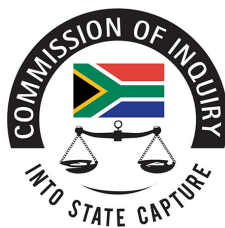




## **EXHIBIT Y 5**

**MATTHEWS SESOKO**





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

2<sup>nd</sup> floor, Hillside House  
17 Empire Road,  
Parktown  
Johannesburg  
2193  
Tel: (010) 214-0651  
Email:

[inquiries@sastatecapture.org.za](mailto:inquiries@sastatecapture.org.za)

Website: [www.sastatecapture.org.za](http://www.sastatecapture.org.za)

---

**INDEX: EXHIBIT Y 5**

---

| Description                                      | PAGES      |
|--|------------|
| Supplementary sworn statement of Matthews Sesoko | 001 to 008 |
| Annexure "MS1"                                   | 009 to 049 |
| Annexure "MS2"                                   | 050 to 057 |
| Annexure "MS3"                                   | 058 to 085 |
| Annexure "MS4"                                   | 086 to 131 |
| Annexure "MS5"                                   | 132 to 154 |
| Annexure "MS6"                                   | 155 to 160 |
| Annexure "MS7"                                   | 161 to 162 |
| Annexure "MS8"                                   | 163 to 230 |

---

## SWORN STATEMENT

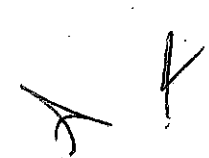
---

I, the undersigned,

**MATTHEWS SESOKO,**

do hereby under oath declare, that:

The facts deposed to herein are true and correct and save where the context indicates otherwise, fall within my personal knowledge.

1. I am an adult male with identity number 6805205609083. I am the National Head of Investigation in the Independent Police Investigative Directorate 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. I am married with two children.
  2. At the onset it is important to note that I specifically asked the Werksman lawyers who were interviewing me what the status of inquiry was, and whether I was being investigated for misconduct or any criminal offence, to which they replied that the Minister merely wanted to understand the circumstances surrounding the two reports. (See page **two** of the transcript of the interview marked **MS1**.) I only participated in the interview without legal representation on the basis of this assurance.
  3. This notwithstanding, when the report was released, which was not officially given to us but rather leaked to the Sunday times newspaper, it
- 

recommended that I must be charged criminally and departmentally, without even affording me an opportunity to deal with the allegations that were made against me upon which they came to conclusion that I should be charged.

4. When you objectively look at the totality of the evidence in this matter, it is apparent that although Khuba signed the so called "*first report*" with the recommendation that Dramat and Sibiya should be charged, he regarded this report as an interim report as he was aware that investigations were outstanding.
5. Mosing and Moeletsi came to a different conclusion relating to charging Sibiya, concluding that there was no evidence to support the charge and also indicated that expert evidence on cell phone records needed to be procured. They both regarded Khuba's so called "*first report*" as a draft report and marked it as such, see Mosing's report marked **MS2**.
6. The report emailed to me by Khuba after sending the so called "*first report*" to Mosing does not recommend charging Sibiya, see the email and the report attachment marked **MS3**. What was sent to me was his amended "*first report*," which amended his recommendation that Sibiya be charged.
7. The decision arrived at by both Mzinyathi and Baloyi, without having regard to both the so called "*first report*" signed by Khuba and the final report signed by myself, Khuba and McBride, is different from the recommendation of Mosing and Moeletsi as they decided that both Dramat and Sibiya should be charged, see the transcript of the interview marked **MS4**.
8. So too, the report, which is the final report signed by myself, Khuba and McBride, concludes differently that there is no evidence to support charges against Dramat, Sibiya and other officers.





9. From the above it is clear that, as is usual in matters of this nature, different people held different views and opinions. I fail to see how it can constitute a crime or a misconduct to have a different view on an investigation.

10. As it turns out, the NPA seem to have followed the recommendation that we made for which we were criminally and departmentally charged, as the NPA is now pursuing criminal charges only against Maluleke.

11. I now deal with the report *ad seriatim*. Where any paragraph is not specifically dealt with it must be taken that it is denied, if it does not accord with the general theme of this submission.

**12. Ad para 2.2.3**

The report is factually incorrect. DPCI would not have known the true facts of the rendition as at the time General Dramat received information from Col Maluleke. True facts were uncovered after investigation by Khuba.

**13. Ad para 2.3.1.1.2**

The report, refers to Regulation 5 (1) of IPID regulations, which must be read with section 7(4) of IPID Act. The regulation confirms that the investigator must submit the report to the Executive Director. However, the report deliberately fails to acknowledge that the so called "*first report*" signed by Khuba does not comply with the IPID Act and Regulations; the report seeks to elevate the so called "*first report*," which is non-compliant to a compliant final report. The only compliant final report is that which was signed by me, Khuba and McBride.

**14. Ad para 3.1.5**

The report, deliberately ignores to mention that Khuba was instructed to exclude me in the investigation and keep Moukangwe's involvement secret.

DK

**15. Ad para 3.1.36**

Even though Mosing starts his report of 13/02/2014 by saying the investigation was finalised, one needs to refer to paragraph 6.3.1 in the challenges part of report marked **MS2**. There the author acknowledges that the investigation was not finalised. He specifically states that *"the cell phone evidence however, does not corroborate his (Sibiya) presence during the operation. 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 out to the investigation team"*.

**16. Ad para 3.2.1.2**

There was a meeting which was held with Mr Mxasana of the NDPP about IPID high profile cases. In that meeting the issue of how the investigation was conducted prior to McBride's appointment was also discussed as well as the leaks to the media on the investigation. It was agreed that after IPID had finalised the investigation, the document would be referred to the NDPP for decision. There was therefore no need to involve Mosing or Moukangwe.

**17. Ad para 3.2.1.3**

The Werksmans report come to this conclusion without any legal basis; the report chose to ignore the fact that McBride and I did not see the so called *"first report"*.

**18. Ad para 3.2.1.4**

I am not able to say from which version Khuba worked when we were doing the final report as there were many versions of the report; I fail to understand how Werksmans comes to this conclusion.

**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

A S

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.

**20. Ad para 3.2.1.11**

Khuba briefed me about his meeting with McBride, but there was never any discussion about the report.

**21. Ad para 3.2.1.12**

The discussion between McBride and Angus about the review process of the investigation did not happen in my presence.

**22. Ad para 3.2.1.24.**


Khuba, in his supporting affidavit in the McBride High Court matter, deals extensively with the reason for submitting the final report (see attached affidavit marked **MS5**). After I became involved in the investigation, I provided my input into the final report that was prepared by us. So the report deliberately ignores all the reasons advanced by Khuba that necessitated the final report.

**23. Ad para 3.2.1.25**

This aspect is fully dealt with by Khuba in his supporting affidavit in the McBride Constitutional challenge, (see the attached affidavit marked **MS5**).

**24. Ad para 5.1.1.4**

Mosing's memorandum points to an investigation that was incomplete as his recommendation differs from that in the "*so called first report*"; in fact, he indicates that an expert should analyse the cell phone records as the evidence does not support criminal prosecution of Sibiya (see Mosing's memorandum to Jiba marked **MS2**). Further, Mosing and Moeletsi did not regard the report as final, but rather as draft. This confirmed in Moeletsi's statement, and Mosing, himself, made a note on the report that it was a draft, (see the attached Moeletsi's statement marked **MS6** and the so called "*first report*" marked "draft" by Mosing, marked **MS7**).



**25. Ad para 5.1.1.8**

It will be illogical not to amend the recommendation when the evidence did not support what was initially recommended by Khuba.

**26. Ad para 5.1.1.9 to 5.1.1.10**

This view is rejected as it is not based on fact.

**27. Ad para 5.1.2**

This aspect is fully dealt with by Khuba in his supporting affidavit in the McBride Constitutional challenge (see the attached affidavit marked MS5).

**28. Ad para 5.1.3.2.6**

If Khuba's version is accepted, then his reason for preparing the final report (*second report*) must be accepted.

**29. Ad para 5.1.3.2.2.3**

The emailed copy of the report sent to me by Khuba was the amended so- called "*first report*" which had been signed by Khuba.

**30. Ad para 5.1.3.2.2.4**

I admit the fact that a report was emailed to me. However, this was not the so called "*first report*" signed by Khuba. This was his amended "*first report*". It is a lie that that I ever went to the NPA offices with Khuba and Moukangwe to submit the so called "*first report*". Mosing also confirmed in my disciplinary hearing that he only recalled seeing me once and that was at the Total Petro Port garage.

**31. Ad para 5.1.3.2.2.5**

The Werksmans report deliberately distorts my version. I did not dispute that I worked with Khuba on the report. What I said is that Khuba was the one who was typing the documents on my computer, so the changes to the report were being done by him as we discussed them. This is

Y2

confirmed by Khuba in the interview with Werksmans as well as in his statement marked **MS5**.

**32. Ad para 5.1.3.2.2.6**

The Werksmans report concludes that I did not take them into their confidence because they did not like the truth I was telling them.

**33. Ad para 5.1.3.2.3**

McBride dealt comprehensively with the Werksmans report in his Constitutional court challenge litigation (see the affidavit marked **MS8**).

**34. Ad para 5.3.1**

Refer again to **MS8**.

**35. Ad para 5.4.13 to 5.4.15**

The transcript of the interview of Mzinyathi and Baloyi show that they made a decision to prosecute without having regard to both the so called "*first report*" and the second report. However, they became aware of both reports, but these reports did not influence their decision (see transcript marked annexure **MS4**).

**36. Ad para 6.4.5**

The conclusion is flawed as it is not based on the evidence. Even the prosecutors who dealt with this matter differed on who should be charged. In the same way, these two reports differ. The final report, however, had regard to the totality of the available evidence. After further evidence was revealed, there was nothing untoward in Khuba changing his views about who should be charged.

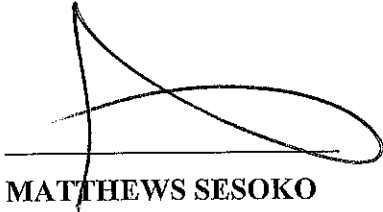
I know and understand the contents of this declaration

I have no objection to taking prescribed oath

I consider the prescribed oath to be binding on my conscience

PK





MATTHEWS SESOKO

I certify that the above signature is the true signature of the deponent who has acknowledged to me that he knows and understand the content of this affidavit, which affidavit was signed and sworn to at 19:35 in Pretoria on this 20 day of November 2019



Capt.  
Mark Wilson  
COMMISSIONER OF OATH

Rank: Captain

Independent Police Investigative Directorate

114 Madiba

Pretoria





**ANNEXURE MS 1.**



**MEETING****HELD AT:**

Offices of Werksmans Attorneys

**DATE:** 2015-04-01**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

VERBIS TYPING & TRANSCRIPTION SERVICES  
25 GRUNG ROAD, SELECTION PARK  
SPRINGS 1559

TEL: (011) 812-2226 FAX: 086 5112359 CELL: 083 5665750

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 1 -

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 Khuba 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.

MY

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 2 -

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  
10 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?

A 2

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 3 -

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  
20 acting as the executive director.

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

18

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 4 -

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

*See*



- 5 -

M SESOKO  
WERKSMANS ATTORNEYS/mb

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

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 6 -

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.

20 MR SESOKO: And the high profile case at the time was the Marikana investigation. It was the Cator Manor investigation, it was 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?

Jsh

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 7 -

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)

JK

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 8 -

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.

AP

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 9 -

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

JK



M SESOKO  
WERKSMANS ATTORNEYS/mb

- 10 -

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

AK



M SESOKO  
WERKSMANS ATTORNEYS/mb

- 11 -

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 Sibiya, 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

JK

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 12 -

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.

Y Y

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 13 -

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

Y k

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 14 -

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 22<sup>nd</sup>?

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

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 15 -

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.

20 MR JULY: Yes. He asked whatever questions that he was asking 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.

38



M SESOKO  
WERKSMANS ATTORNEYS/mb

- 16 -

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)

pg 4



M SESOKO  
WERKSMANS ATTORNEYS/mb

- 17 -

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.

JP

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 18 -

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.

b k

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 19 -

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  
20 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.

X P

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 20 -

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, sorry.

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.

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  
20 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,

8 P

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 21 -

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 signature]*



M SESOKO  
WERKSMANS ATTORNEYS/mb

- 22 -

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.

JK

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 23 -

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.

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 24 -

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 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 22<sup>nd</sup>.

MS BADAL: 22<sup>nd</sup>.

MR JULY: 22 January, this one here. If you look at page 9 and you

✂

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 25 -

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 22<sup>nd</sup>.

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

8 1

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 26 -

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.





M SESOKO  
WERKSMANS ATTORNEYS/mb

- 27 -

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

X P

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 28 -

which has been changed here, too much of it and that is what caused Mr Khuba's concern. But like I said, if then you do not know about the removal of this information, there is no point for us to take you through what was removed.

MR SESOKO: Ja.

MR JULY: Because you do not know what was removed and according to you, you had not been working on the report. But you knew that Khuba at some point sought advice from you about a report, which report was not given to you?

10 MR SESOKO: Ja he, basically his concern was that he needed to send a report. I cannot remember if it was to the Minister or to the NPA, but the ED was not there.

MR JULY: When was that? Can you remember?

MR SESOKO: I cannot remember.

MR JULY: It should have been before January.

MR SESOKO: It should have, it could have been around there, around January. So he wanted to know what to do under the circumstances.

MR JULY: Okay.

20 MR SESOKO: You see.

MR JULY: Okay.

MR SESOKO: And I think I could have said to him he must try and get hold of Ms Mbeki, because I would not know what to do as he had informed me that I should not get involved in this investigation, I would not want to get involved in that way.

JP

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 29 -

MR JULY: Ja. So when we say to you this then report was submitted to NPA as he indicated to you that he wanted to submit a report, it was ultimately submitted and there is no interim, there are recommendations, if you go to the last page, there are recommendations that based on the available evidence, the Independent Police Investigative Directorate recommends that Lieutenant General Dramat, Major-General Sibiya, Colonel Maluleke, Constable Kgadebi, Captain Sonkozi, Warrant Officer Makwe be charged criminally for kidnapping defeating the ends of justice  
10 (inaudible) at that, this is what they submitted.

MR SESOKO: I saw that.

MR JULY: So when he met with you in March, he knew what he would have told you and if you did not do that, then Mr Khuba is not an honest person, because you should have told him that there is a report which I have already submitted. So what we are working on now, we want to correct that report but Mr Khuba says listen, it is the same report that I wanted because based on the new information, it is this new information that makes me to meet with Sesoko and McBride.

20 MR SESOKO: Look, I can only tell you... (intervenes)

MR JULY: What you know.

MR SESOKO: What I know and my discussions with Khuba, and my discussions with Khuba was to the effect that remember he has been dealing with Mosing, you see, and then my understanding from what he at least told me was that he always had progress reports that he

g f

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 30 -

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 came 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.

X 8

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 31 -

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.

g K



M SESOKO  
WERKSMANS ATTORNEYS/mb

- 32 -

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.

20 MR SESOKO: Was signed by Mr Khuba and myself and...  
(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

Y 8

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 33 -

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 Moegsien, 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

Y 1

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 34 -

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 honestly.

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)

PK

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 35 -

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

X K

M SESOKO  
WERKSMANS ATTORNEYS/mb

- 36 -

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.



