

# **EXHIBIT Y**

**AFFIDAVIT & ANNEXURE**

**OF**

**ROBERT JOHN MCBRIDE**



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

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**AFFIDAVIT****ROBERT JOHN MCBRIDE**

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I, the undersigned

**ROBERT JOHN MCBRIDE**

do hereby make oath and state:

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

**The Independent Police Investigative Directorate**

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

**Legislative mandate**

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

 MP



Directorate Act No. 1 of 2011, whose objects are set out in Section 2. It provides *inter alia* that IPID should give effect to the provisions of Section 206(6) of the Constitution of RSA i.e. to establish an independent police complaints body in terms of national legislation in order to investigate alleged misconduct of, or any offence committed by a member of the Police Services in any province. In addition its task is to ensure independent oversight of the South African Police and the Municipal Police Services.

6. The independence and impartiality of the Directorate is entrenched in terms of Section 4 of the IPID Act, which specifically states that the Directorate i.e. IPID functions independently from the South African Police Service.

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."* **See Annexure A.**

7. The regulations for the operation of IPID provide, *inter alia*, that an investigator of IPID, as part of his/her functions, after collecting all evidence, statements and technical expert reports, if applicable, must submit a report on the investigation of the offence to the Executive Director or the relevant Provincial Head, as the case may be, containing recommendations regarding further action, which may include disciplinary measures to be taken against a member of the South African Police Service or the Municipal Police Service or criminal prosecution of such member. **See Annexure B.**
8. The Standard Operating Procedures of IPID effective as from the 1<sup>st</sup> April 2013 and in Section 7.10 thereof provide a procedure for the completion and closing of files and dockets. **See Annexure C.**



**Overview**

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



of prosecutions that should have proceeded to finality by now.

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

#### **Appointment and Conflict with the Minister of Police**

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



20. Additional investigations were undertaken, which included the analysis of the phone records of the two Generals. At the time I received the briefing from the Provincial Head: Limpopo, Mr Innocent Khuba ("Khuba") the reports on the analysis of the phone records and related matters were still outstanding. Once received, these reports established conclusively that the two implicated persons, Generals Dramat and Sibiya could not have been involved in the unlawful deportation of the affected Zimbabwean nationals.
21. In consequence, on 18 March 2014 IPID issued a final report to the NDPP on this matter which effectively exonerated Dramat and Sibiya. The findings and recommendations in this report were based on a thorough review of all available evidence and additional evidence gathered by IPID.
22. The final IPID report that I issued later contradicted the position of the then Minister of Police, Nkosinathi Thamsanqa Phiwayinkosi Nhleko ("Nhleko"), who stated that IPID recommended that Dramat and Sibiya be criminally charged with kidnapping and defeating the ends of justice.
23. This statement by the Minister was wrong, and was obviously based on the provisional and not the final report by IPID on this matter. The provisional report prepared by Mr Khuba did not consider all the evidence in its totality, as there were material reports relevant to investigation that were outstanding. In any event that report was only signed by Mr Khuba. In terms of IPID regulations and standing operational procedure, all final reports must be countersigned by the investigator, supervisor and the approving authority, prior to referring the case file to the NPA.
24. I publically contradicted this statement by the Minister and clarified that Dramat and Sibiya had been exonerated by the IPID investigation. The Minister thereafter accused me of fraudulently altering the IPID report in defence of Dramat and Sibiya and subsequently suspended me on 25 March 2015.
25. What followed is fully traversed in my founding affidavits and replying affidavits

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with annexures filed in the High Court, Labour Court and the Constitutional Court to challenge my unlawful suspension. See attached affidavits marked **Annexures E to G**.

26. The Constitutional Court found the actions of the Minister to be unlawful and unconstitutional and set them aside. **See Annexure H**.
27. Before I was suspended, I had written to the Chairperson of the Portfolio Committee on Police, Mr Francois Beukman ("Beukman"), asking that I be allowed to clarify and account to the Portfolio Committee on media reports about the "two contradicting reports". Beukman rejected this offer, citing the *sub-judice* rule. This was a concern to me given the fact that the doctrine of separation of powers compels him to hold the Executive and IPID to account. It is noteworthy that some members of the Portfolio Committee on Police held a meeting with the then Minister of Police, Nhleko where my removal from office and that of Dramat were discussed. The next day, Nhleko, made a presentation to the entire portfolio committee to start a process to remove Dramat. **See Annexure J**.
28. I believe this was another incident where an oversight body failed to carry out its Constitutional duty but was rather swayed by political considerations.
29. I include in my criticism of the manner in which Nhleko suspended me and appointed Kgamanyane, the investigation and recommendation of Werksmans who were appointed to look into and report on the deportation of the Zimbabwean nationals. I refer to this investigation in **Annexure G** which is the record of proceedings in the Constitutional Court matter that led to my reinstatement as Executive Director at IPID. This report is flawed in material respects. In addition Nhleko's conduct with regards to the commissioning of this report ultimately led to the dismissal of Sesoko and Khuba. I deal with this evidence in detail below.
30. In context, Khuba reported having received multiple calls from Nhleko's Personal Assistant asking him to meet with Nhleko for a face to face meeting. Nhleko himself



called Khuba promising him that the Ministry would cover his travelling costs to Cape Town on a weekend so that I would not find out about it. These were the actions of a government minister who was willing to use any means, including subterfuge to capture the criminal justice system. Nhleko would later go to Parliament to perpetuate the same lies.

### **Charged with Fraud and Defeating the Ends of Justice**

31. On 15 March 2016, I together with Sesoko and Khuba were charged with Fraud and Defeating the Ends of Justice arising solely out of the recommendations of the Werksmans report.
32. I knew that these charges were politically motivated and unsustainable. They had been trumped up as an additional layer of threats and intimidation to interfere with the independence of police oversight. Our charging coincided with our presentation of this matter in the High Court in the second half of 2015. The judgement that was delivered in December 2015 was that my unilateral suspension and disciplinary action was unlawful and unconstitutional. This order was confirmed by the Constitutional Court in September 2016. It bears mentioning that on the eve of us going to argue the matter in the Constitutional Court we were charged criminally.
33. In the relation to the same criminal charges on 1 November 2016, the prosecutor Sello Maema ("Maema") told the Pretoria Magistrate's Court, *"After consultations ... it has been apparent to the state that a prosecution would no longer be viable and we withdraw all charges"*. I knew that this was inevitable as there had never been a basis for charges against us. Our prosecution was politically inspired and malicious. Furthermore, it was probably unlawful. Maema was one of a group of prosecutors who were selected to undertake political prosecutions.

### **Werksman's Report**

34. I pause to reflect on the events that preceded the Werksmans report which was



commissioned by Nhleko in or about January 2015. This report which I maintain was materially flawed was used by Nhleko to legitimise his unlawful actions. I also take issue with the conduct of Sandile July ("July"), who compiled the said report.

35. Nhleko appointed Werksmans to investigate the "two reports" which he falsely alleged he had been given by IPID. IPID only gave Nhleko one report. The report compiled by Khuba had been given to the NPA. That is the only place where Nhleko could have obtained that report from.
36. Several attempts were made by July to interview IPID National Head of Investigations, Mr Sesoko and IPID Lead Investigator, Khuba. Khuba was contacted by July and Khuba indicated his willingness to cooperate but asked that the request be sent via email and be directed to me – he also provided the relevant email addresses. Interestingly, when the email was sent, Khuba's and Sesoko's email addresses were typed correctly but mine was not. The email meant for me was sent to [rmcbride@ipid.co.za](mailto:rmcbride@ipid.co.za) instead of [rmcbride@ipid.gov.za](mailto:rmcbride@ipid.gov.za). Sesoko picked up on what he thought had been an error and alerted Werksmans. The next time they sent the email to [rmcbrde@ipid.gov.za](mailto:rmcbrde@ipid.gov.za) (leaving out the "i" in mcbride). One is left with no other conclusion than that Werksmans was in cahoots with Nhleko to conduct a sham investigation that would enable Nhleko to get rid of myself and Dramat by hook or by crook.
37. Mr Israel Kgamanyane ("Kgamanyane"), who was the IPID's Free State Provincial Head at the time, was appointed to act as Executive Director in my absence (due to my suspension).
38. After his appointment, Kgamanyane instructed Sesoko and Khuba to attend interviews at Werksmans.
39. Thereafter Werksmans produced a report which was strongly contested by me, Khuba and Sesoko. Nevertheless, the report was leaked to the Sunday Times (Stephan Hofstatter and Mzilikazi wa Afrika) and the Sunday Independent (Solly





Maphumulo). The Sunday Times and Sunday Independent ran a series of false stories to prop up Nhleko's false narrative to discredit us publicly.

40. The Werksmans report was the only evidence against me, Khuba and Sesoko.
41. On 21 May 2015, Khuba and Sesoko were suspended by Kgamanyane on the instructions of the Minister of Police for allegedly altering the IPID's Progress Report into the Rendition Investigation, dated 22 January 2015 ("the first report") with me.
42. However, it should be noted that I did not even know about the existence of the report that was supposedly altered as it predated my appointment as IPID Executive Director.
43. A critique of the Werksmans report was filed with my papers when I challenged my unlawful suspension in the High Court. (**See Annexure G**).
44. It later transpired that the author of this report claimed that his report was hearsay and apparently not legally sustainable. It should be noted that the author of this report, Sandile July was later quoted by Maema in court in November 2016 as having threatened to challenge his subpoena in the High Court on the basis that his report was hearsay and he could not stand by it in a court of law. In view of this it seems to me that this report, which cost the taxpayers over R1,3 million was intended only to be used as an instrument to get rid of me, Khuba, Sesoko, Dramat and Sibiya. The Werksmans report is annexed as **Annexure K**.
45. Bizarrely, Nhleko later tried to get the IPID to pay between R6 million and R9 million in legal costs incurred by him in his unlawful and unconstitutional attempt to remove me as IPID Executive Director. The entire rendition saga cost the state R17 million, according to a reply to a parliamentary question put to him in 2017.
46. On 21 May 2015, Khuba and Sesoko were suspended by Kgamanyane on the instructions of the Minister for allegedly altering the IPID's Progress Report into the





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

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

#### **Suspensions, transfers and dismissals**

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

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51. [REDACTED]

52. Sesoko was also criminally charged with Khuba and me for fraud and defeating the ends of justice. The criminal charges were withdrawn on 01 November 2016. Upon my return to office in 2016, a settlement was reached with Sesoko's attorneys to reinstate him to his former position.

53. Upon my return to office, I discovered that there were allegations that of the manipulation of cases to artificially inflate the performance of the IPID in my absence. Kgamanyane even went to Parliament and reported that performance was much better in the absence of the suspended and transferred IPID officials. However, this was a blatant lie which was told to make him look good. Nhleko awarded him a bonus for good performance. Other senior manages did not get a performance bonus.

54. Upon my return to office in 2016, a settlement was reached with Sesoko's attorneys to reinstate him to his former position within IPID.

55. Khuba was the lead investigator into allegations that some Zimbabweans were unlawfully handed over to Zimbabwean police, resulting in them being killed. He was suspended on 21 May 2015 on allegations of altering the investigation report into Zimbabwe 'renditions' with myself and Sesoko. During his suspension, he was told that he was suspended on the Minister's instructions. Khuba deposed to an

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affidavit which was submitted in my Constitutional Court case.

56. Prior to his dismissal, Khuba was approached by Werksmans, the Minister's Personal Assistant and the Minister himself who wanted to interview him and get him to implicate me. When he failed to implicate me and Sesoko, disciplinary charges were brought against him. After six months of suspension, Khuba reached a plea bargain deal and was given a final written warning. Within a week, Khuba was summarily dismissed after he refused to falsely implicate me and Sesoko. Upon his refusal, he was dismissed with immediate effect.
57. After Khuba was dismissed, he was approached by officers from the Hawks and promised his job back on condition he made a false statement saying that I had forced him to change the rendition report. Khuba recorded this approach by a Colonel MS Mahlangu, who is heard imploring Khuba to make a false statement to empower General Mthandazo Berning Ntlemeza ("Ntlemeza"). In the recording, Colonel Mahlangu further says Khuba would be restored to his position if he made such a statement. **(See Recording 1 to be handed up as Exhibit "U1")**. A copy of the transcript is annexed hereto marked **Annexure M**. The recording will be made available to the Commission at the Chairman's discretion.
58. Well before my appointment as IPID Executive Director, Ntlemeza himself had told Khuba in November 2013 while he was doing the rendition investigation that it was the only thing holding up his move to the DPCI. The following year on 6 December 2014 Ntlemeza told Khuba to watch the media as there was going to be a 'hit on Dramat'. On the same Dramat received a "notice of the intention to suspend" from Nhleko.
59. Khuba has since been restored to his position through an order of the Labour Court. The criminal charges against Khuba, Sesoko and myself were withdrawn on 01 November 2016.
60. Felicia Ntshangase ("Ntshangase") is the Gauteng Provincial Head who was

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suspended on 8 July 2015 by Kgamanyane. Five days after my suspension Nhleko addressed IPID management and made disparaging remarks about the judiciary. Ntshangase made an affidavit about this. She was suspended on allegations of nepotism for recommending the appointments of 3 officials in her office. However, the decision to appoint said officials was made by Mr Kgamanyane. The Public Service Commission later cleared Ntshangase of wrongdoing and recommended action against Kgamanyane instead.

