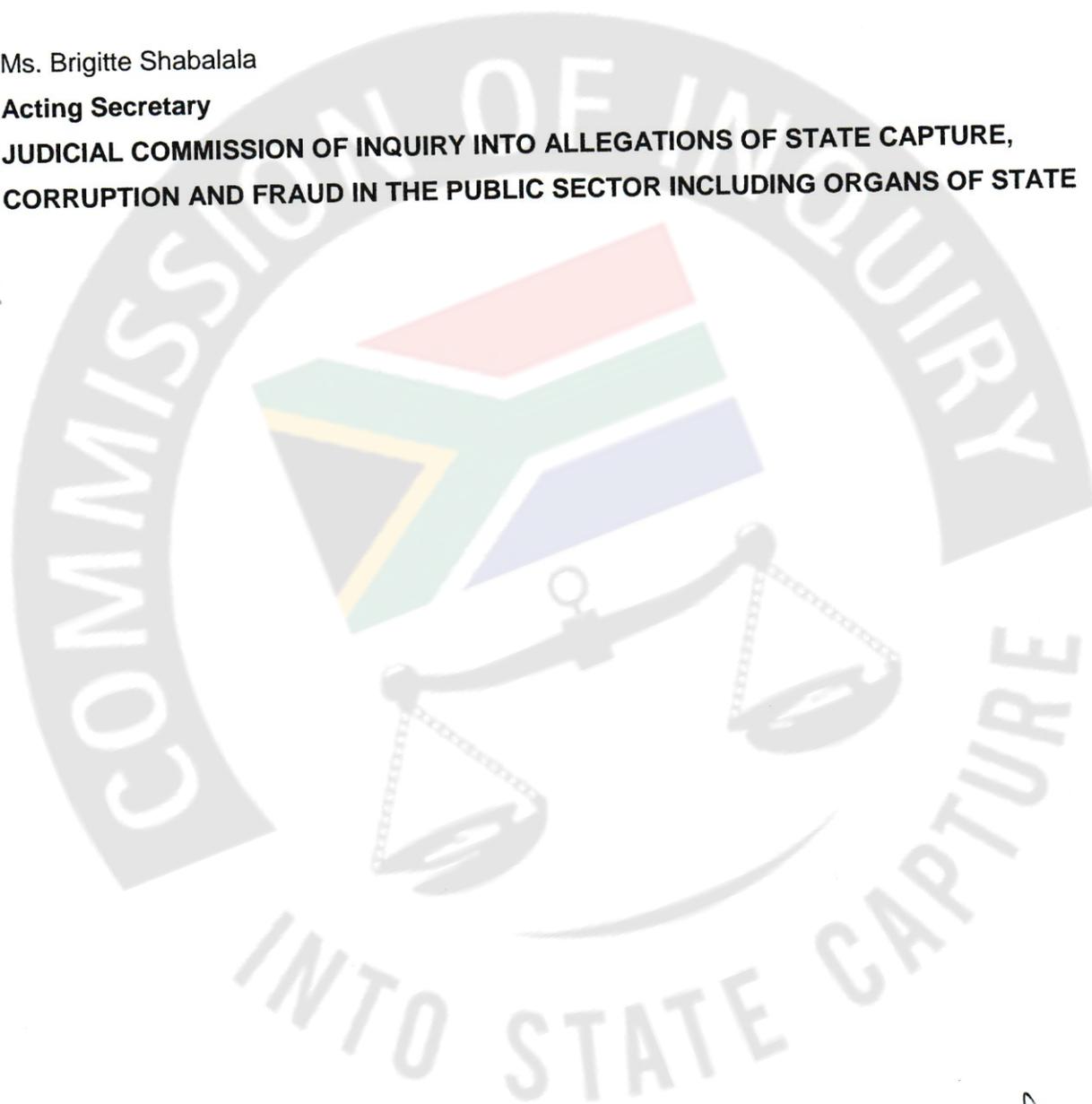
Yours faithfully



Ms. Brigitte Shabalala

Acting Secretary

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



RM3



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

NOTICE OF SET DOWN

MR. ROBERT JOHN MCBRIDE

13 July 2020

To: Mr. Robert John McBride
Email: rjmcbride63@gmail.com

Dear Sir

1. Please be advised that:

Wednesday, 29 July 2020 at 10h00

has been set down as the date on which you are required to appear before the Commission to be cross-examined by Advocate Jacobus Petrus Pretorius.

2. The Commission's hearing venue is located at:
City of Johannesburg Old Council Chamber, 158 Civic Boulevard, Braamfontein.

3. Please contact the Secretariat of the Commission (shannonv@commissionsc.org.za) and (secretary@commissionsc.org.za) regarding any queries relating to this matter.

Yours faithfully



Ms. Brigitte Shabalala

Acting Secretary

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