M SESOKO  
WERKSMANS ATTORNEYS/mb

- 37 -

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

J P

**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**

---

|                        |   |                  |
|------------------------|---|------------------|
| <b>FORUM OF ORIGIN</b> | : | Meeting          |
| <b>TRANSCRIBER</b>     | : | M Botha          |
| <b>DATE COMPLETED</b>  | : | 11 February 2016 |
| <b>NUMBER OF PAGES</b> | : | 39               |

**TRANSCRIBER**

:

*Botha*

VERBIS TYPING & TRANSCRIPTION SERVICES  
25 GRUNG ROAD, SELECTION PARK  
SPRINGS 1559  
TEL: (011) 812-2226 FAX: 086 5112359 CELL: 083 5665750

**TRANSCRIBER'S NOTE**

**PARTIES** Meeting between M Sesoko & Werksmans  
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.



**M BOTHA**  
**TRANSCRIBER**

11 February 2016

**VERBIS TYPING & TRANSCRIPTION SERVICES**  
**25 GRUNG ROAD, SELECTION PARK**  
**SPRINGS 1559**

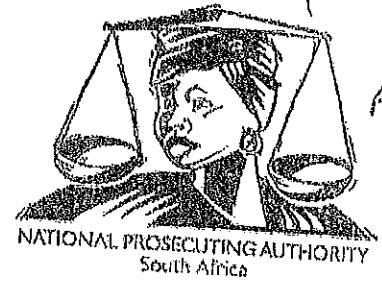
**TEL: (011) 812-2226 FAX: 086 5112359 CELL: 083 5665750**

PK

**ANNEXURE MS 2.**



MS2  
Annexure to AB Statement  
Office of the  
National Director of Public  
Prosecutions



INTERNAL MEMORANDUM

FROM: ADV A. MOSING  
HEAD: SPECIAL PROJECTS DIVISION

TO: ADV N JIBA  
DEPUTY NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

AND TO: ADV A CHAUKE  
DPP: SOUTH GAUTENG

SUBJECT: PROJECT X

DATE: 12 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.

3. SUMMARY OF FACTS

- 3.1 The first police operation took place on the 5<sup>th</sup> November 2010 where four Zimbabwean Nationals (Victims) were arrested in Diepsloot and detained 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
- JP



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 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 Wierda brug 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 Maluleka'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 12<sup>th</sup> 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 28<sup>th</sup> 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. Maluleka) in Pretoria. They complied with the instruction and received an acknowledgement of receipt from Maluleke. Ultimately the case of the two suspects and Dube was struck from the roll due to the court being informed that Dube was convicted in Zimbabwe and sentenced to life imprisonment and that he would never return to the SA to stand trial. Col Maluleke provided the I/O Meyer with an affidavit to this effect.

3.4 While the events pertaining to Dube transpired, Col Maluleke requested the same CIG members to further assist in tracing the outstanding person, namely Johnson Nyoni. Nyoni was subsequently traced also in Diepsloot on 26 January 2011 and arrested by the CIG members, working with Maluleke and the TRT unit of the Johannesburg Central police station (who were seconded to Diepsloot police station at the time and requested by Maluleke to provide support during the operation). The victim was taken directly to the offices of the DPCI head office in Pretoria, where the members that participated in the arrest of Nyoni were congratulated by Lt General Dramat. Photographs depicting the members involved

In the arrest, the victim (nyoni), two Zimbabwean police members and their vehicle, the firearm retrieved from Dube and handed to Maluleke (still in the forensic bag) were taken by a third Zimbabwe police official at the said DPCI head office. Nyoni was thereafter booked into and detained at Pretoria Moot police station on a charge of fraud. He was then booked out on the 28<sup>th</sup> 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
  - Wierda brug police officers
  - Police officials based at Beit Bridge border post
- Cell phone records
- AVL of DPCI members vehicles
- Success reports of the DPCI
- Itinerary and travelling claims of Maluleke
- Handwriting expert reports
- Documents and emails retrieved from Maluleke's computer
- Relevant dockets and court documents

#### 5. ANALYSIS

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

JK



- that Maluleke was tracing suspects in connection with ATM bombings and other SVC 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 therefor 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 border with South Africa and requested permission to enter the country at the blessing of Dramat. 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 suspects connected with the killing of the Zimbabwe police officer. Maluleke was tasked by Dramat to carry out the operations detailed above. He made use of the Gauteng Toms during the first and second operations, but later used other units of the SAPS as detailed above. Members of the CIG Pretoria involved during the latter operations received letters of commendation from the Zimbabwean

police authority as well as the Provincial Commissioner of Police in Gauteng. Maluleke seemingly was promoted as a result of his carrying out of this task.

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

## 6. CHALLENGES

- 6.1 The suspects in this case are police officials and are adept at keeping the truth from coming to light. Much of the documentation is still within their domain as they were not cooperative.
- 6.2 The events happened some time ago.
- 6.3 The involvement of other senior police officers could not be establish beyond reasonable doubt, including the head of the DPCI Gauteng, Major General Sibiya, who it is alleged was present during the first two operations, but the evidence is not conclusive. He is also responsible for the TOMS n 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 and are not considered cooperating witnesses in terms of section 204 witnesses are the head of the DPCI, Lt. General Dramat; Lt. Col. Maluleke; W/O Makoe, Constable Radebe and Capt Nkosi. The recommendation iro of Major General Sibiya is not supported on for the reasons mentioned above. In addition to the charges mentioned, we would also recommend a charge of fraud, alternatively forgery and uttering in respect of the home affairs documents that were submitted to the Civilian Secretariat.

Kind regards

ADV. B.T. MOELETSI



ADV A MOSING  
SPECIAL PROJECTS DIVISION  
OFFICE OF THE NDPP



Request for approval to travel to Polokwane -- Adv. B.T. Moeletsi

*[Handwritten signature]*

**ANNEXURE MS 3.**





Innocent Khuba  
to:  
Matthews Sesoko  
2014/01/23 10:42  
Hide Details  
From: Innocent Khuba/Limpopo/IPID  
To: Matthews Sesoko/NorthWest/IPID@IPID

1 Attachment



DIEPSLOOT RENDITIONS CASE REPORT DPP.docx

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





**ipid**

Department:  
Independent Police Investigative Directorate  
REPUBLIC OF SOUTH AFRICA

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

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

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

## Case Investigative Report

### 1. COMPLAINT IDENTIFICATION

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

*h p*

## 1. BACKGROUND

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

## 2. SUMMARY OF ALLEGATIONS

The following allegations were made:

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

## 3. CONSTITUTIONAL AND STATUTORY MANDATE

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

## 4. AVAILABLE EVIDENCE

### 4.1 STATEMENTS OBTAINED FROM INDEPENDENT WITNESSES

The following witnesses were interviewed and statements obtained.

**Shepard Chuma:** He will state that on Friday 05/11/2010 at 20h00 he was at 6954 John Malatjie Street Diepsloot together with Nelson, 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.

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

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

X 1

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

28

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

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

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

#### 4.3 **STATEMENTS OF HOME AFFAIRS OFFICIALS**

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

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

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

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

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

*Handwritten signature/initials*



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

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

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

**Richard Peter Eiberg**: He state that he is an Immigration Officer based at Beit Bridge. He will further state that when SAPS bring an illegal foreigner at Port of Entry they must hand in a Body Receipt form and not the Detention Warrant. The Warrant of Detention is not a deportation document and must not be produced or stamped at Port of Entry. He will dismiss the allegation that the stamp used on the documents claimed to be Home Affairs documents by the police is a deportation stamp.

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

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

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

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

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

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

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

P P

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Handwritten signature/initials*



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

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

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

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

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

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

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

h 2

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.



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

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

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

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

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

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

20/1

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 the at DPCI offices in Silverton for a braai. He will further state that when he arrived he found Zimbabwean police and some of his colleagues participating in a photo shoot. Shortly after the photo shoot Lt General Dramat came and thanked them for the job well done.

#### STATEMENTS OF DIEPSLOOT SAPS MEMBERS REGARDING GORDON DUBE

**Avhasei Witness 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.

*J R*

**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 Duman. He received a call from "Cowboy" Maluleke of the Hawks to hand the Case dockets Diepsloot Cas 93/01/2011 to his office in Silverton. He said the docket had to be investigated together with other dockets wherein God Dube is a suspect. He further said that the firearm which is an exhibit in his docket was used to kill a senior officer in Zimbabwe. Captain Maluleke took the docket and gave them acknowledgement of receipt. He will further state that Captain Cowboy in the presence of Constable Rambuda told him that he will facilitate the release of the suspect from prison and he will talk to the Prosecutor to withdraw the case. After sometimes seeing that the docket was under his name, he opened a duplicate and sent it to the prosecutor. The prosecutor decided to decline to prosecute and the duplicate docket was filed.

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

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

3 P



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

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

**The investigation at Alexandra Police Station uncovered the following;**

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

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

**The investigation at Silverton Police Station uncovered the following;**

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

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

**The investigation at Pretoria Moot Police station uncovered the following;**

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

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

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

**The investigation at Wierdabrug Police Station uncovered the following;**

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

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

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

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

## 5.2 DOCUMETARY EVIDENCE ACQUIRED FROM DPCI OFFICES.

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

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

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

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

## 5.3 EVIDENCE ACQUIRED FROM CAPTAIN MALULEKE'S SEIZED LAPTOP.

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

JP



**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 Sibiyi and General Dramat went to Zimbabwe to discuss matters of cooperation on cross border crimes. General Sibiyi was appointed as the coordinator on the cooperation issue between two countries. Other letters about the arrest of Zimbabwean national in connection with the murder of Zimbabwean police refers to the cooperation agreed during the same meeting.

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

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

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

#### 5.4 DOCUMENTARY EVIDENCE FROM HOME AFFAIRS

**Warrant of Detention of Illegal Foreigners (BI-1725)** – This document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the docket does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.

It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on both documents clearly shows that whosoever completed the document used the old form already completed and deleted affiliated information to put the information of the three foreign nationals. The handwriting expert in her findings has indicated that the signature in each document does not resemble the sampled signature provided by members of Home Affairs.

**Notification of The Deportation of an Illegal Foreigner (DHA-1689)** documents were produced by SAPS as proof that the Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Bait Bridge Border. However the form has been wrongly stamped and does not have finger prints of the deportee as required.

The stamp number 20 belonging to Bait Bridge was used and such stamp is not for that purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was used was off duty and the stamp was locked in the safe, she is the only person in possession of the key to the safe.

**Bait Bridge Duty Roster** – This is a duty register used by Immigration Officers at Bait Bridge. The register confirms that Immigration Officer Kobelo Margret Mohlahlo was off duty on 7<sup>th</sup> and 8<sup>th</sup> 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.

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

A 9

**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 5<sup>th</sup> November 2010 and 8<sup>th</sup> November 2010. The number called on these two occasions is the same and was called at times preceding critical milestones of the operation. Captain Maluleke also called Colonel Madilonga on 08/11/2010 at 19:10:47, when he was approaching Musina. The information is also corroborated by Colonel Madilonga.

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

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

## 5.6 **STATEMENTS OF SENIOR MEMBERS OF SAPS**

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

**Lt General Lebeya:** He will state that when he commented on the success report regarding the Zimbabwean Nationals arrested, he only did it as a practice. He will further state that Major General Sibiya has an automated messaging which 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

88



## 6. ANALYSIS OF EVIDENCE AND FINDINGS.

The following findings were made;

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

*X 2*

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 4<sup>th</sup> 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 5<sup>th</sup> 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 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 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 amounts 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 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 Ntente 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<sup>th</sup> September 2010. It goes further to state that there was joined operation between South African Police and Zimbabwean police to trace and arrest the suspects.
- There is evidence and witnesses corroborate each other that General Sibiya was both at the scene and planning venue. The meeting held between IPID and General Dramat on 2013/03/07 confirmed that General Sibiya was appointed to be the Head of TOMS which he created to trace wanted suspects. The telephone records of both Captain Maluleke and Major General Sibiya show interaction between them at various milestone of the operation. Following suggest the involvement of General Sibiya;
  - Witness stated that he was seen during the operation that took place on 22/11/2010 which led to the arrest of Prichard Chuma
  - In other operations cellphone record of Warrant Officer Makoe, Captain Maluleke and Col Neethling clearly show continuous contacts with General Sibiya during and shortly after the operation. Col Neethling also stated that he should have reported progress to General Sibiya during the operation. However the cell phone records of General Sibiya does not place him at the scenes and planning venues as claimed by witnesses. It is also clear that some of the witness claim to have heard that General Sibiya was in the car rather than seeing him personally.
  - The meeting held in Zimbabwe wherein General Sibiya was appointed as a coordinator on cooperation matters involving the two countries suggests that the operation could not have been done without his knowledge more so because his Gauteng Team was involved in the operation. However this inference cannot provide prima facie case that he was involved.
- There is insufficient evidence for the involvement of Former General Mzwandile Petros. However he addressed a letter dated 31/05/2011 to Provincial Head of Crime Intelligence in Gauteng appreciating the good work that members of Crime

A Y

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

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

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

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

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

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

- The cellphone record also show Captain Maluleke contacting Zimbabwean number in the morning of the 08<sup>th</sup> 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

9

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

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

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

#### RECOMMENDATION

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

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

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

Mr. HI KHUBA  
ACTING PROVINCIAL HEAD  
IPID: LIMPOPO



**ANNEXURE MS 4.**





S July/IPID  
17.04.15

GEORGE BALOYI  
SIBONGILE MZINYATHI

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

5

SIBONGILE MZINYATHI

and

GEORGE BALOYI

10

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

15

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

20  
25

AK

S July/IPID  
17.04.15

GEORGE BALOYI  
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. 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 20 25

2

S July/IPID  
17.04.15

GEORGE BALOVI  
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.

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.

10

15

MR JULY:

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

20

MR MZINYATHI:

Yes.

MR JULY:

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

25

24

S July/IPID  
17.04.15

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

JP V



8 July/IPID  
17.04.15

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

24

S July/IPID  
17.04.15

GEORGE BALOYI  
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?

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,

25

X P

S July/IPID  
17.04.15

GEORGE BALOVI  
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

JP

S July/IPID  
17.04.15

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

78



S July/IPID  
17.04.15

GEORGE BALOYI  
SIBONGILE MZINYATHI

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

Now, why a recommendation and not a decision?

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

MR BALOYI:

That's from 1 December 2014.

MR JULY:

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

MR MZINYATHI:

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

Y K

8 July/IPID  
17.04.15

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 transfers jurisdiction to another DPP. 5

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 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. 10 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 transferring this to you. 20

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

JR

S July/IPID  
17.04.15

GEORGE BALOVI  
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

P k

S July/IPID  
17.04.15

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

4 12



S July/IPID  
17.04.15

GEORGE BALOYI  
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...

5

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. You will be informed in due course."

20

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

25

*JP*

S July/IPID  
17.04.15

GEORGE BALOYI  
SIBONGILE MZINYATHI

MR MZINYATHI:

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

MR BALOYI:

Yes.

25

✓

S July/IPID  
17.04.15

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

X P

8 July/IPID  
17.04.15

GEORGE BALOVI  
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 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 BALOVI:

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.

S July/IPID  
17.04.15

GEORGE BALOYI  
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 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. I suppose they do not form part of your investigation.

20

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

A V



S July/IPID  
17.04.15

GEORGE BALOYI  
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

D /

8 July/IPID  
17.04.15

GEORGE BALOYI  
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

Y 8

S July/IPID  
17.04.15

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

*[Handwritten signature]*

S July/IPID  
17.04.15

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 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

X 9

S July/IPID  
17.04.15

GEORGE BALOYI  
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.

5

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.

10

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* 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.

20

Already we have our own view about what should

25

*J P*



S July/IPID  
17.04.15

GEORGE BALOYI  
SIBONGILE MZINPATHI

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  
Mkandawire  
ignores  
this information*

8 4

8 July/IPID  
17.04.15

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.

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  
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  
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

15

20

25

1. evidence was  
1. process  
1. this  
1. important  
1. information

X e

S July/IPID  
17.04.15

GEORGE BALOYI  
SYBONGILE 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, 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

SP 8

8 July/IPID  
17.04.15

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.

5

MR JULY: Who is this IO?

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

MR JULY: Who is the IO?