61. Nomkhosi Netsianda ("Netsianda") is the Head of Corporate Services. She was suspended on 19 August 2015 on allegations of leaking information to the media. The leaked information concerned the appointment of the Deputy Minister's daughter to a Deputy Director: Investigation post in the Free State, where Kgamanyane was the Provincial Head. Ms Netsianda advised against the appointment of the Deputy Minister's daughter. The documentation and her written notes ended up in a City Press report. The Public Service Commission ("PSC") later found that the Deputy Minister's daughter did not have the experience required for the post. Netsianda was also charged for conducting herself in a disgraceful manner by raising her voice during the Audit Committee meeting, where the funding of the IPID's case challenging Nhleko's interference with the IPID's independence was discussed. The disciplinary case against Netsianda was driven by the chairperson of the Audit Committee.
62. Netsianda's position was advertised in May 2016 and Molefe Matsomela was subsequently appointed on a six-month contract. The post was not vacant. In addition, Matsomela's security screening was done before the post was advertised, clearly indicating that advertisement and interviews were just a formality and that the post was earmarked for Matsomela. During his tenure, the so-called restructuring at IPID proceeded at pace and some people were transferred to more than one position. Matsomela never came back to work upon my return to office and he resigned thereafter. Since Matsomela's appointment was irregular, the IPID has instituted a process to recover the fruitless and wasteful

A handwritten signature in black ink, appearing to be 'Molefe Matsomela' or similar, with a stylized 'MP' or 'M' at the end.

expenditure relating thereto in the amount of R450 456.44.

63. The reputations of the affected officials were ruined. Kgamanayane even issued a directive for IPID staff not to talk to the suspended and transferred officials. Due to the fact that there were no grounds for the transfers, three officials, Antonett Mphago ("Mphago"), Viceroy Maoka ("Maoka") and Moses Dlamini ("Dlamini"), lodged a dispute at the General Public Service Sectoral Bargaining Council ("GPSSBC") for their unfair transfers and a case of unlawful transfer in the Labour Court. The three were transferred for 8 months at great cost to the IPID just to punish them for having worked with me. The total cost of the transfers is in excess of R1 million, including the arbitration award which they won at the GPSSBC.
64. Maoka is the Director: Litigation Services. He made an affidavit for my Constitutional Court case. Maoka lodged a complaint regarding the conduct of Adv. George Baloyi of NPA in the rendition prosecution. Maoka was transferred to Limpopo on 1 September 2015 on allegations of leaking information to the media. Maoka was transferred at the same time as Mphago (to Gauteng) and Moses Dlamini (to KwaZulu-Natal). He was never charged with leaking information but was charged with the cancellation of bookings, failure to inform his supervisor and failure to report sick leave to the supervisor. Maoka was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was suspended on 12 May 2016 for 'providing legal assistance to his colleagues and for failure to make financial disclosure'.
65. Dlamini is the National Spokesman who was suspended on 20 June 2016. He made an affidavit in my Constitutional Court case. Dlamini was transferred to KwaZulu-Natal on 1 September 2015 on allegations of leaking information to the media. Dlamini was transferred at the same time as Mphago (to Gauteng) and Maoka (to Limpopo). He was never charged with leaking information but was charged with the cancellation of bookings and failure to report sick leave to the supervisor timeously. Dlamini was re-instated by the Labour Court on 29 April 2016, returning to his office on 06 May 2016. He was again suspended on 20 June

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2016 for speaking to suspended officials (Maoka and McBride) against the directive of Kgamanyane, as well as allegations of sending disparaging emails about officials to IPID staff. Kgamanyane had issued a directive that IPID staff should not communicate with transferred and suspended officials. Dlamini was served with a letter of intent to permanently transfer him to the Eastern Cape within 3 days of returning to the office. After objecting, he was transferred to the post of Director: Investigations at National Office effective 1 July 2016 as part of the "restructuring" After he objected to the transfer, he was suspended.

66. Dlamini's disciplinary hearing was presided over by the Limpopo Director of Public Prosecutions, Advocate Ivy Thenga to whom IPID makes referrals of cases investigated by it – a clear conflict of interest. Thenga said that she had been instructed to finalise the hearing over the weekend. Dlamini was reinstated upon my return to office.
67. Mphago is the Director: Executive Support in the office of the Executive Director. She was transferred to Gauteng on allegations of leaking information to the media. The said information related to the appointment of the daughter of the Deputy Minister of Police's daughter to a post of Deputy Director: Investigations in the Free State. She was transferred to Gauteng provincial office to the position of Deputy Director: Corporate Services pending finalisation of investigations. She was never charged with leaking of information nor notified of the outcome of the investigation. On 1 December 2015, Mphago's transfer was uplifted after she had written to Kgamanyane informing him that 60 days had elapsed since her transfer and that no charges had been brought against her. She was denied access to her office and had to squat in the passage. On 30 June 2016 she was transferred to a position of Director: Compliance Monitoring, as a result of 'restructuring'. Mphago was under investigation on allegations of meeting/talking to/with me on my visit to the National Office on 9 June 2016.

## Restructuring





68. Kgamanyane subscribed to the view that *"If it works – break it!"*, as there is no other way to comprehend the rationale behind the restructuring that went on during his tenure. It was completely irrational, with people being transferred to positions for which they had no competencies or experience.
69. Vinesh Boodhoo ("Boodhoo") was the Director: Investigation in Gauteng. He was appointed by Ntshangase. Upon the suspension of Ntshangase, Dan Morema ("Morema") was appointed to act in Ntshangase's position in her absence. Morema victimised Boodhoo, as a result, he lodged a complaint against Morema. Boodhoo received correspondence informing him that the outcome of the investigation of his complaint was that he should be transferred out of Gauteng. Boodhoo was permanently transferred to the post of Director: Investigations in the Eastern Cape effective 1 July 2016 as a result of "restructuring". Boodhoo resigned shortly after being transferred.
70. Marianne Moroasui ("Moroasui") is the Chief Director: Legal Services. In March 2016 Kgamanyane had the Provincial Head of Kimberly and the then Deputy Provincial Head of the Western Cape (Moroasui) take over the running of Legal Services whilst she was in the office. During the purported restructuring of the IPID, Moroasui was informed that she would be transferred to a position of Provincial Head in either Mpumalanga or Kimberley. She resisted the move and referred the matter to the PSA. Whilst still in consultation with the PSA Kgamanyane, transferred her to Kimberley as Provincial Head. Moroasui was instructed to commence in Kimberley on 1 July 2016. She did not comply with the instruction and continued reporting to the National Office. One day she went out to lunch and upon her return her "biometric access" had been deactivated and she could not access the National Office. Moroasui was informed by Matsomela, who was at the time acting as the head of Corporate Services that she had to report to Kimberley. Her colleagues had to bring her handbag, work bag and other personal belongings to her on the street as she was refused access, even to the National Office parking.
71. Zuziwe Cele ("Cele") was the Deputy Director: Supply Chain Management. She



was permanently transferred to Deputy Director: Corporate Services in Gauteng Province effective 1 August 2016 as a result of restructuring. She was seen to be a stumbling block to procurement. She also left IPID shortly after being transferred.

72. Lindokuhle Ngcongco ("Ngcongco") was the Chief Financial Officer ("CFO"). She was transferred to Gauteng as the Provincial Head to head investigations. She was perceived to be a stumbling block to Kgamanyane's plans for procurement. She was also opposed to the IPID paying for legal costs incurred by the Minister of Police (Nhleko). She has since left the IPID.
73. Mamodishe Molope ("Molope") is the Chief Director: Compliance Monitoring and Compliance Management. She was transferred to Mpumalanga as Provincial Head to lead investigations, as part of restructuring.
74. Several other junior staff members were also transferred from their positions as a result of "restructuring" sanctioned by the former Minister of Police, Nkosinathi Nhleko.
75. The impact of the instability that was occasioned by these transfers is noted in the report of the Auditor General dated 31 March 2016. The report is annexed as **Annexure N**.

#### **Return to office**

76. I returned to office on 19 October 2016 and on 20 October 2016 I requested Kgamanyane for a handover report. He was quite petulant and refused to give me such a report. In a letter dated 27 October 2016 he stated that all activities local and international trips were undertaken with the approval by his supervisor. Both the letter and his response are annexed as **Annexure P**.
77. He never returned to work and was irregularly transferred by Nhleko to the DPCI. He was accepted by former Hawks Head, Mthandazo Ntlembeza and appointed to the DPCI structure in the Free State. I had no say in Kgamanyane's transfer, which



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

#### **Infiltration of IPID by Crime Intelligence**

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



was done in certain instances to manipulate the statistics upwards and other acts that amounted to defeating the ends of justice. These cases were termed "special closures". This was intended to give an impression that performance had been better under Kgamanyane. I instructed our Integrity Strengthening Unit to investigate these allegations. The Auditor-General also flagged some of these cases. One employee has already been dismissed as a result of this investigation. Another senior employee, Dan Morema, resigned when he was approached to make a statement.

### Investigation into Phahlane

80. Soon after my return to office I received a complaint from Paul O'Sullivan ("O'Sullivan"). The complaint was about a case of corruption and money laundering that had been opened against the then Acting National Commissioner of Police, General Phahlane. This case was first reported to the IPID before my arrival.
81. O'Sullivan had brought the case to the attention of Mr Kgamanyane, the Acting Executive Director, in March 2016 while I was on suspension. The complaint brought by O'Sullivan was that the case had not been investigated and he requested me to intervene and ensure that matter was investigated. One of the strange things that I found upon my return was that two cases had been opened, one as a duplicate of the other and *vice versa* – and both were then closed as duplicates of each other.
82. At the end of November 2016, a Task Team was formed that was to investigate the cases of corruption and money laundering that were levelled against General Phahlane. The Task Team comprised of Mahlangu, Temane Binang, Mantsha Raphesu and Nkabinde.
83. The case to be investigated had to do with the construction of Phahlane's house at Sable Hills Estate allegedly with funds that were provided by a service provider



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

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

#### **Counter-investigation**

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

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



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



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

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

*(a) \*;*

*(b) \*;*

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

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

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are baseless and are trumped up.

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

#### **Interdict Against Counter-investigation**

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

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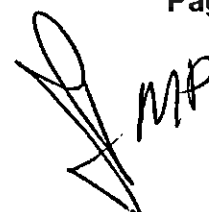
discretion.

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

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

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

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

**Court order regarding search and seizure by Phahlane on vehicle investigation**

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

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**See Annexure T.**

122. The applicants later brought an application for leave to appeal which was dismissed. We have been advised by IPID's attorneys that the applicants are petitioning the Supreme Court of Appeal.

#### **Unjustified Attacks against IPID**

123. As can be seen, it is clearly evident that there have been orchestrated, relentless attempts to unjustly interfere with IPID's core function of independent oversight of the police. I am deeply concerned about this. Should these attacks continue and succeed, there is a real risk that IPID could be marginalised and an important Constitutional check mechanism over the police be minimised.

124. An overview of these attacks follows:

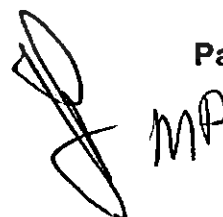
##### **National Prosecuting Authority Bias**

125. The NPA under the leadership of Advocate Shaun Abrahams ("Abrahams"), working with Advocates Tori Pretorius ("Pretorius"), Anthony Mosing ("Mosing"), Sibongile Mzinyathi ("Mzinyathi"), George Baloyi ("Baloyi"), Sello Maema ("Maema"), Molatlhwa Mashuga ("Mashuga") and Raymond Mathenjwa ("Mathenjwa") has lost all credibility. I am of the belief that these advocates are a core group that has been at the forefront of enabling the capture of the criminal justice cluster through the persecution of corruption fighters. They were also involved in the protection of criminal suspects by declining and/or delaying decisions to prosecute suspects investigated by the IPID in cases where their subordinates who are experienced prosecutors had recommended prosecution based on abundant evidence but the advocates would override those decisions.

126. I am of the belief that the above core group of State Advocates at the NPA have

been working to interfere with IPID's oversight function of the police. This same core group of State Advocates have also worked against the independence of the Hawks by the unsustainable prosecutions they have taken against Dramat, Sibiya and Booysen. They have attempted to destabilise both organisations through malicious prosecutions. There is evidence that these actions are politically driven.

127. In addition to the series of malicious prosecution these State Advocates have also impeded the work of IPID by declining to prosecute suspects investigated by IPID. This has occurred in cases where experienced prosecutors recommended prosecutions. These decisions, however, are regularly overturned by the core group of State Advocates. The extent to which this has happened rules out the possibility of coincidence.
128. This caused me to write to NDPP Shaun Abrahams on numerous occasions requesting that he review Mzinyathi's and Baloyi's decisions to undermine the decisions of Senior Public Prosecutors which inexplicably overturned their decisions to prosecute. **See Annexure U.** In response to my letters Abrahams simply said he agreed with his State Advocates actions. The tone of his reply does not convince me that he has applied his mind to the matters which I have raised. **See Annexure V.** I then responded to his letter as recorded in **Annexure W.**
129. I have already expressed my concern that Advocate Sello Maema ("Maema") saw fit to prosecute us in respect of the rendition matter, as I know that there was not a shred of evidence to substantiate his decision to charge us with fraud and defeating the ends of justice (or any other charge).
130. Mashuga was the State Advocate who took the decision to prosecute IPID investigators together with O'Sullivan, and Trent in defiance of a court order, and on charges to which there is no evidence. The motive for this was to impede IPID's investigation into Phahlane.

A handwritten signature, possibly 'Sello Maema', followed by the initials 'MP'.

### **The role of Hogan Lovells**

131. Hogan Lovells allowed itself to be used to hollow out public institutions, especially the IPID and the DPCI. This firm was used to get rid of people in the IPID and the DPCI. There are common figures in the tainted disciplinary processes with fabricated charges against Sesoko, Khuba, Sibiya and myself. In particular the conduct of legal professionals who deliberately carried out the nefarious agenda of politicians (Minister Nhleko) are to be censored.

### **Crimes against the State (CATS) Unit**

132. DPCI has a specialised investigation unit for terrorism and related crimes. The unit is called "Crimes against the State Unit". As its name suggests this unit investigates very serious matters. For inexplicable reasons the fraud and defeating the ends of justice case which arose from the rendition case in which Sesoko, Khuba and I were charged, was investigated by this investigation group. Perhaps this was to add gravitas to the allegations against us. The charges were however eventually (and inevitably) withdrawn as there was never any basis for an investigation against us, much less an actual prosecution. I question why this unit was charged with the investigation against us.
133. I can only conclude that this unit was used to pursue a political agenda and to target individuals within the criminal justice cluster who stood up against state capture. The Unit was headed by Brigadier Nyameka Xaba (then Colonel) who reported to Ntlemeza. The same unit investigated other fabricated cases against Minister Pravin Gordhan, the so-called Rogue Unit and seems to have taken instructions or worked with SARS Commissioner Tom Moyane ("Moyane"). This can be seen from the incident involving SARS Legal Advisor Vlok Symington, who was prevented from leaving a boardroom until he handed back a document on the instructions of Moyane.

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134. Furthermore, cases investigated by this Unit are assigned to Priority Crimes Litigation Unit (PCLU) of the NPA. Prosecutors attached to the PCLU have been involved in many of the malicious prosecution cases which I have referred to in this statement, including the prosecutions of Glynnis Breytenbach and Pravin Gordhan.

**Leon Mbangwa – Police Minister's Nhleko's Chief of Staff**

135. Lionel Moyo aka Leon Mbangwa was employed by Minister Nhleko as his Chief of Staff. This appointment was completely irregular in that Mbangwa is a convicted criminal and illegal immigrant. He does not hold a legitimate South African Identity Book/Card. He was previously convicted and sentenced to four years imprisonment for using a fraudulent ID. Upon his appointment Mbangwa's security screening was processed through IPID by Kgamanyane to State Security Agency to avoid detection. This begs the question: Why would a government minister want an illegal immigrant as his Chief of Staff?
136. In this regard we refer to the letter from Kgamanyane to the State Security Agency dated 22 February 2016 as recorded in **Annexure X**, and the State Security Agency response dated 3 March 2016 to Kgamanyane as recorded in **Annexure Y**. In addition find my letter to the State Security Agency dated 25 October 2016 bringing their attention to this possible threat to National Security, as recorded in **Annexure Z**.
137. This is another incident which demonstrates the political capture of IPID. The fact that IPID involved itself irregularly in Mbangwa's security screening and provided a false clearance flies in the face of IPID's constitutional mandate and demonstrates the political control the Minister established over the IPID.



### Reference Group

138. In October 2014, the Minister of Police, Nkosinathi Nhleko established a reference group to *"...deal with issues of human resources, suspensions... the state of crime intelligence, administrative queries and perception of SAPS."* At the time, the Minister said the ministry would use the work done by the reference group to *"...turnaround the image of the police and build public confidence in the service."* Surprisingly the reference group was comprised of public officials and included State Advocate Raymond Mathenjwa ("Mathenjwa") from the NPA.
139. Mathenjwa was one of the prosecutors involved in untoward decisions concerning IPID cases. Later (in his position of adviser on the Reference Group reporting to the Minister) he aggressively demanded sight of the case file into the rendition's investigation. This was clearly beyond the scope of the reference group as announced by Nhleko. Further, this was an undesirable situation as Mathenjwa was a senior prosecutor who was involved in deciding other matters referred to the NPA by the IPID. At the time, IPID had already referred the rendition docket to the National Director of Public Prosecutions for a decision on prosecution. That neither Mathenjwa nor the Minister saw the clear conflict of interest which could compromise the IPID's independence suggests that there was some ulterior purpose to the establishment of the reference group.

### Portfolio Committee on Police

140. During the period of my suspension, IPID staff who were under attack by Kgamanyane directed correspondence to the Portfolio Committee on Police ("PCP") reporting the wholesale transfers and new appointments in IPID. No response was ever received. I too wrote to the chairperson of the committee alerting him to these concerning events. I never received a response from him.





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

**I know and understand the contents of this declaration.**

**I have no objection to taking the prescribed oath.**

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

ROBERT JOHN McBRIDE

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

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2019-02-13  
CRIMINAL JUSTICE  
SOUTH AFRICAN POLICE SERVICE

**COMMISSIONER OF OATHS**

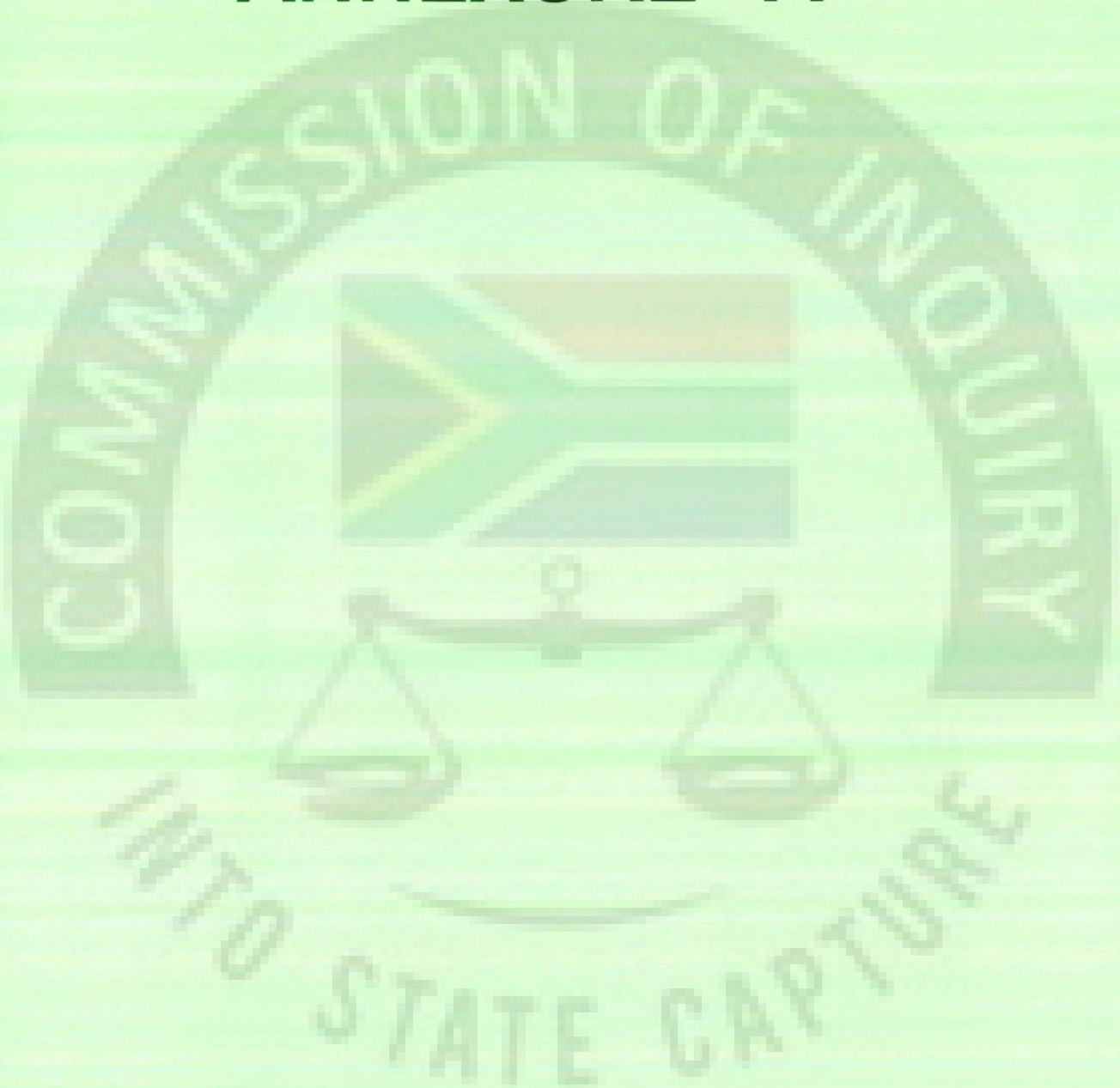
FULL NAMES: MOLOKELA PHINGA RAPHE

DESIGNATION: NARRAN OFFICER

ADDRESS: 01 Clarendon Place

MF

# ANNEXURE “A”



Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



# Government Gazette

**REPUBLIC OF SOUTH AFRICA**

Vol. 551

Cape Town

16 May 2011

**No. 34298**

## THE PRESIDENCY

No. 425

16 May 2011

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 1 of 2011: Independent Police Investigative Directorate Act, 2011.**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

*MP*

**GENERAL EXPLANATORY NOTE:**

[                      ] Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President)  
(Assented to 12 May 2011)*

**ACT**

To make provision for the establishment of an Independent Police Investigative Directorate and to regulate the functions of the Directorate, to provide for the establishment of a Management Committee and Consultative Forum and their respective functions; to provide for the appointment and powers of investigators; to provide for reporting obligations and cooperation by members of the South African Police Service and Municipal Police Services; to provide for transitional arrangements; to provide for the repeal and amendment of certain laws; and to provide for matters connected therewith.

**PREAMBLE**

**WHEREAS** section 206(6) of the Constitution provides that, on receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police service in the province;

**AND WHEREAS** there is a need to ensure effective independent oversight of the South African Police Service and Municipal Police Services;


**AND WHEREAS** Chapter 2 of the Constitution provides for the upholding and safeguarding of fundamental rights of every person,

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

**ARRANGEMENT OF SECTIONS****CHAPTER 1****DEFINITIONS, OBJECTS OF ACT, ESTABLISHMENT, INDEPENDENCE 5  
AND IMPARTIALITY**

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2. Objects of Act

MP



3. Establishment
4. Independence and impartiality

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MP  




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INDEPENDENCE AND IMPARTIALITY****Definitions**

20

1. In this Act, unless the context indicates otherwise—
  - “Committee” means the Management Committee established under section 11;
  - “Constitution” means the Constitution of the Republic of South Africa, 1996;
  - “Directorate” means the Independent Police Investigative Directorate established in terms of section 3;
  - “Executive Director” means the Executive Director appointed in terms of section 6(1);
  - “financial year” means the period from 1 April in any year to 31 March in the ensuing year;
  - “fixed date” means the date of commencement of this Act;
  - “forum” means the Consultative Forum established under section 15;
  - “investigator” means a person appointed under section 22;
  - “MEC” means the Member of the Executive Council of a province who is responsible for policing in that province;
  - “Minister” means the Minister of Police;
  - “municipal police service” means a municipal police service established under section 64A of the South African Police Service Act;
  - “organ of state” means an organ of state as defined in section 239 of the Constitution;
  - “provincial head” means a person appointed under section 20;
  - “Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
  - “Public Service Act” means the Public Service Act, 1994 (Proclamation No. 103 of 1994);

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"Secretariat" means the Civilian Secretariat for Police Service established in terms of section 4(1) of the Civilian Secretariat for Police Service Act, 2011;

"Secretary" means the Secretary for the Police Service appointed in terms of section 7(1) of the Civilian Secretariat for Police Service Act, 2011;

"security clearance certificate" means an official document issued by the Executive Director indicating the degree of security competence of a person; 5

"South African Police Service Act" means the South African Police Service Act, 1995 (Act No. 68 of 1995); and

"this Act" includes the Schedule and regulations.

## Objects of Act

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### 2. The objects of this Act are—

- (a) to give effect to the provision of section 206(6) of the Constitution establishing and assigning functions to the Directorate on national and provincial level;
- (b) to ensure independent oversight of the South African Police Service and Municipal Police Services; 15
- (c) to align provincial strategic objectives with that of the national office to enhance the functioning of the Directorate;
- (d) to provide for independent and impartial investigation of identified criminal offences allegedly committed by members of the South African Police Service and Municipal Police Services; 20
- (e) to make disciplinary recommendations in respect of members of the South African Police Service and Municipal Police Services resulting from investigations conducted by the Directorate;
- (f) to provide for close co-operation between the Directorate and the Secretariat; 25 and
- (g) to enhance accountability and transparency by the South African Police Service and Municipal Police Services in accordance with the principles of the Constitution.

## Establishment

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3. (1) The Independent Police Investigative Directorate, to be structured at national level, with provincial offices, is hereby established.

(2) The Directorate must exercise its functions in accordance with this Act and any other relevant law.

(3) The Directorate is financed from money that is appropriated by Parliament. 35

## Independence and impartiality

4. (1) The Directorate functions independently from the South African Police Service.

(2) Each organ of state must assist the Directorate to maintain its impartiality and to perform its functions effectively.

## CHAPTER 2

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### NATIONAL OFFICE

#### National office

5. The national office is hereby established and is headed by the Executive Director.

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**Appointment of Executive Director**

6. (1) The Minister must nominate a suitably qualified person for appointment to the office of Executive Director to head the Directorate in accordance with a procedure to be determined by the Minister.
- (2) The relevant Parliamentary Committee must, within a period of 30 parliamentary working days of the nomination in terms of subsection (1), confirm or reject such nomination. 5
- (3) In the event of an appointment being confirmed—
- (a) the successful candidate is appointed to the office of Executive Director subject to the laws governing the public service with effect from a date agreed upon by such person and the Minister; and 10
- (b) such appointment is for a term of five years, which is renewable for one additional term only.
- (4) When the Executive Director is unable to perform the functions of office, or during a vacancy in the Directorate, the Minister may designate another person to act as Executive Director until the Executive Director returns to perform the functions of office or the vacancy is filled. 15
- (5) In the case of a vacancy, the Minister must fill the vacancy within a reasonable period of time, which period must not exceed one year.
- (6) The Minister may, remove the Executive Director from office on account of— 20
- (a) misconduct;
- (b) ill health; or
- (c) inability to perform the duties of that office effectively.