10

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

15

20

Maybe before I get to that, during the 25

8 9

S July/IPID  
17.04.15

GEORGE BALOYI  
SIBONGILE MZINYATHI

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

MR JULY: Did he say when he asked for that?

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

X . 4



S July/IPID  
17.04.15

GEORGE BALOYI  
SIBONGILE MZINYATHI

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

5

10

15

20

25

X g

S July/IPID  
17.04.15

GEORGE BALOYI  
SIBONGILE MZINYATHI

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. 5 10 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

8 ge

8 July/IPID  
17.04.15

GEORGE BALOYI  
SIBONGILE MZINYATHI

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

X f

S July/IPID  
17.04.15

GEORGE BALOYI  
SIBONGILE MZINYATHI

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.

7 9

S. July/IPID  
17.04.15

GEORGE BALOYI  
SIBONGILE MZINYATHI

When I was debating the various scenarios with you, it doesn't mean a firm decision had been taken. All I wanted was for you to tell me what your views are, and what evidence there is to sustain that particular scenario. We then 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

Indication  
that even  
from that  
was, not  
convicted  
that question  
is complete.

8 9



S July/IPID  
17.04.15

GEORGE BALOYI  
SIBONGILE MZINYATHI

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

89

S July/IPID  
17.04.15

GEORGE BALOYI  
SIBONGILE MZINYATHI

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

X 4

8 July/IPID  
17.04.15

GEORGE BALOYI  
SIBONGILE MZINYATHI

*Misinformed  
does not  
understand  
investigation*

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

*X* *ge*

S July/IPID  
17.04.15

GEORGE BALOYI  
SIBONGILE MZINYATHI

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

MR BALOYI: Yes, it's more about his struggle credentials.

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

MR BALOYI: Actually now that you mention it, Mr July, I 15 think during our conversation, when he mentioned that 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 conclusion, when other people, including him, 25

x f

S July/IPID  
17.04.15

GEORGE BALOYI  
SIBONGILE MZINYATHI

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

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

Handwritten marks: a stylized '7' and a signature.



S July/IPID  
17.04.15

GEORGE BALOYI  
SIBONGILE MZINYATHI

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

MR BALOYI: Of which report?

MR JULY: Page 9 of the 18 March report. 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 20  
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." 25

X

S July/IPID  
17.04.15

GEORGE BALOYI  
SIBONGILE MZINYATHI

MR JULY:

Yes. After that it's supposed to say:

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

5

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 ..."

10

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.

15

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 ..."

20

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

25

7 8

S July/IPID  
17.04.15

GEORGE BALOYI  
SIBONGILE MZINYATHI

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

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

MR BALOYI: MADILONGA is no more.

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

MR BALOYI: Yes, the change.

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

MR BALOYI: I'm with you.

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

MR BALOYI: Yes.

S July/IPYD  
17.04.15

GEORGE BALOYI  
SIBONGILE MZINYATHI

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

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

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

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

10

And then it says:

"General Dramat had a meeting ..."

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

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

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

"EMAILS BY CAPTAIN MALULEKE."

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

MR BALOYI: "He sent emails ..."

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

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

25

X 8

S July/IPID  
17.04.15

GEORGE BALOYI  
SIBONGILE MZINYATHI

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

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

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

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

Y f



S July/IPID  
17.04.15

GEORGE BALOYI  
SIBONGILE MZINYATHI

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 10  
Sibiya at the crime scene."

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

8 2

S July/IPID  
17.04.15

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

8 9

S July/IPID  
17.04.15

GEORGE BALOYI  
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 5  
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 10  
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

S

4

**ANNEXURE MS 5.**



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.

H / K

X Y



3 I have read the answering affidavit filed by the First Respondent (the Minister) and wish to address the allegations made in respect of the following:

3.1 How the complaint was received by IPID and the initial investigation of the matter; and

3.2 The nature of and reasons for the differences between the preliminary IPID report (of 22 January 2014) and the final IPID report that I read and signed (of 18 March 2014), particularly as regards the findings and recommendations made in respect of Dramat and Sibiya.

4 I have also read the replying affidavit of Mr Robert McBride, and confirm the correctness of its contents insofar as what is stated there concerns me.

#### HOW THE COMPLAINT WAS ASSIGNED TO IPID AND THE INVOLVEMENT OF SAPS' CRIME INTELLIGENCE

5 I was first assigned to investigate the involvement of the SAPS, including members of the DPCI, in the illegal rendition of Zimbabwean nationals towards the end of 2011, although I was only given the green light to investigate in October 2012.

6 The circumstances in which the case was initially investigated and assigned to me were very unusual.

- 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

renditions matter. Moukangwe advised Sesoko that an investigation had already been conducted by CIG, and that the matter was being handed over to IPID on the instructions of the Minister of Police (Mr Nathi Mthethwa). After consulting the new Acting Executive Director of IPID, Ms Koekie Mbeki ("Mbeki"), Sesoko handed over the CIG's docket to me for investigation. These facts are confirmed by Sesoko.

6.5 Shortly after I began my investigations, I briefed Mbeki on the case and informed her that I would consult with Sesoko in the course of the investigation. This was common practice. As the National Head of Investigations at IPID, Sesoko was ordinarily consulted and briefed on all national investigations.

6.6 To my surprise, Mbeki categorically instructed me not to work with or discuss the investigation with Sesoko. Mbeki instructed me instead to collaborate with Moukangwe from CIG in the conduct of the investigation, and to keep this collaboration secret. This was the first and only time that I had received such instructions about an investigation.

6.7 Mbeki's instruction was an unusual and problematic one because members of the CIG were themselves involved in the arrest of the Zimbabwean nationals that were subsequently rendered to Zimbabwe. It also seemed to be a problematic instruction given the widely known history of animosity between Lieutenant-General Richard Mdluli ("Mdluli"), the previous Divisional Commissioner of

CIG, and Major-General Shadrack Sibiya ("Sibiya"), then the Provincial Head of the DPCI for Gauteng Province and who was one of the subjects of the investigation.

6.8 I was instructed by Mbeki to report directly to her in the matter, and to keep her abreast of the progress in the investigation through regular reports. I sent weekly progress reports on the investigation to Mbeki, and also periodically sent her copies of the working draft of the investigation report.

7 On perusing the file of CIG's investigation of the rendition, I became concerned that the investigation that CIG had conducted was not reliable or adequate. This was because –

7.1 The CIG investigation file comprised of statements of CIG members who were involved in the rendition operation, as well as statements of Zimbabwean nationals (including the victims of the illegal renditions and relatives of victims). However there were no statements from any Home Affairs officials or members of the Tactical Operations Management Section of the DPCI ("TOMS") who were allegedly involved in the rendition operation.

7.2 The statements that CIG had obtained, particularly those of the CIG officials, were replete with hearsay. Also, the language used to describe Sibiya in one of the CIG witness statements was remarkably similar to the language used by a CIG official to describe Sibiya in another case involving Sibiya that I was

investigating (under case number Boksburg CAS 322/04/2011, 486/03/2011 and 21/04/2011). While I do not have access to the Boksburg docket (it is in the possession of the Acting Executive Director, Mr Kgamanyane), and do not recall the exact wording used in the affidavit in that case, Sibiya is described in both as the policeman dressed in a suit and sitting in a BMW.

7.3 It also seemed suspicious to me that certain of the Zimbabwean nationals identified Sibiya by name in their affidavits obtained by CIG, although it was unlikely that they would know his identity.

7.4 I note that, in his interview with Werksmans, Advocate Mosing expressed similar concerns about the credibility of the CIG officers' evidence. I attach the relevant excerpt from his transcript as "IK1".<sup>1</sup>

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

<sup>1</sup> 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 Sibliya on the strength of the CIG's investigation, but the NPA had declined to do so.

#### THE SUBMISSION OF THE JANUARY 2014 REPORT

- 11 On 22 January 2014, I submitted to Advocate Mosing of the NPA ("Mosing") what I will, for the sake of convenience, refer to as "the January 2014 report" of the IPID investigation.
- 12 I was placed under considerable pressure by Mosing to submit a signed version of the January 2014 report, with recommendations, so that he could hand over the matter to the DPP. Towards the end of 2013, Mosing started insisting that I finalise my investigations and give him the report. My sense was that he was under a lot of pressure to wrap up the case.
- 13 While I did as I was instructed, I was not satisfied that the January 2014 report was in fact a final report because my investigations were not complete. After I submitted the January 2014 report I continued with the

7

M

H1

J

P

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

8 

H 1

2 9

CIG) that Sibiya was present at the arrests of the Zimbabwean nationals in November 2010.

14.5 I was also still awaiting an expert analysis of the two statements that Colonel Madilonga ("Madilonga") had made. Madilonga's first statement was obtained by Warrant Officer Nthlamu of the DPCI's Integrity Management Unit on 30 November 2011. I obtained the second statement on 8 April 2013. I sought an expert analysis of the second statement from Precision Forensics, because Madilonga's evidence was essential to sustaining any charges against Dramat and I had concerns about Madilonga's credibility. The main red flag was a recordal in Madilonga's second statement, which suggested that he had been placed under pressure to give manufactured evidence in November 2011:

*"In 2012 of which I cannot remember the month and date, Captain Maluleke phoned and told me that there is a person from Head Office who will be coming for investigation and that I must cooperate with him. Later a person came to Thohoyandou and he had a draft statement. He told me that there is a problem with the operation which was once done with the Hawks and they would like my statement to be in a particular format. He told me that the statement is for covering up and the parliament has some issues about the operation. I read the statement and realize that it was to close the gaps and not a true reflection of what happened."*

14.6 A copy of Madilonga's three statements are attached marked IK2. My concerns about Madilonga's credibility were confirmed by the expert analysis that I subsequently received from Precision Forensics on 17 March 2014, a copy of which is attached marked IK3. Precision Forensics concluded that Madilonga's statement

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"*<sup>2</sup> and that, therefore, *"according to Khuba, the First Report was submitted as a 'final report'."*<sup>3</sup>

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*

<sup>2</sup> Werksmans' report at para 3.1.19. See also para 3.1.33.

<sup>3</sup> Werksmans' report para 3.1.20.

*Secretary of Police was not part of the report, and the other statement I cannot remember, but it was quite a substantial number of statements.*<sup>4</sup>

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,<sup>5</sup> and did indeed furnish a warning statement on 21 February 2014. A copy of that statement is attached as IK8.

17 In addition the outstanding evidence, I was also concerned that the formalities required for finalising an IPID investigation could not be concluded before I submitted the January 2014 report. I conveyed these concerns to Mosing at the time.

18 I indicated to Mosing that the report had to be signed off by the Acting Executive Director of IPID and that it was contrary to IPID's policy for an investigative report to be signed off only by the investigator. I explained to Mosing that meeting these requirements was difficult at the time, because –

18.1 With the imminent appointment of McBride as the Executive Director, Mbeki was seldom at the office and I could not reach her

<sup>4</sup> Interview 27 March 2015, Transcript, p. 41.

<sup>5</sup> Werksmans' report para 3.1.25.1.2.



- 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.<sup>6</sup>

<sup>6</sup> 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.

25 I explain each of the differences that the Minister contends evidences a sinister motive to "suppress" evidence against Dramat and Sibiyi. There is no basis for the Minister's allegations.

26 First, it is correct that the summary of Madilonga's statement was changed to remove Madilonga's description of a call that Madilonga made to Dramat about two weeks before 8 November 2010. The crux of what was removed was the statement that *"He [Maluleke] phoned General Dramat on his cell phone and he responded by saying that he is aware of the Zimbabwean police and he must let them come"*.

27 This reference was removed because there was no evidence to corroborate Madilonga's allegation of what Dramat had stated when called by Madilonga, and because the content of the call could not otherwise be verified. The evidentiary value of the statement was thus weak.

28 The statement also did not advance the case against Dramat in any material way, because there was no dispute that Dramat met with Zimbabwean police officials from time to time. This was admitted by Dramat in his warning statement.<sup>7</sup> Even if Dramat had known of, and admitted, the Zimbabwean police officials to South Africa, this did not

<sup>7</sup> Dramat warning statement of 23 November 2013 (Annexure IK7) at para 25.

evidence any knowledge or involvement on Dramat's part of the illegal rendition operation.

- 29 The fact that the call was made and received by Dramat was not suppressed, as this was reflected in Dramat's cell phone records contained in the docket. Also, the fact that Madilonga was instructed to call Dramat by his superior, Brigadier Makusha is recorded at p. 10 of the report. The full statement of Madilonga was also contained in the docket.
- 30 Second, the contents of the success report of 4 February 2011 (annexure NM3 to the Minister's answering affidavit) were changed in the March 2014 because the credibility of this report was doubtful.
- 31 What was removed was the following: *"Paragraph 'A1' of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI office about the Nationals who shot and killed one of their senior officers. Paragraph '3' states that Captain Maluleke was tasked to trace and arrest the said Nationals."*
- 32 As is recorded in both the January and March 2014 reports (at para 5.3), this success report was generated on Maluleke's laptop, which was seized by IPID. The provenance of this report made it inherently unreliable.

- 33 While Verster had signed the report, she did not attend the alleged meeting, and thus could not attest to the accuracy of the report's contents. No other person could attest to the fact of the alleged meeting, or to what is recorded in the success report as having been stated at the meeting.
- 34 The only other evidence that suggests that Dramat met with Zimbabwean police officials is the statement of Mr McIntosh Polela, the former spokesperson of DPCI (attached to the Minister's answering affidavit as NM7). But Polela only joined the DPCI in December 2010 – that is, after the alleged meeting of 5 November 2010 and so his evidence could not be relied upon to prove the alleged meeting.
- 35 There was also no evidence that Dramat in fact received the success report.
- 36 The unreliability of the success report is highlighted in the conclusions in the March 2014 report, where the following is stated (at the sixth bullet):  
*"The success report that claim[s] that Lt General Dramat had a meeting with the Zimbabwean police lacks detail about the meeting itself. There is no indication of what was discussed and who was part of the meeting. It is on this basis that a prima facie case cannot be premised on speculation, but need[s] corroborated facts."*
- 37 The entire success report was, in any event, contained in the docket.

- 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 Sibuya's visit to Zimbabwe in August 2010



and Sibiya's appointment as coordinator on cross-border crimes between South Africa and Zimbabwe, were removed. Sesoko and I agreed that these details had little relevance and evidentiary value to the allegations, as they concerned a visit by Dramat and Sibiya of more than a year before. There was also no denial on the part of Dramat or Sibiya that they went to Zimbabwe on this occasion and of Sibiya's appointment as coordinator. In any event, the letter was contained in the docket.

43 Fifth, we removed the allegation in the January 2014 report that Maluleke had "routed to General Dramat" a letter describing the rendition of Moyo to Zimbabwe because it was not corroborated. The letter referred to was found only in electronic copy on Maluleke's computer. While the electronic copy was addressed to Dramat, there was no evidence that the letter was ever sent to and received by Dramat. The January 2014 report was thus inaccurate in suggesting that there was evidence that letter had in fact been sent to Dramat.

44 Sixth, as regards the amendments to the cell phone analysis:

45 The amendments to the analysis of Sibiya's cell phone records was informed by the expert mapping and location analysis of the cell phone records, which I only received after the January 2014 report.

- 46 The import of the expert analysis is discussed at various points in the evaluation of evidence in the March 2014 report (including at pages 31 and 33), and is summarised in the findings as follows:

*"The evidence that suggest[s] that Major General Sibiya was at the scene during the arrest of Zimbabwean nationals is contradicted by cell phone evidence that suggests that he was nowhere near the scene. It is clear that members of Crime Intelligence had been trying hard to pull Major General Sibiya into the operation. This can be deduced from the following quotations in their statements, "I saw a figure in a BMW and Warrant Officer Makoe referred to him as General Sibiya", and "I heard that General Sibiya was in a blue BMW". The cellphone record of Major General Sibiya was acquired and analysed by an expert, it was discovered that at the time the witnesses claim that he was at Fourways Shopping Centre, he was in Pretoria."*

- 47 The reference to the fact that more than 30 SMSes were sent from Sibiya to Dramat (and other SAPS officials) was removed from the March 2014 report because it had no evidentiary value. Given the working relationship between Dramat and Sibiya, nothing could be deduced from the fact that Sibiya sent automated SMSes to Dramat. The content of Sibiya's SMSes could also not be ascertained, since I could not retrieve either Sibiya or Dramat's cell phones from the time. At the time of my investigation, I was told that these phones had been returned to DPCI Supply Chain, but the department no longer had them. It was thus impossible to establish, from an examination of the handsets, the content of the SMSes.
- 48 Also, since Dramat never responded to the SMSes sent by Sibiya it is not known and could not be verified whether these were even received.