**Responsibilities of Executive Director**

7. (1) The Executive Director is the accounting officer of the Directorate and must ensure that— 25
- (a) proper records of all financial transactions, assets and liabilities of the Directorate are kept;
- (b) the financial affairs of the Directorate comply with the Public Finance Management Act; and 30
- (c) an annual report is prepared in the manner contemplated in section 32.
- (2) The Executive Director is responsible for the appointment of the provincial heads of each province as contemplated in section 22(1).
- (3)(a) The Executive Director must appoint such staff as may be necessary to enable the Directorate to perform its functions in terms of this Act. 35
- (b) The staff component must be established in accordance with the Public Service Act.
- (c) The conditions of service, including remuneration and allowances of such staff, are regulated in terms of the Public Service Act.
- (d) The Executive Director must direct that a register of declaration of interest by managers and investigators be kept in the prescribed form and manner. 40
- (e) The Executive Director must give guidelines with regard to—
- (i) the investigation and management of cases by officials within the respective provincial offices;
- (ii) administration of the national and provincial offices; and 45
- (iii) training of staff at national and provincial level.
- (4) The Executive Director must refer criminal offences revealed as a result of an investigation, to the National Prosecuting Authority for criminal prosecution and notify the Minister of such referral.
- (5) The National Prosecuting Authority must notify the Executive Director of its intention to prosecute, whereafter the Executive Director must notify the Minister thereof and provide a copy thereof to the Secretary. 50
- (6) The Executive Director must ensure that complaints regarding disciplinary matters are referred to the National Commissioner and where appropriate, the relevant Provincial Commissioner. 55
- (7) Once a month the Executive Director must submit to the Minister a summary of the disciplinary matters and provide a copy thereof to the Secretary.

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

(9) The Executive Director may upon receipt of a complaint, cause to investigate any offence allegedly committed by any member of the South African Police Service or Municipal Police Services, and may, where appropriate, refer such investigation to the National or Provincial Commissioner concerned. 5

(10) The Executive Director must refer criminal matters which fall outside the scope of the Directorate, to the appropriate authority for further investigation in terms of applicable legislation.

(11) The Executive Director must provide strategic leadership to the Directorate. 10

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

#### Composition of national office

8. (1) The national office consists of—

- (a) the Executive Director who controls the office; 15
- (b) the Corporate Services Unit;
- (c) the Investigation and Information Management Unit;
- (d) the Legal Services Unit; and
- (e) any other unit established, subject to the approval of the Minister and Parliament. 20

(2) The Executive Director must appoint members at the national office.

(3) A person may not be appointed as a member of the national office unless information with respect to that member has been gathered in an appropriate security screening investigation as prescribed by the Minister.

(4) The security screening investigation contemplated in subsection (3), must be done in conjunction with the National Intelligence Agency, as referred to in section 3 of the Intelligence Services Act, 2002 (Act No. 65 of 2002). 25

(5) The Executive Director must issue a security clearance certificate in respect of such person wherein it is certified that such person has successfully undergone a security clearance and is appointed as an employee of the Directorate. 30

(6) Any member of the national directorate may from time to time, or at such regular intervals as the Executive Director may determine, be subjected to a further security screening as contemplated in subsection (3).

(7) The Executive Director, after consultation with the National Intelligence Agency, must withdraw a security clearance certificate referred to in subsection (5) if he or she obtains information which, after evaluation by him or her, causes him or her to believe that the person in question could be a security risk or acted in any manner prejudicial to the objects of this Act. 35

(8) If the security clearance certificate referred to in subsection (7) is withdrawn, the person concerned is unfit to continue to hold such office and the Executive Director must discharge him or her from the Directorate. 40

#### Functions of national office

9. The functions of the national office are to—

- (a) give strategic leadership to the Directorate; 45
- (b) develop and implement policy for the Directorate;
- (c) oversee and monitor performance at provincial level and intervene to rectify challenges where necessary;
- (d) gather, keep and analyse information in relation to investigations;
- (e) identify and review legislative needs and report on such matters to the Secretariat; 50
- (f) do internal auditing of the Directorate;
- (g) provide administrative support to the Directorate;
- (h) strengthen the co-operative relationship between the Directorate and the Secretariat;

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- (i) report to the relevant MEC on matters referred to the Executive Director by the MEC;
- (j) submit an annual report to the Minister and to Parliament;
- (k) implement information measures to develop public awareness of the provisions of this Act; 5
- (l) deal with any other matter referred to it by the Minister;
- (m) make recommendations to the South African Police Service resulting from investigations done by the Directorate; and
- (n) report twice a year to Parliament on the number and type of cases investigated, the recommendations, the detail and outcome of those recommendations. 10

### Delegations

10. (1) Subject to subsections (2) and (3), the Executive Director may delegate functions entrusted to the Executive Director under this Act to any other person with appropriate knowledge and experience who is under the control of the Executive Director. 15
- (2) A delegation under subsection (1) must be in writing and—
- (a) may be subject to any conditions or restrictions determined by the Executive Director;
  - (b) does not prevent the exercise of any power of the Executive Director; and
  - (c) may be withdrawn or amended by the Executive Director. 20
- (3) The Executive Director may not delegate any of the powers, functions or duties referred to in sections 7(1), (2), (3), (5), (6), (7), (8), (9) and (10), 8, 20, 22, 31(2), 32(1) and (2), and 34 of this Act.

## CHAPTER 3

### MANAGEMENT COMMITTEE 25

#### Establishment of Management Committee

11. There is hereby established a Management Committee.

#### Composition of Committee

12. (1) The Committee established in terms of section 11 consists of— 30
- (a) the Executive Director; and
  - (b) the provincial head for each province.
- (2) The Executive Director is the chairperson of the Committee.
- (3) The Executive Director may invite any person not mentioned in subsection (1) to a meeting of the Committee.

#### Functions of Committee 35

13. (1) The Committee is responsible for the following functions:
- (a) To ensure co-ordination and alignment within each province regarding— 40
    - (i) strategic and performance plans;
    - (ii) priorities, objectives and strategies across national and provincial levels;
    - (iii) adherence to financial requirements prescribed in terms of the Public Finance Management Act; and
    - (iv) interaction between the various provincial directorates;
  - (b) to identify any other matter of strategic importance to the functioning of the Directorate within each province;
  - (c) to discuss performance in the provision of services in order to detect failures 45 and to initiate preventative or corrective action when necessary;
  - (d) to raise national management issues within the Directorate; and
  - (e) to ensure regular reporting on matters specific to the performance of the functions of the respective provincial directorates.

**Meetings of Committee**

14. (1) The Committee meets as often as circumstances require, but at least four times every year, at such time and place as the Executive Director may determine.

(2) The Committee may determine its own procedure for its meetings.

**CHAPTER 4**

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**CONSULTATIVE FORUM****Establishment of Consultative Forum**

15. There is hereby established a Consultative Forum.

**Composition of forum**

16. (1) The forum established in terms of section 15 consists of— 10

(a) the Executive Director; and

(b) the Secretary.

(2) The Executive Director or Secretary, in consultation with one another, may invite any person not mentioned in subsection (1) to a meeting of the forum.

**Functions of forum**

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17. The functions of the forum are to—

(a) facilitate closer cooperation between the Secretary and the Executive Director; and

(b) discuss, amongst other, issues relating to trends, recommendations and implementation of such recommendations. 20

**Meetings of forum**

18. (1) The Secretary must convene the first meeting of the forum and preside at that meeting.

(2) The Secretary and the Executive Director must alternate as chairperson at meetings. 25

(3) The forum determines its own procedure and agenda for its meetings.

(4) The forum must meet at least four times a year on issues of common interest.

**CHAPTER 5****PROVINCIAL OFFICES****Provincial offices**

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19. Each provincial office is headed by a provincial head who is appointed—

(a) at the level of Chief Director; and

(b) on a permanent basis in terms of section 20(1).

**Appointment of provincial heads**

20. (1) The Executive Director appoints the provincial head for each province in accordance with the laws governing the public service. 35

(2) The provincial head must conclude a written performance agreement with the Executive Director—

(a) within a reasonable time after the appointment of the provincial head; and

(b) thereafter, annually within one month of the commencement of each financial year. 40

(3) The performance agreement referred to in subsection (2) must include—

(a) measurable performance objectives and targets that must be met, and must provide for the time-frames within which those performance objectives and targets must be met; 45

(b) standards and procedures for evaluating performance and intervals for evaluation; and

(c) the consequences of substandard performance.

(4) When the provincial head is unable to perform the functions of office, or during a vacancy in the provincial office, the Executive Director may designate another person to act as provincial head until the provincial head returns to perform the functions of office or the vacancy is filled. 5

(5) In the case of a vacancy, the Executive Director must fill the vacancy within a reasonable period of time, which period shall not exceed six months.

#### Responsibilities of provincial head

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21. (1) A provincial head is responsible for the following:

- (a) Appointment and performance management of staff at provincial level;
- (b) to facilitate investigation of cases and to perform any other function incidental to such investigations;
- (c) to control and monitor active cases; 15
- (d) to refer matters investigated by the provincial office under this Act to the National or relevant provincial prosecuting authority for criminal prosecution;
- (e) to report to the Executive Director on matters investigated;
- (f) to refer disciplinary matters to the Provincial Commissioner;
- (g) to facilitate cooperation between the provincial head and the provincial police secretariat; 20
- (h) to report to the Executive Director on recommendations and finalisation of cases;
- (i) to report to the Executive Director on the management of provincial offices and their finances; 25
- (j) to report to the relevant MEC on matters referred to the Provincial Head by that MEC;
- (k) to ensure adherence to guidelines issued by the national office relating to the investigation and management of cases by officials within the respective provincial offices; 30
- (l) to keep proper financial records in accordance with the prescribed norms and standards;
- (m) to prepare financial statements for submission to the Executive Director within two months after the end of the financial year;
- (n) to ensure compliance with administrative guidelines issued by the Executive Director; and 35
- (o) to manage the provincial office.

### CHAPTER 6

#### APPOINTMENT, REMUNERATION, FUNCTIONS AND POWERS OF INVESTIGATORS

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##### Appointment of investigators

22. (1) The Executive Director, in consultation with the relevant provincial head, must appoint a fit and proper person as an investigator of the Directorate, subject to subsections (2), (3) and (4).

(2) A person appointed as an investigator— 45

- (a) must have at least a grade 12 certificate or a relevant diploma or degree; and
- (b) must have—
  - (i) knowledge and relevant experience of criminal investigation; or
  - (ii) any other relevant experience.

(3) A person may not be appointed as an investigator unless information with respect to that person has been gathered in an appropriate security screening investigation as prescribed by the Minister. 50



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

(5) The Executive Director or official so delegated by him or her must issue a security screening certificate in respect of such person wherein it is certified that such person has successfully undergone a security clearance and is appointed as an investigator in terms of this Act. 5

(6) Any investigator may from time to time, or at such regular intervals as the Executive Director may determine, be subjected to a further security screening as contemplated in subsection (3). 10

(7) A person must be discharged from his or her position as an investigator if he or she fails to conform to the security clearance prescripts.

(8) An investigator is given policing powers contemplated in section 24(2) by the Minister, within three months after his or her appointment.

(9) The Executive Director must issue a document in the prescribed form, which shall serve as proof to certify that an investigator has been duly authorised to exercise the powers and perform the functions as contemplated in section 24. 15

#### Remuneration and conditions of service of investigators

23. The conditions of service, including the salary and allowances payable to an investigator appointed under this Act, must be on par with members appointed as detectives in terms of the South African Police Service Act. 20

#### Functions and investigative powers

24. (1) An investigator may, subject to the control and direction of the Executive Director or the relevant provincial head, exercise such powers and must perform such duties as are conferred or imposed upon him or her by or under this Act or any other law, and must obey all lawful directions which he or she may from time to time receive from a person having the authority to give such directions under this Act. 25

(2) An investigator has the powers as provided for in the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which are bestowed upon a peace officer or a police official, relating to— 30

- (a) the investigation of offences;
- (b) the ascertainment of bodily features of an accused person;
- (c) the entry and search of premises;
- (d) the seizure and disposal of articles;
- (e) arrests;
- (f) the execution of warrants; and
- (g) the attendance of an accused person in court. 35

(3) (a) For the purposes of conducting an investigation, an investigator may direct any person to submit an affidavit or affirmed declaration or to appear before him or her to give evidence or to produce any document in that person's possession or under his or her control which has a bearing on the matter being investigated, and may question such person thereon. 40

(b) An investigator or any person duly authorised thereto by him or her may request an explanation from any person whom he or she reasonably suspects of having information which has a bearing on a matter being or to be investigated. 45

(4) A person questioned by an investigator conducting an investigation must answer each question truthfully and to the best of that person's ability, but—

- (a) a person is not obliged to answer any question if the answer is self-incriminating; and
- (b) the person asking the questions must inform that person of the right set out in paragraph (a). 50

(5) No self-incriminating answer given or statement made by any person to an investigator exercising powers in terms of this Act will be admissible as evidence against that person in criminal proceedings instituted against that person in any court, except in criminal proceedings for perjury. 55

**Conflict of interest and disclosure of interest**

25. (1) No member of the Directorate may conduct an investigation, or render assistance with an investigation, in respect of a matter in which he or she has a financial or any other interest which might preclude him or her from exercising or performing his or her powers, duties and functions in an objective manner. 5

(2) If, during an investigation, it appears to a member of the Directorate that a matter concerns a financial or other interest of that member as referred to in subsection (1), that member must—

- (a) immediately and fully disclose the fact and nature of that interest to the Executive Director; and 10
- (b) withdraw from any further involvement in that investigation.

**Integrity measures**

26. (1) The Minister may prescribe measures for integrity testing of members of the Directorate, which may include random entrapment, testing for the abuse of alcohol or drugs, or the use of a polygraph or similar instrument to ascertain, confirm or examine in a scientific manner the truthfulness of a statement made by a person. 15

(2) The necessary samples required for any test referred to in subsection (1) may be taken, but any sample taken from the body of a member may only be taken by a registered medical practitioner or a registered nurse.

(3) The Minister shall prescribe measures to ensure the confidentiality of information obtained through integrity testing, if such measures are prescribed in terms of subsection (1). 20

**Limitation of liability**

27. An investigator is not liable in respect of any act or omission in good faith and without gross negligence in performing a function in terms of this Act. 25

**Type of matters to be investigated**

28. (1) The Directorate must investigate—

- (a) any deaths in police custody;
- (b) deaths as a result of police actions;
- (c) any complaint relating to the discharge of an official firearm by any police officer; 30
- (d) rape by a police officer, whether the police officer is on or off duty;
- (e) rape of any person while that person is in police custody;
- (f) any complaint of torture or assault against a police officer in the execution of his or her duties; 35
- (g) corruption matters within the police initiated by the Executive Director on his or her own, or after the receipt of a complaint from a member of the public, or referred to the Directorate by the Minister, an MEC or the Secretary, as the case may be; and
- (h) any other matter referred to it as a result of a decision by the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case may be, 40

in the prescribed manner.

(2) The Directorate may investigate matters relating to systemic corruption involving the police. 45

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## CHAPTER 7

**REPORTING OBLIGATIONS AND COOPERATION BY MEMBERS OF THE  
SOUTH AFRICAN POLICE SERVICE AND MUNICIPAL POLICE SERVICE  
AND DISCIPLINARY RECOMMENDATIONS****Reporting obligations and cooperation by members**

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29. (1) The Station Commander, or any member of the South African Police Service or Municipal Police Service must—

- (a) immediately after becoming aware, notify the Directorate of any matters referred to in section 28(1)(a) to (f); and
- (b) within 24 hours thereafter, submit a written report to the Directorate in the prescribed form and manner of any matter as contemplated in paragraph (a).

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(2) The members of the South African Police Service or Municipal Police Services must provide their full cooperation to the Directorate, including but not limited to—

- (a) the arrangement of an identification parade within 48 hours of the request made by the Directorate;
- (b) the availability of members for the taking of an affidavit or an affirmed declaration or to give evidence or produce any document in that member's possession or under his or her control which has a bearing on the matter being investigated; and
- (c) any other information or documentation required for investigation purposes.

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**Disciplinary recommendations**

30. The National Commissioner or the appropriate Provincial Commissioner to whom recommendations regarding disciplinary matters were referred, as contemplated in section 7(6) and (7), must—

- (a) within 30 days of receipt thereof, initiate disciplinary proceedings in terms of the recommendations made by the Directorate and inform the Minister in writing, and provide a copy thereof to the Executive Director and the Secretary;
- (b) quarterly submit a written report to the Minister on the progress regarding disciplinary matters made in terms of paragraph (a) and provide a copy thereof to the Executive Director and the Secretary; and
- (c) immediately on finalisation of any disciplinary matter referred to it by the Directorate, to inform the Minister in writing of the outcome thereof and provide a copy thereof to the Executive Director and the Secretary.

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## CHAPTER 8

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**FINANCES AND ACCOUNTABILITY AND ANNUAL REPORT****Finances and accountability**

31. (1) The Executive Director—

- (a) must, subject to the Public Finance Management Act—
  - (i) be charged with the responsibility of accounting for money received or paid out for or on account of the office of the Directorate;
  - (ii) cause the necessary accounting and other related records to be kept; and
- (b) may exercise such powers and perform such duties as may from time to time be conferred upon or assigned to him or her, and in respect thereof be accountable to the Minister.

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(2) The records referred to in subsection (1)(a) must be audited by the Auditor-General.

**Annual report**

32. (1) The Executive Director must prepare and submit to the Minister an annual report in the form prescribed by the Minister within five months after the end of the financial year.

(2) The annual report referred to in subsection (1) must include the following documents:

- (a) The audited financial statements prepared in terms of this Act;
- (b) the Auditor-General's report prepared in terms of this Act; and
- (c) a detailed report on the activities of the Directorate undertaken during the year to which the audit relates.

(3) The Minister must table in Parliament a copy of the annual report and financial statements, and the audit report on those statements, within one month after receipt thereof if Parliament is then in session or, if Parliament is not then in session, within one month after the commencement of its next ensuing session.

(4) The Executive Director must publish the annual report, financial statements and the audit report on those statements.

**CHAPTER 9****OFFENCES AND PENALTIES****Offences and penalties**

33. (1) Any person or private entity, who interferes, hinders or obstructs the Executive Director or a member of the Directorate in the exercise or performance of his or her powers or functions, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding two years.

(2) Any member of the Directorate who wilfully discloses information in circumstances in which he or she knows, or could reasonably be expected to know, that such a disclosure will or may prejudicially affect the exercise or the performance by the Directorate of the powers and functions, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(3) Any police officer who fails to comply with section 29 is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(4) Any member who fails to make disclosure in accordance with section 25(2)(a), or fails to withdraw in terms of section 25(2)(b), as the case may be, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(5) Any person who pretends to be an investigator in terms of this Act, is guilty of an offence and liable on conviction to a fine or to imprisonment for period not exceeding two years.

**CHAPTER 10****REGULATIONS, TRANSITIONAL ARRANGEMENTS, REPEAL AND SHORT TITLE AND COMMENCEMENT****Regulations**

34. (1) The Minister may, after consultation with the Executive Director, make regulations regarding—

- (a) access and control of confidential information and records pertaining to investigations instituted in terms of this Act;
- (b) the procedure to be followed when investigating matters referred to in section 28(1)(a) to (h);
- (c) the procedure to be followed when reporting on cases dealt with under this Act;

- (d) the procedure to be followed for referring, receiving, registering, processing and disposing of complaints;
  - (e) the procedure to be followed when investigating criminal matters;
  - (f) the procedure to be followed for initiating special investigations;
  - (g) the measures for integrity testing of members of the Directorate as contemplated in section 26(1);
  - (h) the measures to ensure the confidentiality of information obtained as contemplated in section 26(3);
  - (i) any issues to be contained in the annual report contemplated in section 32;
  - (j) the procedure and format to be followed regarding reporting to the Directorate as contemplated in section 29(1);
  - (k) the procedure to be followed for the arrangement and the holding of identification parades, as contemplated in section 29(2)(a);
  - (l) the procedure to be followed for the taking of an affidavit or an affirmed declaration or to give evidence or produce any document in that member's possession or under his or her control which has a bearing on the matter being investigated, as contemplated in section 29(2)(b);
  - (m) the procedure to be followed for the submission of any other information or documentation required for investigation purposes, as contemplated in section 29(2)(c);
  - (n) the procedure to be followed in respect of disciplinary recommendations as contemplated in section 30;
  - (o) the manner and procedure to secure a crime scene to be investigated by the Directorate; and
  - (p) in general, any ancillary or incidental matter that it is necessary to prescribe for the proper implementation or administration of this Act.
- (2) The regulations referred to in subsection (1)(a) to (o) must be submitted to Parliament for scrutiny at least one month before promulgation—
- (a) while it is in session; or
  - (b) after the next session starts.
- (3) Regulations with regard to the implementation of this Act must be submitted to the Minister by the Executive Director within three months of the commencement of this Act.

#### Transitional arrangements

35. (1) As from the fixed date—
- (a) all powers exercised and functions performed by investigators immediately before the fixed date, must be exercised and performed by the Directorate;
  - (b) any investigation instituted in terms of the previous Act which was pending must be disposed of as if this Act had not been passed; and
  - (c) the allocated budget, assets and liabilities of the Directorate as agreed upon between the accounting officers of the Independent Complaints Directorate and the Directorate, must be transferred to the Directorate in accordance of section 42 of the Public Finance Management Act.
- (2) The Registrar of Deeds must make the necessary entries and endorsements for the transfer of any property in terms of this section.
- (3) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of the employer must be regarded as having taken place when the investigators and administrative and support personnel are transferred to take up employment with the Directorate.
- (4) For as long as remuneration, allowances and other conditions of service under the South African Police Service Act are more favourable than those determined under this Act, the remuneration, allowances and other conditions of service under the South African Police Service Act prevails.
- (5) A security clearance issued before the fixed date, remains valid until such time it is reissued in terms of this Act.

(6) (a) This Act does not affect the validity of any investigation or prosecution conducted, pending or under investigation by the Independent Complaints Directorate on or before the fixed date.

(b) All matters which relate to service complaints of the South African Police Service will be transferred to the South African Police Service and where appropriate, the Secretariat.

#### **Amendment and repeal of laws**

36. (1) The laws mentioned in Schedule 1 are hereby amended to the extent set out in the third column of that Schedule.

(2) The laws set out in Schedule 2 are hereby repealed to the extent set out in the third column of that Schedule.

#### **Short title and commencement**

37. This Act is called the Independent Police Investigative Directorate Act, 2011, and comes into operation on a date determined by the President by proclamation in the *Gazette*.



MP  
[Signature]

## SCHEDULE 1

## LAWS AMENDED

Number and year of law	Short title	Extent of repeal or amendment	
Act 68 of 1995	South African Police Service Act	<p>Amendment of section 1 of Act 68 of 1995, as amended by section 1 of Act 41 of 1997 and section 1 of Act 83 of 1998</p> <p>1. Section 1 of the South African Police Service Act, 1995 is hereby amended—</p> <p>(a) by the substitution for the definition of “secretariat” of the following definition: “secretariat” means the Secretariat for [Safety and Security] Police established under section 2(1);”;</p> <p>(b) by the substitution for the definition of “Secretary” of the following definition: “Secretary” means the Secretary [for Safety and Security] of Police appointed under section 2(2);”.</p> <p>Amendment of section 2 of Act 68 of 1995</p> <p>1. Section 2 of the South African Police Service Act, 1995, is hereby amended by the substitution for subsection (1) of the following subsection: “(1) (a) The Minister shall establish a secretariat to be called the Secretariat for [Safety and Security] Police.</p> <p>(b) A provincial government may establish a provincial secretariat to be called the Provincial Secretariat for [Safety and Security] Police: Provided that the date on which a provincial secretariat will come into operation shall be determined by a provincial government in consultation with the Minister.”.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p>

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Number and year of law	Short title	Extent of repeal or amendment	
Act 112 of 1998	Witness Protection Act	<p><b>Amendment of section 1 of Act 112 of 1998</b></p> <p>5</p> <p>1. Section 1 of the Witness Protection Act, 1998, is hereby amended by the substitution for the definition of "Complaints Directorate" of the following definition:</p> <p>10</p> <p>"Complaints Directorate" means the Independent [Complaints] Police Investigative Directorate, established under section [50] 2 of the [South African Police Service Act, 1995 (Act No. 68 of 1995)] Independent Police Investigative Directorate Act, 2010;".</p> <p>15</p> <p>2. The substitution for the words "Complaints Directorate", wherever they occur in the Act, of the word "Directorate".</p> <p>20</p>	
Act 116 of 1998	Domestic Violence Act, 1998	<p><b>Amendment of section 18 of Act 116 of 1998</b></p> <p>25</p> <p>1. Section 18 of the Domestic Violence Act, 1998, is hereby amended—</p> <p>30</p> <p>(a) by the substitution in subsection (4) for the following subsection:</p> <p>"(4) (a) Failure by a member of the South African Police Service to comply with an obligation imposed in terms of this Act or the national instructions referred to in subsection (3), constitutes misconduct as contemplated in the South African Police Service Act, 1995, and the [Independent Complaints Directorate] Secretariat, established in terms of [that Act] section 4(1) of the Civilian Secretariat for Police Service Act, 2010, must forthwith be informed of any such failure reported to the South African Police Service.</p> <p>35</p> <p>40</p> <p>45</p>	

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Number and year of law	Short title	Extent of repeal or amendment
		<p>(b) Unless the [Independent Complaints Directorate] Secretariat directs otherwise in any specific case, the South African Police Service must institute disciplinary proceedings against any member who allegedly failed to comply with an obligation referred to in paragraph (a).";</p> <p>(b) by the substitution in subsection (5) for paragraphs (c) and (d) of the following paragraphs respectively:</p> <p>"(5) (c) The [Independent Complaints Directorate] Secretariat must, every six months, submit a report to Parliament regarding the number and particulars of matters reported to it in terms of subsection (4)(a), and setting out the recommendations made in respect of such matters.</p> <p>(d) The National Commissioner of the South African Police Service must, every six months, submit a report to Parliament regarding—</p> <p>(iii) steps taken as a result of recommendations made by the [Independent Complaints Directorate] Secretariat.".</p>