- 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

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"*.<sup>8</sup> 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.

<sup>8</sup> Answering Affidavit para 42.9.

*M*

*H1*

*Y* *J*



- 53 Ninth, the reference to the letter sent by Zimbabwean authorities to Colonel Ntteni (which listed the names of two of the suspects wanted in Zimbabwe, and certain of the SAPS officers in the arrest of the Zimbabwean nationals) was removed from the March 2014 report because it had little evidential value. The letter was nevertheless in the docket.
- 54 There was no evidence that this letter was sent to Dramat – it was only sent to Colonel Ntteni of CIG. A copy of the letter, which is addressed only to Ntteni is attached marked IK9. Subsequent related correspondence was also circulated, but only among certain officers at CIG. This correspondence is attached marked IK10.
- 55 There is also no evidence to suggest that Dramat lied to Parliament, and did not genuinely believe that the named Zimbabweans had been deported as illegal immigrants (as he had been advised by Maluleke). In this regard, the March 2014 report stated (at p. 33) that:

*"[W]hen the renditions issue hit the media at the end of 2011, acting National Commissioner of the South African Police Services Lt General Mkhwanazi (A99) called the head of DPCI Lt General Dramat to explain what happened. Lt General Dramat attended the meeting with Captain Maluleke and for the entire duration of the meeting, Captain Maluleke explained why he arrested Zimbabwean nationals. If Lt General Dramat had full knowledge of the purpose of the arrest, he could have provided an explanation or justification during the meeting thereby convincing the acting National Commissioner that the operation was both lawful and necessary. It is in the same breath that Captain Maluleke provided a report to Lt General Dramat which was used as a basis to respond to a parliamentary question."*



56 I trust that the above explanations will remove any misunderstanding as regards the contents of the March 2014 report.

57 I confirm that the March 2014 report is the only report that I consider to be a "final report" on the renditions investigation. The recommendations in the March 2014 report are informed by all the evidence, and it has been properly subjected to internal review and authorisation, in accordance with IPID policy.



INNOCENT KHUBA

THIS DONE SIGNED AND SWORN TO BEFORE ME AT *Polokwane*  
THIS THE *19<sup>th</sup>* DAY OF *June* 2015 AT *17:35*

THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HAS NO OBJECTION TO SWEARING THE PRESCRIBED OATH AND THAT SAME IS BINDING ON HIS CONSCIENCE.

  
COMMISSIONER OF OATHS

CAPACITY *LEON FREDERICK DE LANGE*  
*COMMISSIONER OF OATHS*  
*PRACTISING ATTORNEY*  
*LEGNUNPARK*  
*20 WATERMELON STREET*  
*POLOKWANE R.S.A.*

AREA

**ANNEXURE MS 6.**



**AFFIDAVIT**

I, the undersigned,

**BILLY TLHABANE MOELETSI**

Do hereby make oath and say that:

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

**AD PARAGRAPH 5-13 OF ADV MOSING'S AFFIDAVIT**

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

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

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

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

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

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

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

g V

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

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

He refers  
to it as  
a draft.

YV

3  
BT MI



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

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

7.11 I had no further dealings with this matter.

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

B. Maerets

DEPONENT

FF

4  
BT MI

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

COMMISSIONER OF OATHS

MABELA ISAAC MUTHSHWAYO  
DPCI - CATS  
218 VISSAGIE STREET  
PRETORIA  
SAPS 1, CAPTAIN

**ANNEXURE MS 7.**





ipid

Department:  
Independent Police Investigative Directorate  
REPUBLIC OF SOUTH AFRICA

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

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

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

### Case Investigative Report

#### 1. COMPLAINT IDENTIFICATION

|                               |                               |
|-------------------------------|-------------------------------|
| 1.1 CCN                       | 2013030375                    |
| 1.2 Incident Description Code | 312                           |
| 1.3 Type of Report            | Criminal Prosecution          |
| 1.4 Report Date               | 22 January 2014               |
| 1.5 Date of Last Report       | 09 November 2012              |
| 1.6 Complaint Category        | Section 28(1)(f) and 28(1)(h) |
| 1.7 Complainant               | Shepard Chuma and others      |
| 1.8 Date of Complaint         | 10 October 2012               |
| 1.9 SAPS CR/CAS Number        | 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                |

**ANNEXURE MS 8.**





IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG PROVINCIAL DIVISION, PRETORIA)

In the matter between:

**ROBERT MCBRIDE**

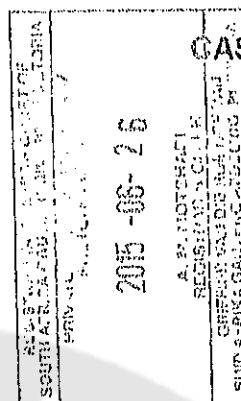
Applicant

and

**MINISTER OF POLICE**

First Respondent

**MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION** Second Respondent



CASE NO: 6588/15

**REPLYING AFFIDAVIT**

I, the undersigned

**ROBERT MCBRIDE**

do hereby make oath and state as follows:

- 1 I am an adult male, currently suspended from my position as the Executive Director of the Independent Police Investigative Directorate ("IPID"), situated at 114 Madiba Street, Pretoria. I am the applicant in this matter.
- 2 The facts set out in this affidavit are true and correct, and are within my personal knowledge unless the context indicates otherwise. Where I make legal submissions, I do so on the advice of my legal representatives.

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*

866

- 3 I have read the answering affidavit filed by the First Respondent (together with their annexures and confirmatory affidavits) and the explanatory affidavit filed by the Second Respondent.
- 4 In its explanatory affidavit, the Second Respondent has indicated that it will abide the decision of this Court and will withdraw its notice of opposition to this application. The Second Respondent's submissions are entirely of a legal nature, and I do not dispute those submissions. I accordingly accept that this Court ought not to make any order of costs against the Second Respondent.
- 5 For the sake of convenience, I refer to the First Respondent as "the Minister".

#### AMENDMENTS TO THE RELIEF SOUGHT

- 6 Since the supplementary affidavit and amended notice of motion was filed in this matter, developments have arisen that require amendments to the relief that I seek in this application.
- 7 At the time that I deposed to the supplementary founding affidavit, on 2 April 2015, I had been placed on precautionary suspension pending an "investigation and possible disciplinary enquiry".<sup>1</sup> On 6 May 2015, I received a notice from the Minister to attend a disciplinary inquiry,

<sup>1</sup> Annexure RM2 to the Supplementary Founding Affidavit: Letter of suspension dated 24 March 2015 (second last paragraph).

PK

P

MP 2

D

OPG

scheduled to take place on 21 May 2015, accompanied by a charge sheet.<sup>2</sup>

8 I am accordingly now prejudiced not only by the Minister's unlawful decision to suspend me from office, but also by the Minister's subsequent unlawful decision to institute a disciplinary inquiry against me.

9 It appears that, in instituting the disciplinary inquiry, the Minister has relied on the same statutory powers that informed his suspension decision – namely, s 6(6)(a) of the IPID Act, the Public Service Act and chapter 7 of the SMS Handbook (presumably read with chapter 8 which applies to Heads of Department).<sup>3</sup>

10 I have therefore sought to amend the relief in the Amended Notice of Motion to include the review and setting aside of the Minister's decision to institute the disciplinary inquiry.

11 It has also become necessary for me to extend the declaratory relief to include the following provisions (which address disciplinary action against Heads of Department in the Public Service):

11.1 Sections 16A(1) and 16B of the Public Service Act, 1994 ("the PSA");

<sup>2</sup> The charge sheet is annexure NM1 to the First Respondent's Answering Affidavit.

<sup>3</sup> Annexure FM2 of the Supplementary Founding Affidavit: Letter of suspension dated 24 March 2015 (p. 2 of the letter).

Y V

MP

MP 3

Op. 6

11.2 Paragraphs 2.5, 2.6, 2.7(1), (3), (4) and (5) of chapter 7, and paragraph 19 of chapter 8, of the SMS Handbook; and

11.3 Regulation 13 of the Regulations for the Operation of the Independent Police Investigative Directorate (GNR 98 of Government Gazette 35018 of 10 February 2012).

12 A notice of Intention to amend was served and filed in accordance with Rule 28(1) of the Uniform Rules of Court on 20 May 2015. A copy is attached for the sake of convenience as RJM 1.

13 On 29 May 2015, the Minister's attorneys advised my attorneys that they opposed the application to amend on the basis that *"it seeks to introduce a new case which is not pleaded in the founding papers and [the] supplementary affidavit"* and would prejudice the Minister who is entitled to answer the new case. A copy of this correspondence is attached as RJM2.

14 I do not accept that the proposed amendment constitutes "a new case", as the Minister contends. The reasons for the challenge to constitutionality of the Minister's disciplinary powers under these provisions vis-à-vis that Executive Director of IPID are the same as those that pertain to the Minister's power of suspension and removal. I seek the review and setting aside of the Minister's decision to institute the disciplinary inquiry against me on the same legality ground (the first ground) as is pleaded in the founding affidavit.

YR

MP

MP<sub>4</sub>

MP

MP

869

15 Nevertheless, I do not dispute that the Minister is entitled to answer the further relief sought. I accordingly invite the Minister to file a supplementary affidavit within ten days of the filing of this affidavit, only on the discrete issues raised by the amendment – i.e., pertaining to the application and constitutionality of the provisions sought to be challenged in the amendment. This would alleviate the prejudice alleged by the Minister. In the circumstances and to the extent necessary, at the hearing of this matter my counsel will seek to effect the amendment concerned.

#### OVERVIEW OF REPLY TO THE MINISTER'S ANSWERING AFFIDAVIT

16 Having considered the Minister's answering affidavit, I recognise that material disputes of fact have arisen in this application in respect of my allegations as to the reasons and motives of the Minister in suspending me, and as regards the Minister's allegations against me of misconduct. I am advised and submit that these disputes cannot be determined by this Court on the papers, and ought properly to be dealt with at constitutionally compliant inquiry, where oral evidence can be led and tested.

17 Accordingly, I do not persist in reviewing the Minister's decision to suspend me on the second and third grounds set out in the founding affidavit (i.e., that the Minister's decision is vitiated by an ulterior purpose

JP

JP

NP

5

JP



870

of Improper motive; and the Minister's decision is irrational and unreasonable).<sup>4</sup>

18 I do continue, however, to seek the review and setting aside of the Minister's decision to suspend me on the basis that the Minister's exclusive power to suspend or remove the Executive Director of IPID – under section 6(6) of the IPID Act, section 17(1) and (2) of the PSA, the relevant provisions of chapters 7 and 8 of the SMS Handbook, or the common law – is unconstitutional and invalid; alternatively, that the Minister's exercise of this power against me has infringed the independence of IPID.<sup>5</sup> As indicated, I seek the review of the Minister's decision to institute disciplinary proceedings against me on the same ground.

19 In the main, the Minister's answering affidavit details the Minister's allegations against me of misconduct, upon which the Minister relies to justify his suspension of me as the Executive Director of IPID. The Minister contends that he suspended me as a result of three instances of misconduct on my part.<sup>6</sup> It is alleged that –

19.1 I attempted to protect Lieutenant-General Anwa Dramat (“Dramat”) and General Shadrack Sibiya (“Sibiya”) of the DPCI from the consequences of their alleged criminal conduct and misconduct by altering, or causing the alteration of, the

<sup>4</sup> FA paras 30.2 and 30.3.

<sup>5</sup> FA para 30.1.

<sup>6</sup> AA para 8, read with the charge sheet annexed as NM1.

79

MP

6

870

recommendations, findings and evidence in the IPID report on the rendition of Zimbabwean nationals that incriminated them;

19.2 I gave instructions to members of the IPID staff – specifically Mr Innocent Khuba (Provincial Head: IPID Limpopo) (“**Khuba**”) and Mr. Matthews Sesoko (Chief Director: IPID Investigation and Information Management) (“**Sesoko**”) – to act in a manner for the same improper purpose; and

19.3 That I caused the advance payment of R500,000 to be made by IPID to Adams & Adams Attorneys for the present litigation, in violation of the Public Finance Management Act 1 of 1999 (“**PFMA**”).

20 I categorically deny these allegations. I do not set out an exhaustive response to the allegations and charges against me in this affidavit, as they are no longer pertinent to the relief that I seek in this application and will be the subject of an inquiry in due course.

21 However, given that I am accused of “self-servingly” failing to set out a proper sequence of the facts,<sup>7</sup> and that my reputation and that of IPID and certain of its officials have been impugned by the Minister in his answering affidavit, I address the following in some detail:

21.1 The facts pertaining to my involvement in the finalisation of the IPID report; and

---

<sup>7</sup> AA para 11.

24

MP

7

ORG

871

21.2 The alleged inconsistencies in my evidence in the founding affidavit filed in this matter and statements that I made at the Werksmans' Inquiry.

22 In addition, I refer the Court to the supporting affidavits of Khuba and Sesoko, which respond to the Minister's allegations regarding:

22.1 How the complaint was received by IPID and the initial investigation of the matter; and

22.2 The nature of and reasons for the differences between the preliminary IPID report (of 22 January 2014) and the final IPID report (of 18 March 2014), that I read and signed on 9 April 2014, particularly as regards the findings and recommendations made in respect of Dramat and Sibiyi.

23 Before addressing the facts, I wish to correct certain misconceptions or misrepresentations by the Minister as to the nature of my case. The Minister contends that my application is premised on the suggestion that the Minister ought to have "*done nothing*" in respect of his concerns about misconduct on my part;<sup>8</sup> and that the employees of IPID, including the Executive Director are "*not accountable*" for their conduct;<sup>9</sup> and that I "*appear to believe that [I am] not answerable to anyone as head of IPID*".<sup>10</sup> These contentions are incorrect and utterly unfounded.

<sup>8</sup> AA para 10.

<sup>9</sup> AA para 102.

<sup>10</sup> AA para 87.2.

Y4

MP

MP

OPG

873

24 I do not contend that the Executive Director of IPID is not accountable and may never be subjected to disciplinary action. This has never been my case. I contend only that disciplinary action against the Executive Director, including suspension, the institution of a disciplinary inquiry and removal, cannot be taken by the Minister unilaterally as the IPID Act currently purports to permit, but must be subject to guarantees necessary to protect the independence of IPID, including the effective oversight of Parliament.

25 The Minister instituted disciplinary proceedings against me on 6 May 2015. I dispute the lawfulness of these disciplinary proceedings, primarily on the basis that they have been instituted by the Minister in the exercise of the statutory powers that I contend are unconstitutional. I do not, however, contest the institution of a disciplinary inquiry into the allegations against me *per se*, nor do I suggest that I am immune from removal from office.

26 I readily accept that I may be called upon to explain and account for my conduct at an inquiry that adequately safeguards the independence of IPID and its Executive Director. However the inquiry that the Minister has instituted against me does not meet this standard. The inquiry has been instituted exclusively by the Minister; is chaired by an appointee of the Minister alone; and its findings may be implemented by the Minister without any Parliamentary oversight and intervention. This is plainly inimical to the job security of the Executive Director.