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Number and year of law	Short title	Extent of repeal or amendment	
Act 70 of 2002	Regulation of Interception of Communications and Provision of Communication-Related Information Act	<p>Amendment of section 1 of Act 70 of 2002, as amended by the schedule of Act 36 of 2005 and section 1 of Act 48 of 2008</p> <p>1. Section 1 of the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002, is hereby amended—</p> <p>(a) by the substitution for the definition of “<b>Executive Director</b>” of the following definition:  “<b>Executive Director</b>” means the Executive Director appointed in terms of section [51] 5(1) of the [South African Police service Act] <u>Independent Police Investigative Directorate Act, 2010;</u>”;</p> <p>(b) by the substitution for the definition of “<b>Independent Complaints Directorate</b>” of the following definition:  “<b>Independent Complaints Directorate</b>” means the Independent [Complaints] <u>Police Investigative Directorate</u> established by section [50(1)] 2 of the [South African Police Service Act] <u>Independent Police Investigative Directorate Act, 2010;</u>”.</p> <p>2. The substitution for the words “<b>Independent Complaints Directorate</b>”, wherever they occur in the Act, of the word “<b>Directorate</b>”.</p>	<p>10</p> <p>5</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p>

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40 No. 34298

GOVERNMENT GAZETTE, 16 MAY 2011

Act No. 1 of 2011

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE ACT, 2011

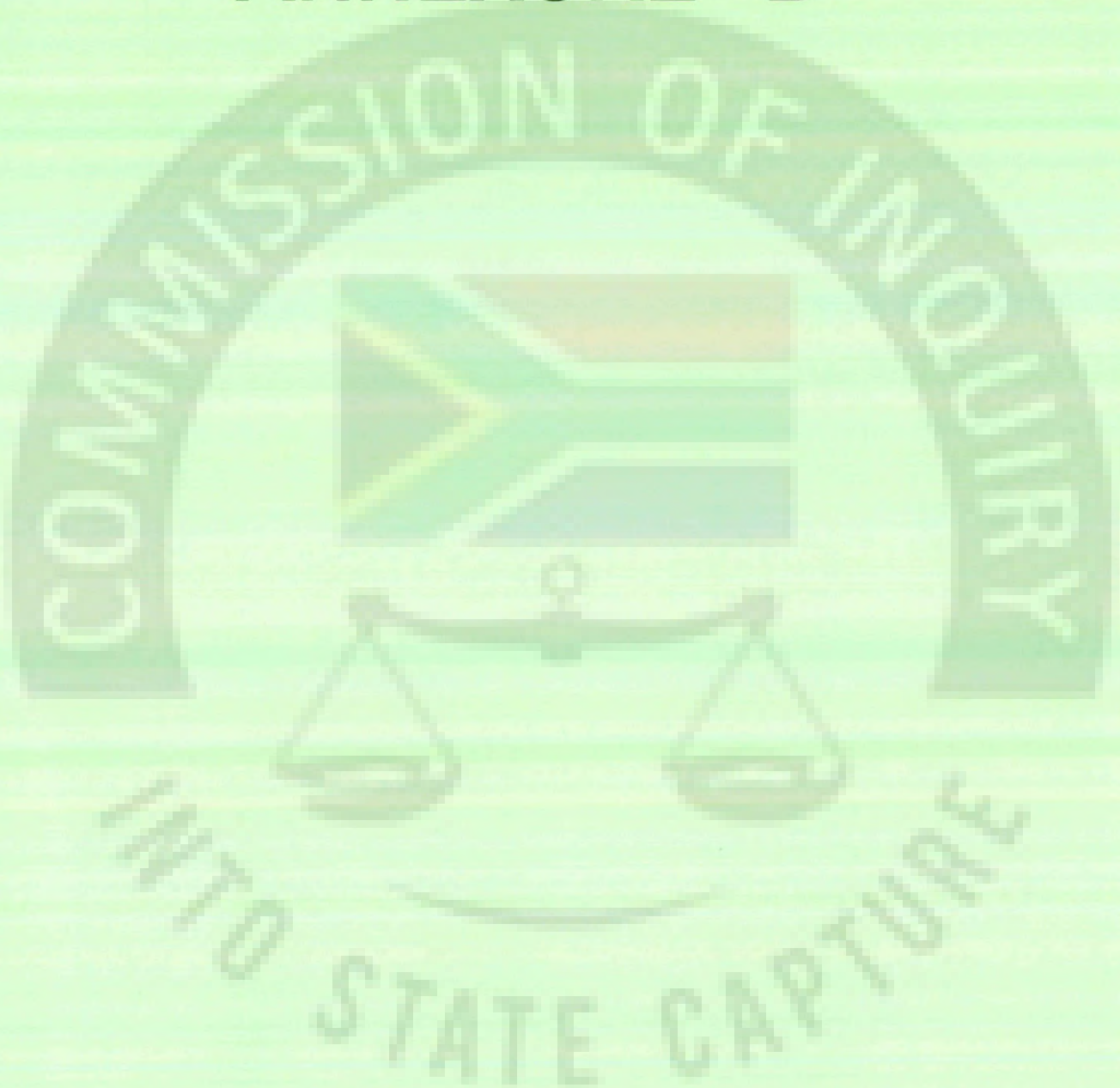
**SCHEDULE 2****LAWS REPEALED**

No. and year of law	Short Title	Extent of repeal
Act 68 of 1995	South African Police Service Act, 1995	Chapter 10

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## **ANNEXURE “B”**



## GOVERNMENT NOTICE

### DEPARTMENT OF POLICE

No. R. 98

10 February 2012

#### INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE ACT, 2011

#### REGULATIONS FOR THE OPERATION OF THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

The Minister of Police has, under section 34(1) of the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011), made the regulations set out in the Schedule hereto.

#### SCHEDULE

##### Definitions and interpretation

1. In these regulations, any word or expression to which a meaning has been assigned in the Act has the meaning so assigned and unless the context indicates otherwise—

“complainant” means a person who has submitted or lodged a written report or a complaint, as the case may be, with the Directorate in terms of regulation 2;

“complaint” includes a written report contemplated in regulation 2(1);

“member of the Directorate” means a person appointed to the Directorate on a full-time or contractual basis, either in the national office or in any provincial office;

“Public Service Disciplinary Code” means the Disciplinary Code and Procedures for the Public Service as contained in Public Service Co-ordinating Bargaining Council (PSCBC) Resolution 2 of 1999, as amended;

“Station Commander” means a member of the South African Police Service in charge of a police station; and

**“the Act”** means the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011).

#### **Reporting of matters to be investigated to Directorate**

2. (1) A Station Commander or any member of the South African Police Service or the Municipal Police Services must, within the period referred to in section 29(1)(b) of the Act, submit a written report to the Directorate regarding any matter listed in section 28(1)(a) to (f) of the Act in a format substantially similar to **Form 1**.

(2) The report contemplated in sub-regulation (1) must be submitted to a provincial office by fax or electronic mail, and the relevant provincial head must ensure that the Executive Director is notified of such report.

(3) A person contemplated in sub-regulation (1) must, after the submission of the report referred to in sub-regulation (2), keep or retain proof of the submission, including the method of transmission.

(4) (a) The provisions of this regulation do not preclude a member of the public from lodging a complaint, in a format substantially similar to **Form 2**, with the person contemplated in sub-regulation (1) or the Directorate, either at the national or provincial office, regarding any matter listed in section 28(1)(a) to (g) of the Act.

(b) A person who lodges a complaint in terms of this sub-regulation must do so in writing, by fax or electronic mail and the provisions of sub-regulation (3) apply with such changes as may be required by the context.

(c) A complaint lodged in terms of this sub-regulation may not be rejected merely as a result of the complainant's inability to furnish all of the information required in terms of **Form 2**.

(5) A complaint lodged with the Directorate at the national office in terms of sub-regulation (4) may be referred by the Executive Director to a relevant provincial office for investigation.



**Receiving, registering, processing, referral and disposing of complaints**

3. (1) A member of the Directorate designated for such purpose must, upon receipt of a complaint contemplated in regulation 2, determine whether or not the complaint falls within the ambit of the provisions of section 28(1)(a) to (g) of the Act.

(2) (a) A complaint which falls outside the ambit of the said provisions must, within seven days of receipt or referral, as the case may be, be referred, in writing, to an appropriate authority or institution that is capable of dealing with such complaint.

(b) The complainant must, within seven days, be informed in writing and, if practicable, telephonically, of such referral.

(3) A complaint which falls within the ambit of the said provisions must, within seven days of the receipt or referral, be registered in a computer-based register designed for this purpose and the complainant must, within the same period, be informed in writing and, if practicable, telephonically, that his or her complaint has been received and that his or her complaint is being investigated by an identified investigator, including the name and contact details of such investigator.

(4) A complaint which has been registered in terms of sub-regulation (3) must be disposed of within the time periods contemplated in regulations 4(6), 5(4) or 6(3) and (5), whichever is applicable in the circumstances.

**Investigation of deaths in police custody or as result of police action**

4. (1) The investigation of the death of a person in police custody or the death of a person as a result of police action or omission or both must be done in accordance with this regulation.

(2) The Executive Director or the relevant provincial head, as the case may be, must designate an investigator to investigate the death of a person—

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- (a) In police custody, irrespective of whether or not such death has occurred as a result of the alleged involvement of a member of the South African Police Service or the Municipal Police Services; or
- (b) who has died as a result of any action or omission or both on the part of a member of the South African Police Service or the Municipal Police Services.

(3) An investigator designated in terms of sub-regulation (2) must, as soon as is practicable, but within 24 hours of designation—

- (a) attend the scene where the death occurred, ensure that the scene is secured in terms of regulation 8, oversee the scene and conduct a preliminary investigation;
- (b) record the details of the deceased, including his or her name and surname, age and gender;
- (c) identify and record particulars of all potential witnesses for purposes of interviewing them, and in the case of a death in police custody, record the particulars of the persons who had been on duty in the facility at the time when the death occurred;
- (d) authorise the removal of the corpse, in consultation with a pathologist if a pathologist is available;
- (e) collect, or ensure the collection, by forensic experts, of exhibits for processing by the Forensic Science Laboratory and ensure the proper registration, handling, transportation and disposal of exhibits;
- (f) visit the deceased's next-of-kin to inform them of the death and to obtain statements that may assist in the investigation;
- (g) visit all identified witnesses for purposes of obtaining statements that may assist in the investigation;

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- (h) attend the *post mortem* and advise the person conducting the *post mortem* of observations made at the scene of death as well as areas that should be concentrated on; and
- (i) after collecting all evidence, statements and technical or expert reports, if applicable, submit a report on the investigation of the death containing recommendations regarding further action, which may include disciplinary measures to be taken against a member of the South African Police Service or the Municipal Police Services or criminal prosecution of such member, to the Executive Director or the relevant provincial head, as the case may be.

(4) In the event of a death in police custody that has occurred as a result of the alleged involvement of a member or members of the South African Police Service or the Municipal Police Services, as the case may be, or a death which is the result of the action or omission or both of such member or members, the investigator, when visiting the scene of death, must, in consultation with the Executive Director or the relevant provincial head, as the case may be, make a determination as to whether such member or members must be arrested.

(5) When effecting an arrest, the investigator must have due regard to the constitutional rights of the person who is arrested and the provisions of sections 39 to 53 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) relating to the arrest of persons.

(6) An investigation into the death of a person in police custody and the investigation of the death of a person who has died as a result of police action or omission or both must be finalised within a reasonable period, which period may not exceed 90 days after designation, failing which the investigator must give reasons for failure to comply with this period in the report contemplated in sub-regulation (3)(i).

(7) An investigator designated to investigate a death in terms of this regulation must inform the complainant, and the next-of-kin, if the complainant is not a member of the deceased's next-of-kin, in writing of the progress made with the investigation at least once per calendar month.

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(8) In the event of a late notification of a death in police custody or as a result of police action or omission or both, the investigator must, within a reasonable period, which period may not exceed 30 days of designation—

- (a) conduct a preliminary investigation or proceed with a full investigation;
- (b) attend the *post mortem* if it has not yet been conducted;
- (c) interview witnesses and obtain statements that may assist in the investigation;
- (d) consider the desirability of reconstructing the scene of death; and
- (e) submit a report on the investigation containing recommendations to the Executive Director or relevant provincial head.

(9) For purposes of sub-regulation (8), the investigator must—

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

#### Investigation of criminal matters

5. (1) An investigation of a matter contemplated in sub-regulation (2) must be done in accordance with this regulation.

(2) The Executive Director or the relevant provincial head, as the case may be, must designate an investigator to investigate a complaint that—

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- (a) a person has been raped while that person was in police custody;
  - (b) a member of the South African Police Service or the Municipal Police Services has raped a person, irrespective of whether such member had been on official duty at the time of the alleged rape or not;
  - (c) a member of the South African Police Service or the Municipal Police Services has in the execution of his or her duties tortured or assaulted a person; or
  - (d) a member of the South African Police Service or the Municipal Police Services is involved in corruption.
- (3) An investigator designated in terms of sub-regulation (2) must, as soon as is practicable, but within 24 hours of designation—
- (a) if a police docket has been opened, take over the docket and conduct all outstanding investigations, and if such docket has not been opened, ensure that it is opened for purposes of the investigation;
  - (b) interview and record the details of the victim of the offence concerned, including his or her name and surname, age and gender, if this had not yet been done;
  - (c) identify and record particulars of all potential witnesses for purposes of interviewing them, and in the case of an offence contemplated in paragraph (a) of sub-regulation (2), record the particulars of the persons who had been on duty in the facility at the time when the offence had been committed, if this had not yet been done;
  - (d) collect, or ensure the collection, by forensic experts, of exhibits for processing by the Forensic Science Laboratory or other appropriate institution and ensure the proper registration, handling,

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transportation and disposal of exhibits, if this had not yet been done;

- (e) in the case of an offence contemplated in paragraph (a) or (b) of sub-regulation 2, ensure, if this had not yet been done, that—
- (i) the victim is examined by a medical practitioner without delay;
  - (ii) a sexual assault crime kit is obtained, properly sealed and submitted to the Forensic Science Laboratory; and
  - (iii) the provisions of sections 28(3), 31(5), 32(1) and (5), 33(1), 34, 36 and 37 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), and any South African Police Service National Instructions relating to the crime of rape are complied with;
- (f) in the case of an offence contemplated in sub-regulation (2)(d) or any offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), involving an amount of R100 000 or more, ensure that a report contemplated in section 34(1) of that Act has been taken down in the manner contemplated in section 34(3)(a) of the said Act;
- (g) in the case of an offence contemplated in paragraph (c) of sub-regulation (2), if this had not yet been done—
- (i) attend and secure the scene where the alleged torture occurred in terms of regulation 8; and
  - (ii) ensure that the victim is taken to a medical practitioner for examination, including the taking of bodily specimens relating to torture;



- (h) visit all identified witnesses for purposes of obtaining statements that may assist in the investigation; and
- (i) after collecting all evidence, statements and technical or expert reports, if applicable, submit a report on the investigation of the offence to the Executive Director or the relevant provincial head, as the case may be, containing recommendations regarding further action, which may include disciplinary measures to be taken against a member of the South African Police Service or the Municipal Police Service or criminal prosecution of such member.

(4) An investigation contemplated in this regulation must be finalised within a reasonable period, which period may not exceed 90 days after designation, failing which the investigator must include reasons for failure to comply with this period in the report contemplated in paragraph (i) of sub-regulation (3).

(5) An investigator designated to investigate an offence in terms of this regulation must inform the complainant, and if the complainant is not the victim of the offence, the victim, in writing of the progress made with the investigation at least once per calendar month.

(6) Regulation 4(4) and (5) applies with such changes as may be required by the context to the arrest of a person in terms of this regulation.

#### **Investigation of discharge of official firearm**

6. (1) The discharge of an official firearm by a member of the South African Police Service or the Municipal Police Services, as the case may be, must be investigated in accordance with this regulation.

(2) The Executive Director or the relevant provincial head, as the case may be, must designate an investigator to investigate a complaint that a member of the South African Police Service or the Municipal Police Services has discharged an official firearm, irrespective of whether such member had been on or off duty and whether any injury has been sustained as a result of such discharge or not.



(3) An investigator designated in terms of sub-regulation (2) must conduct a preliminary investigation, to be finalised within a reasonable period, which period may not exceed 30 days after designation, into the discharge of an official firearm to enable the Executive Director or the relevant provincial head, as the case may be, to determine whether a full investigation is warranted or not.

(4) If the Executive Director or relevant provincial head, as the case may be, determines that a full investigation is warranted, the investigator must as soon as is practicable, but within 24 hours after determination—

- (a) if a police docket has been opened, take over the docket and conduct all outstanding investigations, and if such docket has not been opened, ensure that it is opened during any stage of the investigation;
- (b) identify and record particulars of all potential witnesses for purposes of interviewing them;
- (c) collect or ensure the collection, by forensic experts, of exhibits for processing by the Forensic Science Laboratory or other appropriate institution and ensure the proper registration, handling, transportation and disposal of exhibits, if this had not yet been done;
- (d) visit all identified witnesses for purposes of obtaining statements that may assist in the investigation; and
- (e) after collecting all evidence, statements, technical and expert reports, if applicable, submit a final report on the investigation to the Executive Director or the relevant provincial head, as the case may be, containing recommendations regarding further action, which may include disciplinary measures to be taken against a member of the South African Police Service or the Municipal Police Services or criminal prosecution of such member.

(5) A full investigation contemplated in this regulation must be finalised within a reasonable period, which period may not exceed 90 days after designation, failing



which the investigator must include reasons for failure to comply with this period in the report contemplated in paragraph (e) of sub-regulation (4).

(6) An investigator designated to do an investigation in terms of this regulation must inform the complainant in writing of the progress made with the investigation at least once per calendar month.

(7) Regulation 4(4) and (5) applies with such changes as may be required by the context to the arrest of a person in terms of this regulation.

#### **Investigation of referred matters**

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

(2) The Executive Director or the relevant provincial head, as the case may be, must designate an investigator to investigate a matter contemplated in section 28(1)(h) of the Act which had been referred to the Directorate for investigation.

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

- (a) a matter contemplated in regulation 4, in which case the provisions of that regulation apply with such changes as may be required by the context;
- (b) a criminal matter, in which case the provisions of regulation 5 apply with such changes as may be required by the context, notwithstanding the fact that the criminal matter to be investigated may not be listed in sub-regulation (2) of that regulation; or
- (c) a matter not dealt with in regulation 4 or 5, in which case the Executive Director or relevant provincial head, as the case may be, must give directions regarding the investigation, the period within which the investigation must be completed and the manner of disposal of the referred matter.

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(4) An investigator designated to do an investigation in terms of this regulation must inform the person who referred the matter for investigation in writing of the progress made with the investigation at least once per calendar month.

### Securing of crime scene

8. An investigator designated to investigate a criminal matter must secure the scene of the crime, if still intact, or take over the securing of such scene from a member or members of the South African Police Service who may already be present at such scene, by—

- (a) establishing an inner cordon around the perimeter of the crime scene, as well as an outer cordon around the inner cordon to enable persons to perform their tasks within the inner cordon;
- (b) protecting obvious exhibits from contamination and the elements;
- (c) making a note of each exhibit to protect its integrity and location if it has to be moved;
- (d) regarding a corpse as a source of evidence and handling it as such;
- (e) identifying other scenes that might have a direct connection with the primary crime scene, and also protecting such scenes;
- (f) exercising control over the persons who may gain access to the crime scene and co-ordinating all investigation support resources;
- (g) requesting potential witnesses to wait at a designated area outside the outer cordon for the obtaining of statements, ensuring their safety and encouraging witnesses not to discuss the incident amongst themselves;
- (h) protecting the routes of access and departure by the person or persons suspected of having committed the crime, if known;
- (i) determining access and departure routes for use by emergency services and other persons authorised to enter the crime scene;

- (j) controlling any representatives of the media who may be in the vicinity of the crime scene; and
- (k) refraining from releasing information about the crime or the crime scene to any unauthorised person, including representatives of the media.

**Procedures relating to identification parades, taking of affidavits, giving of evidence, production of documents and submission of information and co-operation by Police**

**9. (1) The procedures relating to—**

- (a) the arrangement and holding of identification parades, as contemplated in section 29(2)(a) of the Act;
- (b) the taking of affidavits or affirmed declarations or the giving of evidence or the production of documents in the possession or under the control of a member of the South African Police Service or the Municipal Police Services which have a bearing on the matter to be investigated, as contemplated in section 29(2)(b) of the Act; and
- (c) the submission of any other information or documentation required for investigation purposes, contemplated in section 29(2)(c) of the Act,

must be conducted in accordance with the relevant procedures applicable to members of the South African Police Service.

(2) A member of the Directorate may require written reasons for failure by a member of the South African Service or the Municipal Police Service to comply with a request for co-operation regarding any matter contemplated in sub-regulation (1), and may make recommendations to the Executive Director or relevant provincial head, as the case may be, regarding disciplinary measures to be taken against such member.

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**Access and control of confidential information and records**

10. (1) All information, whether verbal or in writing, and all documentation acquired during the course of an investigation conducted in terms of the Act and all records pertaining to any such investigation are to be treated as confidential and may not be divulged to any person outside of the Directorate unless authorised to be divulged, in the interests of justice, by –

- (a) the Executive Director or relevant provincial head, as the case may be, in writing; or
- (b) an Act of Parliament.

(2) All information, documentation and records pertaining to an investigation must be secured at all times in a manner that would effectively prevent access to such information, documentation and records by an unauthorised person.


(3) A member of the Directorate may insist on, and must be granted, access to such confidential information, documentation and records as are reasonably necessary to enable such member to conduct an investigation in terms of the Act, excluding confidential information, documentation and records protected under professional privilege.

(4) Subject to the provisions of section 33(2) of the Act, a member of the Directorate who divulges information, documentation or records or causes such information, documentation or records to be divulged in contravention of sub-regulation (1) or (2) is guilty of misconduct and is subject to the disciplinary measures contemplated in regulation 13.

**Integrity testing and confidentiality of information relating to integrity testing**

11. (1) The Executive Director may conduct, or authorise any member of the Directorate or any other person to conduct, a procedure to test the integrity of any particular member of the Directorate.

(2) The procedure referred to in sub-regulation (1) may involve–



- (a) the employment of an act or omission, by the person who conducts the procedure, which offers the member of the Directorate whose integrity is being tested the opportunity to engage in behaviour in contravention of any law, any code of conduct which is binding on such member or any disciplinary regulations;
  - (b) the testing of a member of the Directorate for the abuse of alcohol or drugs; or
  - (c) the use of a polygraph or any similar instrument.
- (3) A procedure involving a measure contemplated in paragraph (a) of sub-regulation (2) may only be performed—
- (a) after approval by the Director of Public Prosecutions having jurisdiction in the area in which the integrity testing will take place, or by his or her delegate; and
  - (b) in consonance with such instructions or guidelines as may be laid down by the National Director of Public Prosecutions or by the Director of Public Prosecutions having jurisdiction in the area in which the integrity testing will take place, or by his or her delegate, in accordance with section 252A(2)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (4) A procedure involving measures contemplated in paragraphs (b) and (c) of sub-regulation (2) may only be performed with the written approval of the Executive Director, in which case the member of the Directorate whose integrity is being tested must submit to such measures.
- (5) A member of the Directorate may not, at any time when reporting for duty, while on duty or while on call for duty; have any evidence of—
- (a) alcohol; or
  - (b) a drug as defined in section 1 of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992) which may not lawfully be taken or has been taken in a manner which is contrary to the prescription of

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a registered medical practitioner or the recommendation of the manufacturer of the substance,

in his or her breath, blood or urine, as the case may be.

(6) Despite paragraph (b) of sub-regulation (5), a member of the Directorate who lawfully takes or has taken a drug prescribed by a registered medical practitioner may not perform duties involving operational capacity if the substance may impair such member's capacity to perform the duties without danger to himself or herself or any other person.

(7) In the event of an alcohol test—

- (a) the member of the Directorate whose integrity is being tested must provide a specimen of breath or blood, if requested to do so, and if such member fails or refuses to provide such specimen, he or she may be charged with disobeying a lawful order, command or instruction under regulation 13; and
- (b) the test, in the case of a specimen of breath, must be performed by using equipment prescribed in regulation 332 of the regulations made under the National Road Traffic Act, 1996 (Act No. 93 of 1996).

(8) In the event of a drugs test —

- (a) the member of the Directorate whose integrity is being tested must provide a specimen of blood or urine to a registered medical practitioner or registered nurse at a place and time specified by the Executive Director, if requested to do so, and if such member fails, unless failure is attributable to a medical condition, or refuses to provide such specimen, he or she may be charged with disobeying a lawful order, command or instruction under regulation 13; and
- (b) the registered medical practitioner or registered nurse may give such directions as may be reasonably necessary to the member of

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the Directorate whose integrity is being tested regarding the manner in which the specimen is to be provided.

(9) If a member of the Directorate refuses to submit to a polygraph examination or other similar test, when requested to do so, or if the polygraph or similar test indicates possible deception, the Executive Director may instruct such member to subject himself or herself to a security screening in accordance with section 2A of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), failing which he or she may be charged with disobeying a lawful order, command or instruction under regulation 13.

(10) The Executive Director, in the event of a result that impacts adversely on the integrity of a member of the Directorate after employment of a measure contemplated in paragraph (a) of sub-regulation (2), may—

- (a) require such member to undergo such counselling, rehabilitation or retraining as directed by the Executive Director or relevant provincial head;
- (b) require such member to subject himself or herself to a security screening in accordance with section 2A of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994); or
- (b) if appropriate in the circumstances, take disciplinary or other action against such member under regulation 13.

(11) The Executive Director, in the event of a finding that a member of the Directorate has evidence of alcohol or drugs in his or her breath, blood or urine respectively, may—

- (a) suspend such member from duty until he or she is free from such evidence;
- (b) require such member to undergo such counselling or rehabilitation as directed by the Executive Director;

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- (c) refer such member to an identified registered medical practitioner for a medical examination and report of the member's fitness to proceed with his or her duties;
- (d) after considering a report referred to in paragraph (c), instruct such member to perform other duties for such time as the Executive Director considers necessary; or
- (e) if appropriate in the circumstances, take disciplinary or other action against such member under regulation 13.

(12) The measures contemplated in this regulation must be applied with due regard to decency and the right of a member of the Directorate to dignity and privacy.

(13) No person may disclose any information which he or she has obtained in the application of the measures contemplated in sub-regulation (2), unless such information is--

- (a) required by a person who of necessity needs the information for the performance of his or her functions in terms of these regulations;
- (b) supplied in the performance of functions in terms of these regulations; or
- (c) required in terms of any law or as evidence in any court of law or formal disciplinary process.

(14) Any contravention of sub-regulation (13) is to be regarded as serious misconduct for purposes of regulation 13.

#### **Disciplinary referrals**

12. (1) A complaint of a disciplinary nature or recommendations by the Directorate involving the discipline of a member or members of the South African Police Service or the Municipal Police Services must be contained in a report substantially similar to Form 3.

(2) The Executive Director or relevant provincial head must, in accordance with section 7(6) of the Act, read with sections 9(m) and 21(1)(f), ensure that the form contemplated in sub-regulation (1) is correctly completed and submitted to the National Commissioner or relevant Provincial Commissioner of Police, as the case may be.