MY

[Signature]

MP

9

[Signature]  
OPG

874

27 I do not accept that it is lawful for the Minister, acting entirely at his own instance and without any special measures that ensure oversight by Parliament, to decide to suspend me. The lawfulness of the Minister's power to suspend cannot be considered in isolation of its legal consequences, and in particular the nature of the inquiry and the removal decision that follows it. A lawful decision to suspend the Executive Director requires that –

27.1 It is followed by an inquiry that is sufficiently independent of the Minister; and

27.2 Any removal decision consequent upon suspension and an inquiry must be subject to parliamentary oversight, with a clear mechanism for parliamentary intervention.

28 The lack of adequate safeguards for the job security of the Executive Director at the inquiry and removal stage, which are consequent upon the suspension decision, renders that decision – and now the Minister's decision to institute disciplinary proceedings against me – unlawful and unconstitutional. This will be addressed further in argument.

#### THE IPID INVESTIGATION AND FINALISATION OF THE IPID REPORT

##### The January 2014 report

29 I assumed the office of Executive Director of IPID on 3 March 2014. The facts pertaining to what transpired prior to that date, regarding IPID's

Ag

MP  
10  
ORG



875

investigation into the rendition of the Zimbabwean nationals and the preparation of the January report, are not in my personal knowledge. These facts are addressed by Khuba in his supporting affidavit. I believe the contents of Khuba's affidavit to be true and correct, and refer to the confirmatory affidavit filed by Sesoko in support of the facts set out therein.

30 The Minister appears to have placed considerable reliance on the Werksmans' Report of 24 April 2015 (annexure NM2) in setting out his version of the facts. That report was compiled by Mr Sandile July, a Director at Werksmans Attorneys who was improperly tasked by the Minister with investigating IPID's investigation into the illegal renditions.<sup>11</sup>

31 My concerns about the propriety and alleged independence of the Werksmans' investigation are borne out by the Werksmans' report. On reading transcripts of the interviews that Mr July conducted with Khuba, Sesoko, Advocate Mosing of the NPA ("Mosing") and myself,<sup>12</sup> it is evident that the Werksmans' report is not an accurate and fair summation of what was stated in those interviews, and its conclusions and recommendations are founded on a misrepresentation of the facts. Given these misrepresentations, it is incumbent on me, Khuba and

<sup>11</sup> The terms of reference of the Werksmans' inquiry are attached to the founding affidavit as annexure FM9.

<sup>12</sup> I received audio recordings of some of the interviews from the Minister's attorneys as well as transcripts of some of the interviews, save for that of Mr Sesoko. I have relied on an unofficial transcript of Mr Sesoko's interview (prepared by my attorneys) and the audio recording of that interview.

JP

MP

MP  
11

ORG

Sesoko to address the true facts, to the extent that they are relevant to this application.

32 To avoid overburdening the papers in this matter, I do not attach copies of the full transcripts of the interviews conducted by Werksmans with Khuba, Sesoko and Mosing. I attach only the pages that I refer to in this affidavit. To the extent that the Court requires a full copy of these transcripts, they will be furnished.

33 In light of the facts attested to by Khuba and Sesoko – and regardless of what Mosing, Moukangwe or Khuba may have believed at the time – it is clear that the January 2014 report was not a "final report". This is because:

33.1 There remained outstanding material evidence that was not addressed in the January 2014 report, and which the investigators (from IPID and the NPA) continued to seek to obtain and analyse, including expert analysis of Sibiya's cellphone records;

33.2 Warning statements, which the NPA requires to be included in any docket submitted to it, were still outstanding or were not yet incorporated into the investigation report; and

33.3 The report was not properly completed and authorised by IPID for submission as a final report, in accordance with IPID Regulation 5(3)(i) and IPID's Standard Operating Procedures Policy.

X 9



MP

  
CPG

877

33.3.1 Regulation 5(3)(i) requires that an IPID investigation report into alleged criminal conduct by a member of the SAPS be submitted to the Executive Director of IPID with recommendations for authorisation.<sup>13</sup>

33.3.2 Regulation 5(3)(i) must be read with section 7(4) of the IPID Act,<sup>14</sup> which 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 accordingly. It is evident that the Acting Executive Director at the time (Ms Mbeki) did not authorise and refer the recommendation for prosecution in the January 2014 report to the NPA, nor was the Minister notified of the referral.

33.3.3 IPID's Operating Procedures detail the procedure for the completion and closing of files and dockets. None of the internal requirements for the completion of files was followed prior to referral of the January 2014 report to Advocate Mosing at the NPA. These requirements

<sup>13</sup> GNR 98 in GG 35018 of 10 February 2012: IPID Regulations: Operation of the Independent Police Investigative Directorate. Regulation 5(3)(i) provides in relevant part:

*"(3) An investigator ... must, as soon as is practicable ... (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... criminal prosecution of such member".*

<sup>14</sup> 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 for criminal prosecution and notify the Minister of such referral."

878

Include an internal supervision and quality-control process, and a prohibition against investigators approving the completion of their own investigations. Both of these requirements were not met in respect of the January 2014 report.<sup>15</sup>

34 Mosing explained in his interview with Werksmans, that he wrote the word "draft" on the January report upon receiving it from Khuba, because the report was not complete.<sup>16</sup> I attach the relevant pages of the transcript as RJM3.

35 It is evident that, notwithstanding that material evidence was outstanding and that the requirements for finalising an IPID report were not met, Khuba was pressurised by Mosing (who in turn was being placed under pressure from his superiors) to submit the January 2014 report. Both Khuba and Mosing conveyed this in their interviews with Werksmans – the relevant parts of the transcript are attached as RJM4 and RJM5. It is also confirmed by Khuba in his supporting affidavit.

35.1 Khuba stated in his interview that:

<sup>15</sup> IPID Standard Operating Procedures, Policy no. 001-POL-PR2, effective from 1 April 2013. Procedure 7.10 provides:

*"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 [Director Investigations/ Provincial Head];*

*3. The DI/PH approves/ disapproves completion of a file and the Completion Register is utilised (...);*

*4. No case worker acting as DI/PH [Director of Investigations/ Provincial Head] will approve the completion of a file investigated by himself/ herself."*

<sup>16</sup> Mosing interview 17 April 2015: p 42 (lines 4-5), p 44 (12-15), p 58 (line 16) – p 59 (line 21)

MP  
14

Jg

V

SFC



879

*"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... even though there were things that were outstanding...."*<sup>17</sup>

35.2 Mosing recalled that *"I think there was a lot of pressure as well to terminate the investigation, to move over to arrest"*.<sup>18</sup>

36 Despite having submitted the January 2014 report, Khuba continued with his investigation of the illegal renditions, and obtained the outstanding material evidence. He also continued to update and revise the January 2014 report.

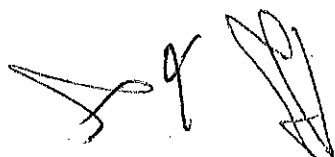
37 The very next day, 23 January 2014, Khuba sent a further revised version of his investigation report to Sesoko. That version of the report recommended that charges be laid against Lt Gen Dramat, but recorded that *"[IPID] cannot recommend any criminal charge against Major General Sibilya because the witnesses versions are not corroborated by other evidence that he was at the crime scene, e.g. cellphone records"*. I attach a copy of this version of the report and the cover email under which it was sent by Khuba to Sesoko on 23 January 2014 marked RJM6.

38 Mosing also reconsidered the evidence and its recommendations after he received the signed January 2014 report, and presumably sent it to

<sup>17</sup> Khuba Interview, 13 April 2015, p. 13, lines 1-8.

<sup>18</sup> Mosing Interview 17 April 2015, p. 24, lines 3-5.

MP





880

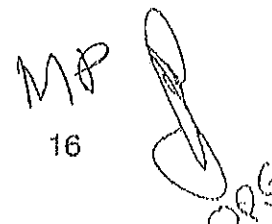
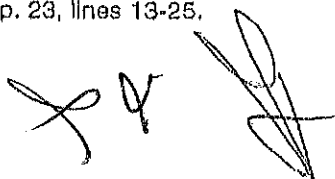
the DPP's office. This is despite the fact that Mosing understood that he was not to be involved in the prosecution decision, but was only an Investigator in the matter. This appears from the transcript of Mosing's interview at the Werksman's inquiry – the relevant pages are attached as RJM7.<sup>19</sup>

- 39 On 13 February 2014, Mosing addressed an Internal memorandum to Advocate Jiba (then the Deputy NDPP) and Advocate Chauke (the DPP; South Gauteng), which is attached as annexure NM17 to the Minister's answering affidavit. Mosing's statements at paragraphs 6.3 and 7 of the memorandum indicate that Mosing had by then conducted his own (rudimentary) analysis of Sibiba's cell-phone data, and concluded that the charges against Sibiba were not sustainable in light of this evidence. Mosing further recorded that the expert analysis of the cell phone data (i.e. the expert mapping of the location of the cell phones) was outstanding and would still need to be considered.

**My briefing on the investigation and the retrieval of the docket**

- 40 Upon taking office as the Executive Director, my immediate priority was to get a status update on the current IPID Investigations. This was especially urgent as I had agreed to meet the National Director of Public Prosecutions, Mr Nxasana ("the NDPP") on 6 March 2015 to discuss various matters, including the status of the high-profile IPID investigations.

<sup>19</sup> Mosing Interview 17 April 2015, p. 23, lines 13-25.



MA  
16  
226

894

- 41 The Information note on my meeting with the NDPP of 6 March 2015, which I prepared for the Minister and dated 10 March 2014, is attached to the founding affidavit as annexure RM11.
- 42 On two occasions between 4 and 6 March 2015 (I cannot recall the precise dates), I met with Khuba and Sesoko to discuss the status of IPID's investigation on the renditions complaint. Another IPID investigator from Mpumalanga, Mr Glen Angus was present for a time at the second meeting because he was briefing me in another matter, but I do not recall whether and for how long he remained present when Khuba briefed me and Sesoko on the renditions matter.
- 43 At these briefing meetings with Khuba and Sesoko –
- 43.1 Khuba relayed his concerns over the involvement of SAPS' Crime Intelligence Gathering (CIG), and disclosed that his instructions were to report on the matter only and directly to the former Acting Executive Director; not to involve Sesoko in the investigation; and to collaborate with Moukangwe secretly.
- 43.2 I expressed my concerns about these instructions, and indicated that the involvement of CIG seemed to me to undermine the independence of IPID's investigations into police misconduct.
- 43.3 Khuba described his investigation of the case and the status of his report. In doing so, Khuba did not convey to me that IPID had submitted any report to the NPA for a decision on prosecution. I

X 9

MP  
17

APG

882

was advised by Khuba that he had been working with the NPA's Mosing and Moeletsi in the investigation, and that he had submitted preliminary and progress reports to them. My understanding was that IPID's investigation report was not complete, as there were outstanding statements and analyses of cell phone records that were yet to be incorporated into the report, and that Khuba was in the process of updating and finalising the report.

43.4 I tasked Sesoko with assisting Khuba in finalising and reviewing his investigation report. I did so to ensure that the investigation had been properly conducted and that the findings and recommendations were sustainable on the evidence and correct as a matter of law. As indicated, this procedure is required by IPID's Standard Operating Procedures Policy. Given that Sesoko was Khuba's case supervisor, it was entirely appropriate for me to assign him this responsibility. Sesoko has legal training and experience as a former prosecutor, making him well qualified for the task.

43.5 Khuba also advised me that the docket was with the NPA. He explained that he had recently requested the docket from Mosing at the NPA, who was assisting in the investigation, in order to update it with the new evidence. He explained that Mosing had told him that the docket was with the DPP in South Gauteng, and that he would make arrangements to get it.

99

MP  
18

OPG

883

44 In the information note that I sent to the Minister on 10 March 2014 (annexure RM11), I described the status of the investigation and report, in accordance with what I had been advised by Khuba. I recorded that:

*"We indicated that the investigation is complete, we are currently preparing a final report on the matter and reviewing the totality of the available evidence to ensure that recommendations that are made are appropriate and speaks to what can be proven. The file with the final recommendations will be forwarded to the NDPP shortly."*

This is an accurate reflection of my understanding of the status of the investigation and report at the time.

45 As regards my knowledge of the January 2014 report and the docket, the Minister makes the following allegations in his answer, presumably based on the misleading Werksmans' report, all of which I deny:

45.1 *"Khuba advised Werksmans attorneys that he received a call from Matthews Sesoko, on 4 March 2014, informing him that the applicant wanted a copy of the report which had been submitted to the NPA. Khuba emailed a word version of the report to Sesoko."*<sup>20</sup>

---

<sup>20</sup> AA para 32.

Handwritten signatures and initials at the bottom of the page.

MP  
19

Handwritten signature and initials at the bottom right of the page.

884

45.2 "[McBride] was informed of... the fact that IPID had prepared a report to the NPA";<sup>21</sup>

45.3 "Mr Khuba said that he informed the applicant ... that the report and docket were in the possession of the NPA for a decision [on] whether or not to prosecute";<sup>22</sup>

45.4 "The applicant instructed Khuba and Angus to retrieve the full docket and report which had been submitted to the NPA for decision";<sup>23</sup>

45.5 "Khuba advised Werksmans that the applicant instructed him, together with Angus, to fetch the docket from the NPA. In addition to the docket, the applicant also wanted each and every document which was in the possession of IPID relating to this investigation";<sup>24</sup> and

45.6 "Khuba and Angus advised the applicant that they had retrieved the docket from the NPA, for which he thanked them. They handed the docket to the applicant personally";<sup>25</sup>

46 These allegations are not correct, as is confirmed by Khuba and Sesoko. The allegations are also not supported by what I, Khuba and Sesoko

<sup>21</sup> AA para 31.

<sup>22</sup> AA para 33.

<sup>23</sup> AA para 34.

<sup>24</sup> AA para 35.

<sup>25</sup> AA para 40.



885

stated at the Werksmans' inquiry – contrary to what the Werksmans' report suggests.

47 Given the weight that the Minister has placed on these allegations, and at the risk of some repetition, I address each in turn:

48 *"Khuba advised Werksmans attorneys that he received a call from Matthews Sesoko, on 4 March 2014, informing him that the applicant wanted a copy of the report which had been submitted to the NPA. Khuba emailed a word version of the report to Sesoko":*

48.1 I did not request any such report from Khuba or Sesoko. I could not have done so since I had no knowledge of any report having been submitted to the NPA. I also did not ever receive any such report-by email or otherwise.

48.2 I point out that what Khuba stated at the Werksmans' inquiry is not accurately recorded by the Minister. Khuba stated the following:

*"... I got a request to say the ED [Executive Director] 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 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*

MP

886

*about the rendition. Of course it had an update in terms of ... [Interruption by Mr July] ... It was not the signed one, it was a soft copy, and that's why I had to email it. But I cannot say how many statements were updated, because by that time I had not yet finalised them ...*<sup>26</sup>

48.3 Khuba did not say that I requested any report submitted to the NPA. Khuba stated only that I had requested "an update on the case". I attach the relevant pages of the transcript marked RJM8.

48.4 While Khuba suggests that he emailed Sesoko a copy of the working draft of his investigation report to send on to me for briefing purposes, he is clearly not confident in this recollection (qualifying his statement with "if I am not mistaken"). Sesoko's email records indicate that Khuba is indeed mistaken. They evidence that Sesoko received a soft copy of Khuba's working draft of the investigation report on 23 January 2014 (one day after Khuba sent the January report to Mosing, and at least a month prior to my arrival at IPID) and thereafter only on 13, 17 and 18 March 2014 (after I had tasked Sesoko with reviewing and finalising the investigation report).

48.5 Notably, the report that Khuba sent to Sesoko on 23 January 2014 was not identical to the report sent to Mosing, albeit that it was sent only a day later. That version of the report recommended

<sup>26</sup> Khuba Interview 27 March 2015: Transcript, p. 44 line 22 – p. 45, line 19.

887

that charges be laid against Lt Gen Dramat, but recorded that "[IPID] cannot recommend any criminal charge against Major General Sibiya because the witnesses versions are not corroborated by other evidence that he was at the crime scene, e.g. cellphone records". This report clearly indicates that Khuba did not understand the report he sent to Mosing on 22 January to be final, but was continuing to revise a working draft of the report. I attach a copy of this version of the report and the cover email under which it was sent by Khuba to Sesoko on 23 January 2014 marked RJM6.

49 *"The applicant was informed of... the fact that IPID had prepared a report to the NPA":*

49.1 I was not so informed. As I have indicated, I was advised that Khuba had been working with the NPA's Mosing and Moeletsi in the investigation, and that he had submitted preliminary and progress reports to them. However, I understood that Khuba was still in the process of finalising IPID's investigation report.

49.2 I note that Khuba made it quite clear in his interview to Werksmans that he did not advise me of any report having been submitted to the NPA, although this is not reflected in the Werksmans' report. In the transcript of Khuba's interview on 23 April 2015 (attached as RJM9), the following exchange is recorded between Mr July and Khuba:

7 8

MP

P.25

888




"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?

Khuba: No, that was never part of that."

49.3 The first time that I learned that any ostensibly "final report" on the renditions investigation, other than the one that I had signed, had been submitted to the NPA, was during or about January 2015..

49.4 I questioned Khuba about the alleged report at the time, and he gave me a complete copy of (an unsigned version of) the report dated 22 January 2014. That is the version of the report attached to the founding affidavit. Khuba advised me that the report had been sent to the NPA, and was subsequently signed by him, but that he did not consider it to be the final report. The first time that I saw the signed version of the January 2014 report was a few weeks ago.

49.5 Prior to that, during or about November 2014, Mr Moses Dlamini, the Spokesperson of IPID, advised me that an unsigned version of an IPID report into the Illegal renditions, dated December 2013, was circulating in the media. He showed me the report on his cell phone. I attach a confirmatory affidavit from Mr Dlamini marked

MP

24



889

RJM10. I did not think much of this, as the report was unsigned and appeared to be nothing more than a progress report without any status. By then, IPID had submitted the finalised report and the entire docket to the NDPP for decision on 14 April 2014.

49.6 Around the same time, on 24 November 2014, the Minister requested the entire docket and all progress reports in the renditions investigation. In his request, which is attached to the founding affidavit as Annexure RM12, the Minister mentioned that he had received a CIG report on the matter.<sup>27</sup>

49.7 On 26 November 2014, I sent the docket (which included the March 2014 report), under cover of the information note attached as RM13 to the founding affidavit.<sup>28</sup> That information note records that:

*"At the conclusion of the investigation, notwithstanding several other preliminary report[s] that were written on this matter, the IPID team did a thorough analysis of all the available evidence and made recommendation to the Executive Director for his consideration..."*

50 "Mr Khuba said that he informed the applicant ... that the report and docket were in the possession of the NPA for a decision [on] whether or not to prosecute", and that "The applicant instructed Khuba and Angus

<sup>27</sup> At p 390.

<sup>28</sup> At pp 391-394.



890

to retrieve the full docket and report which had been submitted to the NPA for decision".

50.1 While Khuba informed me that the docket was with the NPA, I was not informed that it was in the possession of the NPA for a decision on prosecution.

50.2 I also deny that I "instructed" Khuba to retrieve the docket. By the time that I met with Khuba, he had already taken steps to obtain the docket from Mosing, who advised him to get the docket from the South Gauteng DPP's office. Email correspondence between Khuba and Mosing in this regard, dated 28 February 2014, is attached marked RJM11.

50.3 Khuba advised me that the docket was with the NPA and that he intended to retrieve it in order to update the evidence, and he sought my consent in this regard. I merely authorised him to do so.

50.4 I note from the transcript of his interview with Werksmans, that Khuba did not make the statements that the Minister alleges. I attach the relevant pages of the transcripts of Khuba's interviews dealing with this issue marked RJM12 & RJM 13. The Minister's allegations are based on misrepresentations in the Werksmans' report.<sup>29</sup>

<sup>29</sup> Werksmans' report para 3.2.1.12.

891

51 "Khuba advised Werksmans that the applicant instructed him, together with Angus, to fetch the docket from the NPA. In addition to the docket, the applicant also wanted each and every document which was in the possession of IPID relating to this investigation".

51.1 As indicated, I deny that I gave any such instruction. I also deny that Khuba or Angus advised Werksmans that I gave such an instruction as no such statement is reflected in the transcripts of Khuba's or Angus' interviews with Werksmans.. To the contrary, Khuba explained to Werksmans that, upon retrieval of the docket from Van Zyl SC, he took the docket to Sesoko's office, attached hereto marked RJM14<sup>30</sup> Angus indicated that he went with Khuba voluntarily, attached hereto marked RJM15.<sup>31</sup>

51.2 The only time that I recall giving specific instructions in respect of the renditions docket was when it was to be sent to the NDPP on 13 April 2014 (I instructed Sesoko to have the docket delivered to the NDPP), and when the Minister requested a copy of the docket and all other documents related to the renditions investigation in November 2014. At that point, I instructed Khuba to give me a copy of the docket so that I could have them sent to the Minister.

51.3 As far I can recall, I was never given the docket relating to the renditions investigation prior to signing the March 2014 report. I certainly did not consider the contents of the docket before signing off the March 2014 report.

<sup>30</sup> Transcript of Khuba's Interview with Werksmans, 23 April 2015, pp. 14-15.

<sup>31</sup> Transcript of Angus interview with Werksmans, 31 March 2015, p. 8

T Y

PP

MP

27

J.ORG

892

51.4 Analysing the evidence in the docket is the job of the investigators of IPID, and that is precisely what Khuba and Sesoko were assigned to do. There was no need for me to scrutinise the docket, and there was no time for me to do so. However, I deny that it would have been improper had I requested and considered the evidence in the docket.

52 *"Khuba and Angus advised the applicant that they had retrieved the docket from the NPA, for which he thanked them. They handed the docket to the applicant personally":*

52.1 It may be that Khuba advised me that he had retrieved the docket, but I have no recollection of him doing so. I doubt that I would have "thanked him" for doing so, as I had no reason to thank him. He was simply following through on his own initiative.

52.2 I do not know where the Minister gets this version from. It is not supported by what was stated by Khuba or Angus in their interviews with Werksmans.

#### The finalisation of the IPID report in March 2014

53 Between 6 March and 18 March 2014, Khuba and Sesoko worked together on finalising the report. Khuba would periodically come from his offices in Limpopo to Pretoria to work on the report with Sesoko. Khuba revised the report on Sesoko's computer, as Khuba's small laptop and keyboard made editing work difficult. Accordingly, all changes to the

94

MP  
28

Page

893

investigation report during this time were made by the two of them working together, in close discussion and analysis of the evidence.

54 During this period, I had several meetings with Khuba and Sesoko to discuss their progress in finalising the report. We discussed their analysis of the evidence and the legal principles that had to inform the findings and recommendations in the final report. My role was confined to interrogating their legal and factual assumptions.

55 At no point did I indicate to Khuba or Sesoko that I wished any particular person to be exonerated in the report, including Dramat and Sibiya. This is confirmed by Khuba and Sesoko, and was clearly stated by them at the Werksmans' Inquiry. Khuba stated (repeatedly) in his interview that:

*"But I also need to be clear on this thing. McBride never said to us: You need to clear this person or not clear them... he would just make input on certain things."<sup>31</sup>*

*...  
"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*

<sup>31</sup> Khuba Interview 27 March 2015, p. 61, lines 2-5.

894

are independent.<sup>32</sup>

I attach marked RJM16 and RJM17 the relevant portions of the transcript.

56 When Khuba and Sesoko were satisfied that they had finalised their report, they sent it to me in hard copy. I made changes to the hard copy, but only to correct the grammar and spelling. I received and sent back a few drafts of the report with such changes. I did not alter any findings or recommendations, nor did I make any material or substantial deletions on the report. Khuba and Sesoko signed the report on 18 March 2014 and I signed the report on 9 April 2014, after being satisfied that the grammatical and spelling errors were corrected.

57 On 13 April 2014, I had the final report, together with the full and complete docket, sent directly to the NDPP. This was in accordance with my undertaking to do so at the meeting of 6 March 2014. The NDPP and I had discussed our concerns over the leaking of the January 2014 report from the NPA's office, and had agreed that I would send the final report to him directly to avoid any further leaks.

<sup>32</sup> Khuba Interview 27 March 2015, p. 96, lines 15-23.

*[Handwritten signature]*

*[Handwritten signature]*

MP

*[Handwritten signature]*



895

## THERE IS NO INCONSISTENCY IN MY ACCOUNT

58 The Minister contends that there are contradictions in what I stated in the founding affidavit and what I said when interviewed at the Werksmans' inquiry.<sup>33</sup> I deny that this is so.

59 The Minister suggests that there is a contradiction in that I described the January 2014 report as a "preliminary" report (in the founding affidavit), but also stated (at the Werksmans' inquiry) that I had never seen the January 2014 report, and that the only report I had seen was the one that I signed in April 2014. There is no contradiction in these statements. In March and April of 2014 I did not know of the January 2014 report. I only learned of this report in late November 2014. By March 2015, when I deposed to the founding affidavit, I was aware of the January 2014 report, which I consider to be a preliminary report.

60 The Minister also contends that I contradicted myself when I explained at the Werksmans' interview that I had only made spelling and grammatical changes to the final report, and that I did not go through the evidence itself but looked at the analysis of the evidence and the recommendations that were made in the final report before signing it.

61 The Minister says that this contradicts the statements made in the founding affidavit that the findings and recommendations in the March report "are based on a thorough scrutiny of all the available evidence" (at

---

<sup>33</sup> AA para 48.

Handwritten signatures and initials at the bottom of the page, including "MD" and "31".

896

paragraph 51.1); 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"* (at paragraph 51.2); and that *"The preliminary draft of the IPID Investigation Report was also still subject to consideration and review by Sesoko as well as myself"* (at paragraph 51.5).

62 Again, there is no inconsistency in these statements. I accept that some confusion may have been caused by the loose wording of paragraph 51.5 of the founding affidavit to the extent that it may be construed to imply that I in fact read the January 2014 report. But, as I have explained, this is not correct. While I did not read the January 2014 report, I was involved in reviewing the findings and recommendations that IPID would ultimately propose to the NPA, through my discussions with Khuba and Sesoko.

63 As a result of these discussions and on a reading of the final report, I was satisfied that the final report – the March 2014 report – was indeed based on a thorough scrutiny of all the available evidence by IPID (not myself personally), and the product of a thorough investigation process, which took into account all the evidence gathered and made reasonable recommendations on the basis thereof.

59

MP JCS

32

## IPID'S FINDINGS AND RECOMMENDATIONS ON DRAMAT AND SIBIYA

64 There is no merit whatsoever in the Minister's allegation that I *"attempted to suppress the evidence which implicates Dramat and Sibiya"*.<sup>34</sup> On a thorough and impartial analysis of all the available evidence, Khuba and Sesoko concluded that the findings in the preliminary reports that implicated Dramat and Sibiya were not sustainable, which findings I endorsed. There was simply no reliable evidence that either Dramat or Sibiya had any involvement in, or knowledge of, the kidnapping, assault, detention on false charges and unlawful rendition of the Zimbabwean nationals.

65 I underscore that it is not only IPID, but members of the NPA that held the view that there was not sufficient credible evidence to sustain charges against Dramat and Sibiya.

65.1 In February 2014, Mosing noted in his internal memorandum to the NDPP and Deputy NDPP, that *"The cell phone evidence... does not corroborate his presence during the operations"* and that the recommendation to charge Sibiya (in the January 2014 report) *"is not supported"*.<sup>35</sup>

65.2 Khuba also attests to the fact that on 23 February 2015, he received a call from Advocate George Baloyi (then Deputy DPP for South Gauteng) who was then dealing with the renditions

<sup>34</sup> AA para 14.

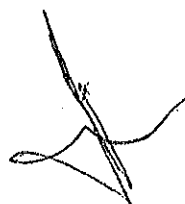
<sup>35</sup> Annexure NM17, paras 6.3 and 7.

case. He advised Khuba that with the available evidence, and in the absence of the key witness, Madilonga, he could not prosecute Dramat. On 3 March 2015, in a subsequent meeting with Khuba and Mr Pule Maoka (of IPID Legal Services), Advocate Baloyi subsequently changed his position, without giving any proper explanation. I attach affidavits by Khuba and Maoka addressing this engagement with Baloyi marked RJM18 and RJM19.

66 I address the alleged evidence of a prima facie case against Dramat and Sibiya in my ad seriatim reply, and refer to the explanations given by Khuba for the changes that he and Sesoko made to the January 2014 report. None of what is relied on by the Minister suggests that either Dramat or Sibiya had any knowledge of, or were in any way involved in, the kidnapping, assault, detention on false charges and the unlawful rendition of the Zimbabwean nationals. For these reasons, I maintain that the findings and recommendations made in the March 2014 report, which I signed, were reasonable, fair and correct.

67 I did not know of all the specific changes made to the January 2014 report at the time that I signed the March 2014 report (as explained, I had not read this report), but I have now considered the analysis of the changes made in the Werksmans' Report. I have also considered Khuba and Sesoko's explanations for the changes, which are detailed in Khuba's supporting affidavit.

YK



MP





899

68 I do not accept that the differences between the January 2014 report and the March 2014 report are sinister and entail the "suppression" of evidence. It is evident that changes were made to the summary and analysis of the evidence to de-emphasise that which Khuba and Sesoko assessed to be unreliable. Khuba and Sesoko dispassionately reassessed the totality of the evidence in the light of the new evidence obtained by Khuba and with the benefit of Sesoko's experience as a prosecutor. The result was a thorough, critical and objective evaluation of the totality of the evidence, and a sincere attempt by IPID to make recommendations that are supported by credible evidence.

69 I emphasise that an IPID investigation report is only recommendatory in nature. Upon referral from IPID, the NPA retains a discretion in deciding whether or not to prosecute, which decision is made on an independent examination of the docket. The NPA does not rely exclusively on the IPID report and recommendations. It considers all the evidence in the docket and makes its own determination as regards the appropriateness of the recommendation, and whether or not it should be followed.

70 The NPA is fully entitled to remit the matter (and docket) back to IPID for further investigation or analysis of the evidence, should it deem it necessary – as was done in the renditions case. Indeed, such an exchange has recently again been done in the renditions case. I attach, as annexure RJM20, instructions for further investigation and supplementation of the renditions docket sent from the DPP, Johannesburg to the Acting Executive Director of IPID on 23 April 2015.

YQ

JMP

JMP

JMP



900

The Instructions conclude by recording that *"The police docket CAS3907/7/2012 is attached, but must be returned to this office together with the required information"*.

71 When the March 2014 report was sent to the NDPP, it was accompanied by the complete docket. The docket contained all the evidence obtained in the course of IPID's investigation, including all the statements summarised in the IPID report; the raw cell phone and vehicle tracking data; the expert analyses and mapping of this data; the computer documents and emails retrieved from Maluleke's computer, and a forensic report of these documents and electronic files; excerpts from the occurrence books and SAPS 14 registers; and all the documents and statements that IPID had obtained from CIG and the DPCI and which had been obtained in their investigations

72 In short, the NPA was given all the evidence that IPID had obtained in the investigation. The NPA had all the information necessary to make an independent analysis of the evidence, and to assess the appropriateness of IPID's findings and recommendations.

73 I point out, further, that Khuba gave the only signed version of the January 2014 report to Mosing. Khuba confirms that the signed version of the January 2014 report remained with Mosing, and is presumably still with the NPA. There was no attempt by Khuba, or anyone else at IPID (although I do not know of anyone else who knew of that report), to retrieve or suppress the existence of the January 2014 report. As far as

X a

MP

MP

A.P.G.

901

Khuba was concerned, the January 2014 report was simply no longer relevant, in light of his subsequent supplementation of the docket and updating and the finalisation of the investigation report.

74 I deal now with the Minister's answer ad seriatim.

**AD SERIATIM REPLY TO THE MINISTER'S ANSWER**

75 In this section, I address only the pertinent factual allegations in the answering affidavit which have not been dealt with above. The legal argument in the answering affidavit will be addressed in heads of argument.

76 To the extent that I fail to respond to any averment or contention in the answering affidavit which is inconsistent with what I have set out above and in my founding and supplementary affidavits in this application, it must be taken to be denied.

77 Ad paragraph 6.1

77.1 I deny that the decision to suspend me is not administrative action. I am advised that in *Gcaba v Minister of Safety and Security* 2010 (1) SA 238, the Constitutional Court stated the applicable principles as follows:

*"[64] Generally, employment and labour relationship issues do not amount to administrative action within the meaning of PAJA. This is recognised by the Constitution.*

S 9

[Signature]

MAP

37

[Signature]

Section 23 regulates the employment relationship between employer and employee and guarantees the right to fair labour practices. The ordinary thrust of s 33 is to deal with the relationship between the State as bureaucracy and citizens and guarantees the right to lawful, reasonable and procedurally fair administrative action. Section 33 does not regulate the relationship between the State as employer and its workers. When a grievance is raised by an employee relating to the conduct of the State as employer and it has few or no direct implications or consequences for other citizens, it does not constitute administrative action."

77.2 I submit that my suspension and subjection to a disciplinary inquiry by the Minister acting unilaterally, does indeed have consequence for other citizens, as it violates the constitutionally protected independence of IPID. This, in turn, has a detrimental impact on the effective functioning of IPID and the fulfilment of its mandate.

77.3 I point out that s 17DA(2) of the SAPS Act (which governed the suspension and removal of the head of the DPCI, before it was declared invalid by the Constitutional Court), provided for the application of PAJA to these decisions. The same must apply, I submit, to the suspension and removal of the Executive Director of IPID.

PA [Signature] MP [Signature] 38 [Signature]

903

77.4 It is not necessary, however, for the Court to decide this issue, since the only ground of review being pursued is the legality of the Minister's decision.

78 Ad paragraph 9

78.1 I firmly deny that the constitutional attack is contrived. The extent of the Minister's powers over the police complaints directorate (now IPID, and formerly the Independent Complaints Directorate, "ICD") has long been recognised as a problem for the independence of the Directorate.

78.2 For instance, I refer the Minister to a research report compiled jointly by the ICD and the Institute for Security Studies in 2007, on SAPS' Compliance with Recommendations by the ICD, attached as RJM21. The report found that:

*"Based on the views expressed during some of the structured interviews, it would seem that the independence and credibility of the ICD is compromised by its location within the Department of Safety and Security and having to report to the Minister who is also the Minister responsible for the police (viz. conflict of interest)." (page 17)*

78.3 The report contained the following recommendation (of the ICD):

R Y [Signature] MP [Signature]

904

*"For the purposes of independence and credibility, the ICD should report to a Minister who is not also the Minister responsible for the police. Alternatively, the ICD should report directly to parliament (a special parliamentary committee or, alternatively, the Portfolio Committee for Safety and Security)" (page 20).*

78.4 The Importance of the operational and institutional independence of police complaints directorates from the executive authority responsible for the police is widely recognised in international law and foreign jurisdictions. This will be addressed in argument.

78.5 I point out too that although Fabricius J dismissed Part A of this application (for lack of urgency), the learned judge recorded in his judgment that *"part B is arguable, and it does have reasonable prospects of success"*.<sup>36</sup>

79 Ad paragraph 9.1 (incorrectly numbered 8.1 in the AA)

79.1 I categorically deny the allegations in this paragraph, for the reasons already stated.

79.2 I wish to emphasise that I have no reasons and motivation – personal, political or otherwise – to attempt to protect Dramat or Sibiya.

<sup>36</sup> *Independent Police Investigative Directorate and Another v Minister of Police and Another* (6588/2015) [2015] ZAGPPHC 138 (18 March 2015) at para 7.



905

## 80 Ad paragraph 9.2 (incorrectly numbered 8.2 in the AA)

80.1 I deny that I gave instructions to junior members to act in a manner designed to achieve any improper motive. I note that the Minister's allegations in this regard are based entirely on speculation and his own supposition. The allegations are also firmly denied by Khuba and Sesoko.

## 81 Ad paragraph 9.3 (Incorrectly numbered 8.3 in the AA)

81.1 I admit that, when I was not yet suspended as the Executive Director, I caused a payment to be made in the amount of R500,000 to IPID's then attorneys of record, Adams & Adams. At the time of the payment, Adams & Adams as well as counsel instructed on IPID's behalf had already rendered legal services in excess of the amount paid. The acting Executive Director confirmed on 30 March 2015 that IPID would withdraw from the application, that Adams & Adams' mandate in respect thereof was terminated and that IPID were processing payment in respect of legal services rendered up to that date. I attach as annexure RJM22 a copy of the said letter. I deny that this was in violation of the PFMA, since legal services were indeed rendered by Adams & Adams, in accordance with instructions furnished by IPID.

81.2 I further deny that I used public funds for my personal benefit and that there was any conflict of interest. At that stage, IPID was a party to the proceedings, and the application was (and indeed,

g g

MP

OPG

906

remains) directed at protecting the institutional and operational independence of IPID.

82 Ad paragraph 10

82.1 For the reasons stated in the founding affidavit, I deny that the Minister's actions have been motivated by a genuine and proper concern over my conduct.

82.2 However, even had the Minister had genuine and well-founded concerns, I deny that the only alternative to suspending me was "to do nothing". The Minister could have required me to report to Parliament and to address his concerns in that forum, as indeed I sought to do. Had Parliament been satisfied that there were grounds for a proper inquiry, it would have been open to it to institute a disciplinary inquiry, and to suspend me pending the outcome of that inquiry.

83 Ad paragraph 11

In response to the allegation in this paragraph, I have set out the facts in my personal knowledge in detail in this affidavit, notwithstanding that they are no longer pertinent to the determination of this application. The facts will be further ventilated in the disciplinary inquiry to be held in due course.

84 Ad paragraph 11.1 (incorrectly numbered 10.1 in the AA)

42

907

I deny that the application for Interim relief was "premature". The application was struck off the roll only for lack of urgency.

85 Ad paragraph 11.2 (incorrectly numbered 10.2 in the AA)

85.1 I was suspended for 60 days pending "*an investigation and possible disciplinary enquiry*". It is only on 6 May 2015, that I learned that a disciplinary had in fact been instituted by the Minister.

85.2 On 20 May 2015, I instituted an application to stay the disciplinary proceedings pending the final determination of this application, and pending the lawful appointment of a chairperson. I attach a copy of the Notice of Motion in that application as RJM23. That application is due to be heard by the Chairperson of the disciplinary inquiry on 6 July 2015.

86 Ad paragraph 11.3 (incorrectly numbered 10.3 in the AA)

86.1 I do not deny that Mr Philip Mokoena SC is an independent legal practitioner, from the Johannesburg Society of Advocates.

86.2 However, I do deny that Advocate Mokoena's unilateral appointment by the Minister is lawful, and that the fact of such appointment does not compromise the independence of the disciplinary inquiry.

87 Ad paragraph 11.4 (incorrectly numbered 10.4 in the AA)

9 9

MP

908

87.1 I deny the accuracy of the Werksmans' report, as well as the objectivity, fairness and correctness of its findings and conclusions. I refer the Court to the inaccuracies and misrepresentations that I have noted and explained above.

87.2 Given the contents of the Werksmans' report, I further deny that it is the product of an independent inquiry.

88 Ad paragraph 11.5 (incorrectly numbered 10.5 in the AA)

88.1 I note the contents of this paragraph. The Minister fails to appreciate that the ultimate decision ought to be that of Parliament, and not that of the Minister.

89 Ad paragraph 14

89.1 I deny the allegations that there is a prima facie case against Dramat and Sibiyi, and that the illegal rendition operations were conducted "under the leadership and approval of Dramat and Sibiyi".

89.2 I also deny that I "caused IPID to change its report and recommendations regarding the criminal charges against Dramat and Sibiyi"; and that there is any merit in the disciplinary case that the Minister has instituted against me.

90 Ad paragraph 15

MP CAS

44

909

I deny the allegations in this paragraph. I address the alleged 'prima facie evidence' that the Minister relies on in what follows. I also refer to what is stated by Khuba in his supporting affidavit, which is confirmed by Sesoko.

**91 Ad paragraphs 15.1 to 15.6**

91.1 As is explained more fully in Khuba's affidavit, the success report was generated by Maluleke, and the veracity of its contents is doubtful. The occurrence of the alleged meeting of 5 November 2010, and Maluleke's purported record of what was stated at that meeting, could not be corroborated.

91.2 There is also no evidence that Dramat ever received this report.

**92 Ad paragraphs 15.7 and 15.8**

92.1 The information notes attached as NM4 and NM5 to the Minister's answering affidavit were also generated on Maluleke's laptop.

92.2 There is no evidence that either of the information notes was ever received by Dramat.

92.3 The information notes do not indicate that any illegal renditions occurred; they record only that fugitives sought by the Zimbabwean police were arrested.

**93 Ad paragraphs 15.9 – 15.10**

7 9

MAP

45

909



910

93.1 The relevance and evidentiary value of Madilonga's statement is addressed by Khuba in his supporting affidavit. While the cell phone records of Dramat confirm that he received a call from Madilonga, there is no evidence to corroborate Madilonga's statement as regards the contents of this call.

93.2 However, even if Madilonga's statement as to the contents of the call is correct, it does not evidence that Dramat had any knowledge or involvement in the illegal rendition. Dramat does not deny that he met with Zimbabwean officials in South Africa from time to time.

94 Ad paragraph 15.11

94.1 I deny that the alleged "*fact of the meeting between Dramat and Zimbabwean police was confirmed under oath by Mr McIntosh Polela*".

94.2 Mr Polela was not employed at DPCI at the time of the alleged meeting at the DPCI offices on 5 November 2010. Polela only joined DPCI in December 2010. This is confirmed in Polela's own statement (annexure NM7). Polela states that "*From December 2010 to May 2013, I was employed by South African Police Services as a spokesperson for DPCI ...*"<sup>167</sup>

94.3 No other person could attest to the fact of the alleged meeting of 5 November 2010.

<sup>167</sup> At p 82.

911

## 95 Ad paragraph 16, subparagraphs inclusive

95.1 I deny the conclusions sought to be drawn by the Minister, and the alleged facts upon which he relies.

95.2 I admit that there was a special dispensation between South Africa and Zimbabwe, as alleged in paragraph 16.4.

## 96 Ad paragraph 17

96.1 I deny that I stated in the founding affidavit that, as a matter of fact, Dramat and Sibiya did not commit any offence, and that I purported to usurp the authority of the courts in this determination.

96.2 I indicated in the founding affidavit that IPID's investigation did not reveal evidence to support a prima facie case against them and recommendations that they be prosecuted.

96.3 I deny that there is a prima facie against Sibiya. I address the alleged 'prima facie evidence' that the Minister relies on in what follows, and refer to what is stated by Khuba in his supporting affidavit.

## 97 Ad paragraph 17.1

97.1 I admit that the TOMS unit is led by Sibiya.

97.2 I deny that there is credible evidence that the TOMS unit was "assigned the responsibility of tracing and arresting the Zimbabwean nationals in this case". I am advised by Khuba that

MP  
47

P. O. S. G.

912

TOMS was mandated to deal with serious crimes including ATM bombings and not the deportation of illegal immigrants.

97.3 I admit that certain members of the TOMS unit were, nevertheless, involved in the arrests of Zimbabwean nationals (in particular, Colonel Neethling, Captain Boonstra, Captain Nkosi and Warrant Officer Seepa), but there is no reliable evidence that Sibiya was involved.

98 Ad paragraphs 17.2 to 17.4

98.1 The statements of Yende, Jawuke and Campbell, made years after the relevant time, which purport to place Sibiya at the scene of the arrests of the Zimbabwean nationals, are disproved by the cell phone records of Sibiya, which place him many kilometres away from the scene of the arrests.

98.2 Their evidence was considered in the March 2014 report, and addressed as follows:

98.2.1 As regards the arrests on 5 November 2010:

*"[T]he claims made by Bongani Henry Yende (A4), Petros Jawuke (A5) and Desmond Campbell (A6) that Major General Sibiya was at the planning venue (Fourways Shopping Complex) could not be substantiated. The cellphone record[s] of Major General Sibiya were analysed by an expert and indicated that at the time of*

8 9 10

MP

106

913

the alleged planning, Major General Sibiya was in Pretoria. None of the witnesses who claim that Major General Sibiya was at Fourways ever saw him in person but allude that they were informed by Warrant Officer Makoe that Major General Sibiya was in the blue BMW. This information highlights the depicting false picture that can be created by hearsay evidence. It is immaterial how many people heard Warrant Officer Makoe saying that Major General Sibiya was in a blue BMW at Fourways Shopping Centre but the evidence from the analysis of his cellphone records proves otherwise." (p. 31)

98.2.2 As regards the arrests on 23 November 2010:

"In this operation Desmond Campbell (A6) and Petros Jawuke claim that Major General Sibiya was involved. Desmond Campbell stated that he saw a person seated in a BMW whom Warrant Officer Makoe referred to as Major General Sibiya. It is clear that members of Crime Intelligence had been trying hard to pull Major General Sibiya into the operation. This can be deduced from the following quotations in their statements, "I saw a figure in a BMW and Warrant Officer Makoe referred to him as General Sibiya" and "I heard that General Sibiya was in a blue BMW". These remarks justify the drawing of an inference that members of crime intelligence tried hard to

S

q

J

MP  
49

DORG

914

*implicate Major General Sibiya, most especially because his cellphone records provide concrete alibi that he was not at the crime scene."* ( p. 33)

99 Ad paragraph 18, subparagraphs inclusive

99.1 I deny the conclusions sought to be drawn by the Minister, and the alleged facts on which he relies.

99.2 I admit that it appears that the Zimbabwean nationals were falsely detained as illegal immigrants, but I deny that there is any evidence that Dramat or Sibiya were aware of this fact. I note, in this regard, that Maluleke signed the occurrence book recording the removal of suspects and took them to Belt Bridge.

99.3 Further, the evidence suggests that Maluleke concealed the operation from his superiors in DPCI. This is noted in the March 2014 report, where it states (at pp. 32-33):

*"The letter retrieved from Captain Maluleke's laptop provides a vital clue that his engagement in the operation did not receive the blessing of his superior. The letter was addressed to the Director General of Home Affairs requesting assistance in the deportation of 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 the rank of Captain, but could have*

A

g

A

MP  
50

MP



915

*needed the head of the DPCI. However the letter retrieved shows that Captain Maluleke was the author and also wrote his name as an approving authority of the request."*

99.4 I admit paragraph 18.4.

100 Ad paragraph 19

Save to deny what "must have been known" at the time of operation of 23 November 2010, I admit this paragraph.

101 Ad paragraph 20

101.1 I deny the allegations and conclusions sought to be drawn in this paragraph, for reasons already stated.

101.2 I deny that there was any need for me to interview any of the officers. I was satisfied that the investigation that Khuba conducted was thorough and fair.

102 Ad paragraph 21

102.1 I admit that the article attached as NM15 cites Dramat as stating that he believed the suspects were deported as illegal immigrants, but I have no knowledge of the accuracy of this report.

X 9 J MP 51

916

102.2 I point out, however, that Dramat was briefed on the matter by Maluleke and may genuinely have believed the truth of what he is reported to have said in the *Sunday Times*. This does not evidence any criminal conduct on Dramat's part.

**103 Ad paragraph 22**

103.1 I admit this paragraph, save to state that the evidence does not support the Minister's contention that Dramat or Sibuya had knowledge of, or were involved in, "the ruse".

**104 Ad paragraphs 23 and 24**

104.1 I admit these paragraphs, save to state that the October 2013 report was not the only working draft of the report that Khuba sent to Mosing for consideration.

104.2 I further refer to what is stated by Khuba as regards how the complaint was lodged with IPID, and the inappropriate involvement of CIG in the investigation.

**105 Ad paragraphs 25 and 26**

105.1 I refer to Khuba's explanation of the circumstances in which he submitted the January 2014 report. Khuba did not consider the investigation to be final, as material statements and analysis of the evidence remained outstanding. This was known to Mosing who requested that Khuba submit the report in any event.

g

g

g

MP

g

917

105.2 I deny that, at the time the January 2014 report was compiled and submitted, a sufficiently extensive and complete investigation had been conducted and captured in the report.

106 Ad paragraph 27

106.1 For reasons already stated, I deny that the January 2014 report and the docket was, or could properly have been, submitted to the NPA for a decision on whether to prosecute.

106.2 I admit that IPID would retain a duplicate copy of the docket and case file. It is standard operating procedure to initiate and maintain a duplicate of the docket, the original of which may be held either at IPID or the NPA, from the onset of the investigation. This is to ensure that there is an independent IPID record of the docket.

106.3 I did not consider the contents of the renditions case docket, and thus do not know if it contained (or contains) the January 2014 report, but I would have expected that only IPID's final report would be included in the docket, not all working drafts of the report. I note that Khuba advised Werksmans', in his interview of 23 April 2015, that he could not remember whether the docket that he retrieved from the Advocate Van Zyl contained the January 2014 report, but that "common-sense" suggests that it would have

MP  
025  
53

been removed. I attach the relevant page of the transcript as RJM24.<sup>38</sup>

107 Ad paragraph 28

107.1 I deny that IPID had finalised its investigation in January 2014.

Both Khuba and Mosing had knowledge that material evidence was outstanding and other evidence remained to be properly analysed.

107.2 In these circumstances, it would have been a dereliction of duty had Khuba not continued to pursue obtaining the evidence, to consider it and incorporate it into IPID's investigation report. He acted properly and professionally in doing so. In this regard, I note that in Mosing's correspondence to Khuba of 28 February 2014 (annexure RJM6, where Mosing advised Khuba that the docket was at DPP of South Gauteng), Mosing did not remark at all on the fact that Khuba sought to update the docket with additional evidence, and certainly did not suggest that this was improper in the circumstances. In fact, Mosing anticipated that there may be further additional evidence to be filed in due course. Mosing stated "*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*".

108 Ad paragraph 29

<sup>38</sup> Khuba interview 23 April 2015, p. 22, lines 21-23.

919

108.1 Regardless of whether or not Mosing accepted the January 2014 report as "the final report", it was not a final report as it was not based on a finalised investigation. Mosing knew this, as is evidenced by the internal memorandum that Mosing sent to the NDPP and Deputy NDPP on 13 February 2014 (annexure NM17).

108.2 Further, the report and its recommendations was not finally approved by the Executive Director, as required by the IPID regulations, nor was the report subject to review and quality control by a supervisor as required by IPID's operating procedures. It was simply sent by the investigating officer, without any internal oversight.

108.3 I accordingly deny that IPID had discharged its mandate at this stage.

**109 Ad paragraph 30**

109.1 I admit that I was employed from 3 March 2014.

109.2 I deny that this was two months "after IPID had finalised its investigation".

**110 Ad paragraph 31**

Save to deny that I was informed that IPID had prepared a report to the NPA and that I stated that I was so informed in the Werksmans' interview, I admit this paragraph.

J J

MD

MD

J J



**111 Ad paragraphs 32 to 35**

111.1 I deny these paragraphs.

111.2 I have addressed the allegations in these paragraphs at paragraph 5 to 2 above, and refer to what is stated there.

**112 Ad paragraphs 36 to 39**

112.1 Save to deny the correctness of the memorandum attached as NM19, I admit these paragraphs.

112.2 I point out that IPID returned the docket to the NDPP in April 2014, not in June 2014 (as paragraph 1(d) of the memorandum attached as NM19 may be read to suggest).

**113 Ad paragraph 40**

I deny the allegations in this paragraph, and refer to what is stated at paragraph 52 above.

**114 Ad paragraphs 41 to 43 and 45**

I deny the allegations in these paragraphs, and refer to what is stated at paragraphs 3 to 8 above.

**115 Ad paragraphs 44, 46 and 47**

I deny these paragraphs, and refer to what is stated at paragraph 69 above and in Khuba's supporting affidavit.

29

MP

56

org

## 116 Ad paragraph 48

I deny that I have given contradictory accounts, and refer to what is stated at paragraphs 59 to 3 above.

## 117 Ad paragraphs 49 to 54

For reasons already stated, I deny the allegations and conclusions sought to be drawn by the Minister in these paragraphs.

## 118 Ad paragraph 58

118.1 I admit that IPID is no longer a party to the proceedings.

118.2 This evidences, I submit, that the Acting Executive Director, Mr Kgamanyane is not prepared to assert and protect the independence of IPID. This ought to be a matter of concern, not celebration by the Minister.

## 119 Ad paragraph 80

119.1 I deny that the Minister is motivated by a concern to protect the institutional integrity and autonomy of IPID. His conduct has only served to jeopardise the integrity, effectiveness and independence of IPID. It is evident that the Minister is seeking only to justify his suspension of Dramat and Sibiya *ex post facto* and to save face in his ill-considered reliance on the January 2014 report.

5 9 2 MP 57 J.P.S.

922

119.2 The Minister has persisted in relying on that report despite receiving the March 2014 report, together with the complete docket from IPID on 26 November 2014. In the information note accompanying the docket (RM13), I extended the following invitation to the Minister, to which I received no response: *"The Executive Director and the Investigation Team will be available to brief the Minister on this investigation, at any time convenient to the Minister"*.<sup>39</sup>

119.3 Notwithstanding the above, the improper motives of the Minister are no longer pertinent to this application, as I am persisting only in the legality ground of review.

120 Ad paragraphs 84 to 85

I deny the allegations in these paragraphs, for the reasons already stated.

121 Ad paragraph 86

121.1 I deny that my willingness to account to Parliament was "disingenuous" or "a deliberate attempt to undermine [the Minister's] authority". I was entitled to approach Parliament, and am statutorily required to report to it.

121.2 I further deny that I concealed the existence of the January 2014 report from the Minister. I have set out the extent of my

---

<sup>39</sup> At p 393.

MP 58

923

knowledge and appreciation of the significance of the signed and unsigned versions of this report above.

**122 Ad paragraph 88**

122.1 I deny that the Werksmans' inquiry was conducted "completely independently from government". It was conducted at the behest of the Minister, and for the Minister's benefit.

122.2 The contents of the Werksmans' report, which materially misrepresents what was stated at the interviews (including by myself, Khuba, Sesoko and Mosing) suggests that an impartial and objective mind was not brought to bear in the preparation of the report.

**123 Ad paragraph 93, including subparagraphs**

123.1 I deny the allegations in this paragraph.

123.2 The Data Box 6 was removed by Mr Takalani Nemusimbori, the Director of Information Technology, IPID. It was not removed by me personally. Upon its retrieval from Sibilya's office, I signed for IPID's possession of the Data Box, but it was taken by the IT personnel at IPID. At no point did I have the Data Box in my personal possession.

123.3 This is confirmed in the affidavit of Sibilya's personal assistant, Ms Pearl Angel Pomuser, who states at paragraph 10 that

S G

Z

MP

CPL  
59

P

924

"Afterwards the gentlemen returned and one of them, not Robert McBride was carrying a device in his hands. I explained to them that they must acknowledge receipt of which Mr Robert McBride complied and signed for the device".

123.4 I note that an unsigned version of Ms Pomuser's affidavit is attached to the founding affidavit as **RM19**. I attach hereto, marked **RJM25**, a signed copy of the affidavit.

123.5 The Data Box was taken by IPID's IT personnel to IPID's offices, where it was sealed in an evidence bag and placed in a safe on IPID's premises. I also attach the confirmatory affidavit of Mr Bartomeus Botha who had the keys to Sibiya's safe, marked **RJM26**.

123.6 In February 2015 the Data Box was given by IPID to the State Security Agency. I refer to the affidavit of Takalani Nemusimbori in this regard marked **RJM27**, my letter marked **RJM27.1** to Victor Dlodlo and proof of receipt of the databox by Dlodlo marked **RJM27.2**. If the Minister requires this information, the Minister can obtain it from the State Security Agency.

123.7 I have no knowledge of what, if anything, is contained in the Data Box, and accordingly deny the Minister's allegations as to the nature and relevance of its contents. For this reason too, I cannot disclose the contents of the Data Box to the Court.

99 2 MAP 60



925

124.1 I deny that the Minister's control is a form of "civilian control", as alleged. Plainly, it is Parliament that provides "civilian control" and oversight, not the Minister.

124.2 I do not deny that the Minister retains political responsibility for IPID, as indeed he does for the Hawks. This does not mean that the Minister is empowered to exercise unilateral powers of suspension, discipline and removal over the Executive Director of IPID.

125 Ad paragraph 105

125.1 The conduct of the Minister that is impugned in this very application – including the threat of my suspension; my subsequent suspension; the institution of a disciplinary inquiry against me; and the Minister's institution of his own investigation to 'second-guess' an IPID investigation – all constitute undue political pressure on IPID to take a particular decision relating to its investigations, which is favoured by the Minister.

125.2 Further, while the Minister states in his affidavit that *"The Minister has no role to play in the investigative functions of IPID"*, the Minister has sought to liaise directly with Khuba on his investigation of the renditions matter. I attach marked RJM28 an email sent by the Minister's Personal Assistant, Ms Amella Monaheng to Khuba dated 9 March 2015 in which the following "request" was conveyed:

79

MP

ORH

61

*"The Minister requests your availability whenever your requested [sic] in terms of follow up on investigations [w]hich might require your cooperation and assistance in terms of finalizing processes."*

125.3 The Minister's interference was further disclosed by Khuba in an interview with Werksmans' attorneys – but is, unsurprisingly, not recorded or remarked upon in the Werksmans' Report. Khuba explained in the interview how he was approached by Mr Mathenjwa, a member of the Minister of Police's "reference group" (an inner circle of advisors and delegates used by the Minister) for a report on the renditions investigation. Khuba describes that he disclosed this approach to me, and that I responded by writing to the Minister. A copy of the Information Note addressed to the Minister is attached to my Founding Affidavit at RM13.

125.4 Khuba explains that, thereafter, the Minister himself directly approached him to discuss his "cooperation" in the renditions matter. Khuba stated as follows in his interview with Werksmans on 23 April 2015.

*"... I once spoke to the Minister, and when I spoke to the Minister when (sic) the Minister wanted to know: Are you sure you are cooperating. I spoke to the Minister, but 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*

*MP ORG*  
62

*wanted to leave the Minister out of it. I never mentioned anything. I said: If he [McBride] finds out later, it's fine, but I'm not going to tell him because tomorrow he is writing to the Minister: You speak to my people behind my back. You see, those type of things. So all of these things these I started to think".*

125.5 A copy of the relevant pages of Khuba's interview on 23 April 2015 are attached marked RJM29 (including the portion that describes Mathenjwa's improper inquiries).

125.6 In addition to his direct interference with investigators, the Minister made a point of visiting IPID's offices on 31 March 2014, shortly after my suspension. At this meeting, the Minister addressed senior staff from the country at IPID's Pretoria office on the renditions matter and on his view that the January 2014 report was not a progress report, but was a final report that was "contradicted" by the March 2014 report. The Minister further intimated that the March report was politically-motivated, and affiliated with the views of the DA in particular. The Minister also addressed the staff on his unfounded allegations pertaining to "the encryption device", presumably the Data Box. The Minister went on to make an utterly inappropriate remark about the over-ready reliance on the Constitution (plainly alluding to my reliance on the Constitution in this matter). The Minister stated:

*[Handwritten signatures]*

63

*"These days... If there is something you do not like, even at a political level ... you can take it to the constitutional court. This thing has become so common that if you don't like that hand that's dealt to you it's 'unconstitutional' that's what we claim ..."*

125.7 I attach a copy of an unofficial transcript of a recording of the Minister's speech at this meeting, marked RJM30. I attach a confirmatory affidavit by Felicia Ntshangase marked as RJM31, who attended the meeting.

125.8 As regards the remaining allegations in this paragraph, I deny that the proposals as regards Parliamentary oversight of IPID are unworkable institutionally. They accord with what Parliament itself envisaged and set out for the DPCI in s 17DA(3) to (5). There is no reason why the same scheme cannot be applied to IPID.

125.9 Contrary to the Minister's contentions, the facts of this case demonstrate precisely why the Minister cannot have unilateral powers to suspend, discipline and remove the Executive Director of IPID, and to institute his own investigation into IPID's investigations. As this case demonstrates, these powers are open to abuse, to the detriment of the independence and effective functioning of IPID.

126 Ad paragraph 111

126.1 I deny the allegation of any "underhanded motives" on my part.

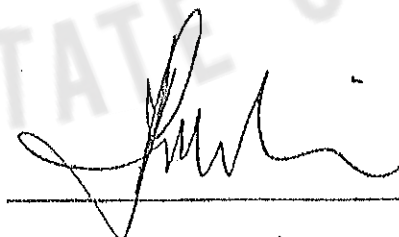
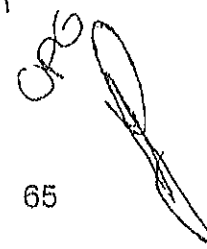
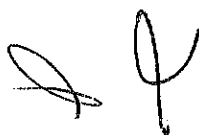

126.2 In my founding and supplementary founding affidavit, I have explained the reasons for my initial instruction to Khuba not participate in the Werksmans Inquiry, and my reasons for subsequently changing my position.

**127 Ad paragraph 114.2**

127.1 I admit that, in terms of section 7(4) of the IPID Act, IPID must notify the Minister when a recommendation for a criminal charge has been made against a member of the SAPS. This is not tantamount to being briefed on all high-ranking matters that have not yet been referred to the NPA for a decision. Accordingly, there are a number of ongoing high-profile investigations of which the Minister is not aware.

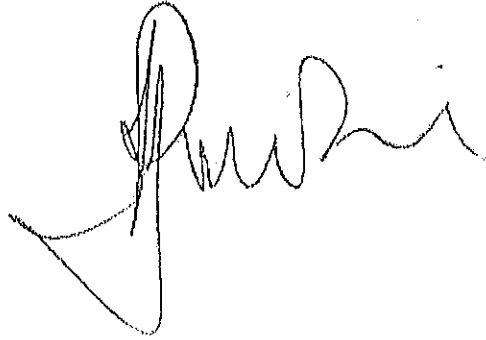
127.2 As regards the Minister's contention that he has never attempted to influence the decision-making process on the part of IPID in any of its high-profile investigations, I deny this and refer to what is stated in paragraph 125 above.

128 I seek the amended relief as described in this affidavit. In respect of the review of the Minister's decision to suspend me and institute a disciplinary inquiry, I seek a finding by this Court only on the ground of legality.

  
MP  
  
65  
  





ROBERT MCBRIDE



P 9



MP  
66  


THUS DONE SIGNED AND SWORN TO BEFORE ME AT *Pretoria*  
THIS THE *19th* DAY OF *June* 2015 AT *Pretoria*

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

**Olive P.G. Motsomi**  
Commissioner of Oaths  
Practising Attorney  
Gildenhuys Malatji Inc.

\_\_\_\_\_  
CAPACITY

GMI House, Harlequins Office Park  
164 Totius Street, Groenkloof, Pretoria

\_\_\_\_\_  
AREA



*[Handwritten signatures]*