(3) The Executive Director or relevant provincial head must interact and liaise with the National Commissioner or Provincial Commissioner of Police regarding progress relating to disciplinary proceedings initiated by the National Commissioner or Provincial Commissioner of Police, as the case may be, in accordance with section 30 of the Act.

(4) The duty imposed upon the Executive Director or the relevant provincial head in terms of sub-regulation (2) or (3) may be delegated, in writing, by the Executive Director or relevant provincial head, as the case may be, to a suitable member of the Directorate.

#### **Disciplinary measures in relation to members of the Directorate**

13. The Public Service Disciplinary Code applies in the case of disciplinary proceedings initiated against a member of the Directorate as a result of the alleged misconduct of such member or failure to comply with a lawful command, order or instruction.

#### **Security screening investigations**

14. The security screening investigation of a member of the Directorate or investigator contemplated in sections 8(3) and 22(3) of the Act, respectively, must be done in accordance with the provisions of section 2A of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994).

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## Reporting

15. (1) In addition to the provisions of section 32 of the Act, the Executive Director must submit an annual report to the Minister and Parliament in accordance with section 9(j) of the Act.

(2) The report contemplated in sub-regulation (1) must include an overview of—

- (a) the administration of the Directorate relating to its overall management and organisation;
- (b) the processing, monitoring and investigation of complaints lodged with the Directorate in terms of section 28(1) of the Act;
- (c) the management of information and research conducted during the financial year under review; and
- (d) statistics of cases dealt with by the Directorate on both national and provincial level, including information on the number and nature of cases carried over to the next financial year,

and may include recommendations relating to the manner in which deficiencies in practices employed by members of the South African Police Service or Municipal Police Services could be addressed.

(3) Despite sub-regulation (1), the Executive Director must, in accordance with section 7(12) of the Act, at any time when requested to do so by the Minister and Parliament, report on the activities of the Directorate.

## General

16. These Regulations may be supplemented by—

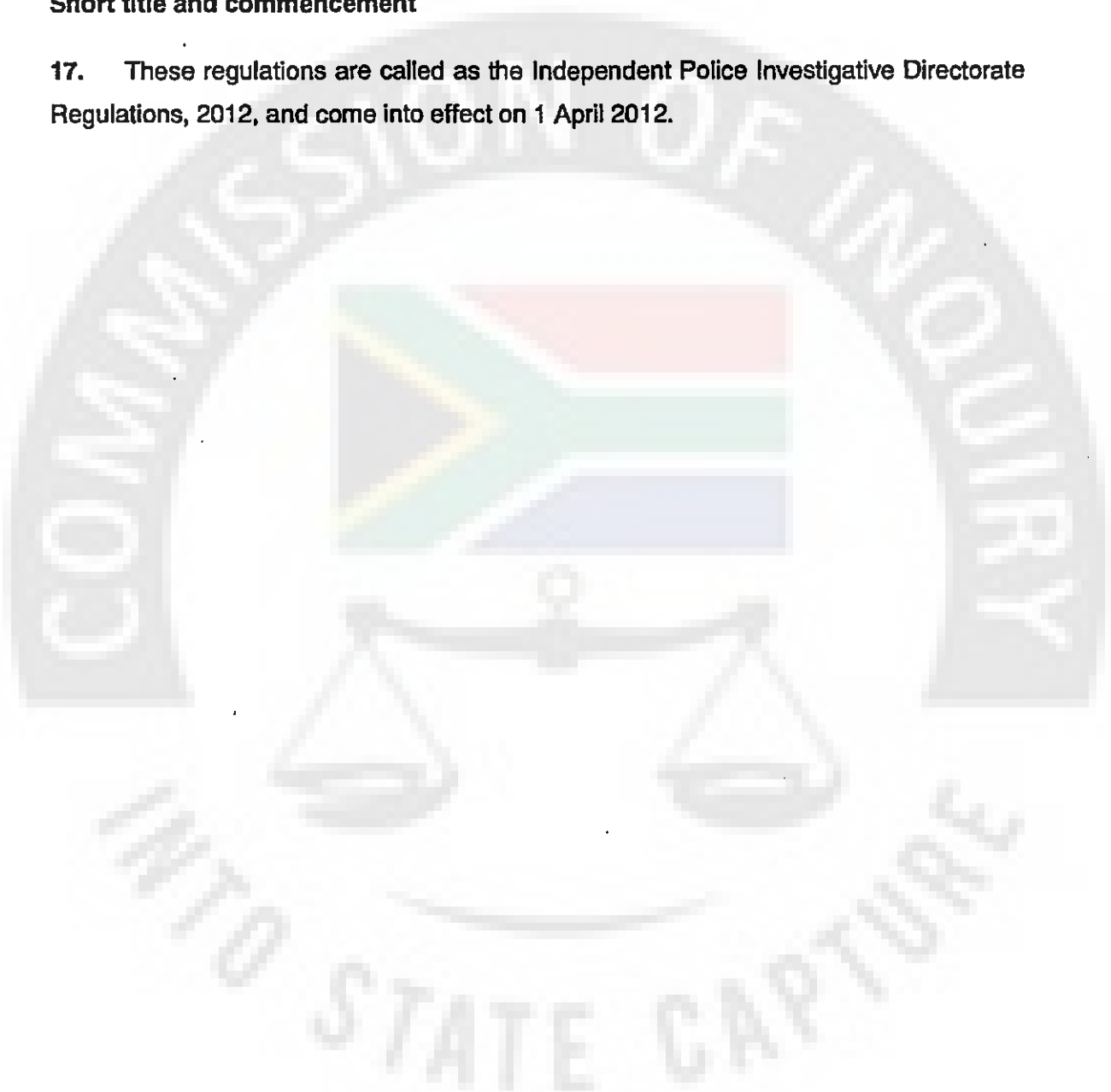
- (a) the guidelines issued by the Executive Director in terms of section 7(3)(e) of the Act; and

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- (b) any protocol on co-operation entered into by and between the Directorate, the South African Police Service and the Municipal Police Service pursuant to section 29(2) of the Act.

**Short title and commencement**

17. These regulations are called as the Independent Police Investigative Directorate Regulations, 2012, and come into effect on 1 April 2012.



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**ANNEXURE****FORMS**


- Form 1: Reporting of matter by Station Commander, Member of the South African Police Service or the Municipal Police Services
- Form 2: Complaint reporting form by member of public
- Form 3: Disciplinary referrals to National Commissioner or Provincial Commissioner



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**FORM 1**  
**REPORTING OF MATTER BY STATION COMMANDER, MEMBER OF THE SOUTH**  
**AFRICAN POLICE SERVICE OR MUNICIPAL POLICE SERVICES**  
**(Regulation 2(1))**

Complaint Details			
CAS/CR No/Inquest No		Province	
Date of Incident		Time of Incident	
Reported to SAPS	<input type="checkbox"/> Yes <input type="checkbox"/> No	Date Reported to SAPS	
Incident relates to :			
<input type="checkbox"/> Death in police custody			
<input type="checkbox"/> Death as a result of police action			
<input type="checkbox"/> Discharge of firearm by police officer			
<input type="checkbox"/> Rape by police officer			
On Duty <input type="checkbox"/> Off Duty <input type="checkbox"/>			
<input type="checkbox"/> Rape of person in police custody			
<input type="checkbox"/> Torture/assault by police officer			
Complaint Description (Use additional folios if necessary)			
<div style="text-align: center;">  </div>			

 MP

<b>Complainant Details</b>			
Role in the case	<input type="checkbox"/> Complainant <input type="checkbox"/> Third party		
ID Number		Passport Number	
Title		First Name	
Middle Name		Surname	
Landline		Mobile	
Fax		Email	
Nationality		Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female
Disabled status	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Address (if complainant is willing to disclose this)			
Country		City	
Suburb		Postal Code	
Preferred contact Method (e.g. Email, SMS, Fax)			


 MIP

Police Details (Reporting Station/Unit/MPS)			
Policing Unit		Policing Entity (E.g. SAPS, MPS)	
Police Station			
Investigating Officer First Name		Investigating Officer Middle Name	
Investigating Officer Surname		Investigating Officer Rank	
ID Parade Held	<input type="checkbox"/> Yes <input type="checkbox"/> No		
IPID Telephonically Informed	<input type="checkbox"/> Yes <input type="checkbox"/> No		
IPID Official Incident reported to		Date of Call	
		Time of Call	
Title of Person Reporting Incident			
First Name of Person Reporting Incident		Middle Name of Person Reporting Incident	
Surname of Person Reporting Incident			
District Surgeon Notified <input type="checkbox"/> Yes <input type="checkbox"/> No			
District Surgeon First Name		District Surgeon Middle Name	
District Surgeon Surname		District Surgeon Tel	
Victim Details			
Nationality		ID Number	
Passport Number			
First Name		Middle Name	
Surname			
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female		Race
Age			
Next of Kin Notified	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Location of Body			
Responsible Person for death / injury	<input type="checkbox"/> Himself/Herself <input type="checkbox"/> SAPS/MPS Member(s) <input type="checkbox"/> Inmates <input type="checkbox"/> Vigilantes / Members of the public <input type="checkbox"/> Other		
Responsible Person (Other)			
Cause of Death	<input type="checkbox"/> Suicide <input type="checkbox"/> During Apprehension <input type="checkbox"/> In transit with SAPS vehicle <input type="checkbox"/> Natural Causes <input type="checkbox"/> Self-defense <input type="checkbox"/> During escape <input type="checkbox"/> Due to motor vehicle accident <input type="checkbox"/> Unknown <input type="checkbox"/> Other		

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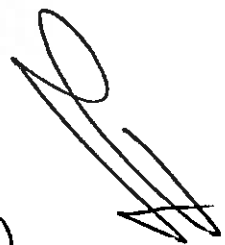
Classify Deceased	<input type="checkbox"/> Suspect <input type="checkbox"/> Sentenced <input type="checkbox"/> Witness Protection <input type="checkbox"/> Awaiting trial <input type="checkbox"/> Mental patient		
Detainee	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Reason for Detention			
Place where Death Occurred			
Instrument / Object Causing Death			
<b>Service Member's Details</b>			
Identified	<input type="checkbox"/> Yes <input type="checkbox"/> No	Rank	
Persal Number		ID Number	
Initials			
First Name		Middle Name	
Surname			
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female	Race	
Duty Station		Duty Station Unit	
On Duty	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Identified	<input type="checkbox"/> Yes <input type="checkbox"/> No	Rank	
Persal Number		ID Number	
Initials			
First Name		Middle Name	
Surname			
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female	Race	
Duty Station		Duty Station Unit	
On Duty	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Identified	<input type="checkbox"/> Yes <input type="checkbox"/> No	Rank	
Persal Number		ID Number	
Initials			
First Name		Middle Name	
Surname			
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female	Race	
Duty Station		Duty Station Unit	
On Duty	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Contact Number			
Vehicle Registration Number			
Description of vehicle:			

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Station Commissioner's Rank:
Station Commissioner's Full names:
Station Commissioner's Signature:



MP 

## FORM 2

**COMPLAINT REPORTING FORM BY MEMBER OF PUBLIC**  
(Regulation 2(4))

Complaint Details			
CAS/CR No/ Inquest No		Province	
Date of Incident		Time of Incident	
Reported to SAPS?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Date Reported to SAPS	
Name of SAPS station			
Protection Order Issued?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Protection Order type	Interim <input type="checkbox"/> Final <input type="checkbox"/>
Date Issued			
Incident relates to : <input type="checkbox"/> Death in police custody <input type="checkbox"/> Death as a result of police action <input type="checkbox"/> Discharge of firearm by police officer <input type="checkbox"/> Rape by police officer On Duty <input type="checkbox"/> Off Duty <input type="checkbox"/> <input type="checkbox"/> Rape of person in police custody <input type="checkbox"/> Torture/assault by police officer <input type="checkbox"/> Corruption within the police			
Complaint description (use additional folios if necessary):			
			

*Handwritten signature/initials*



Complainant Details (Includes third party complaints)			
Role in the case	<input type="checkbox"/> Complainant <input type="checkbox"/> Third Party		
ID Number		Passport Number	
Title		First Name	
Middle Name		Surname	
Landline		Mobile	
Fax		Email	
Nationality		Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female
Disabled status			
Address			
Country		City	
Suburb		Postal Code	
Preferred contact Method (E.g. E-mail, SMS, Post)			
Victim Details			
Passport Number			
First Name		Middle Name	
Surname			
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female	Race	
Age			
Service Member's Details			
Identified	<input type="checkbox"/> Yes <input type="checkbox"/> No	Rank	
Persal Number		ID Number	
Initials			
First Name		Middle Name	
Surname			
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female	Race	
Duty Station		Duty Station Unit	
Identified	<input type="checkbox"/> Yes <input type="checkbox"/> No	Rank	
Persal Number		ID Number	
Initials			
First Name		Middle Name	
Surname			
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female	Race	
Duty Station		Duty Station Unit	
Identified	<input type="checkbox"/> Yes <input type="checkbox"/> No	Rank	
Persal Number		ID Number	

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Initials			
First Name		Middle Name	
Surname			
Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female	Race	
Duty Station		Duty Station Unit	
Contact Number			
On Duty	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Vehicle Registration Number			
<b>Details of Witnesses to Incident</b>			
Title		First Name	
Middle Name		Surname	
Landline		Mobile	
Title		First Name	
Middle Name		Last Name	
Landline		Mobile	
Title		First Name	
Middle Name		Surname	
Landline		Mobile	
Title		First Name	
Middle Name		Surname	
Landline		Mobile	

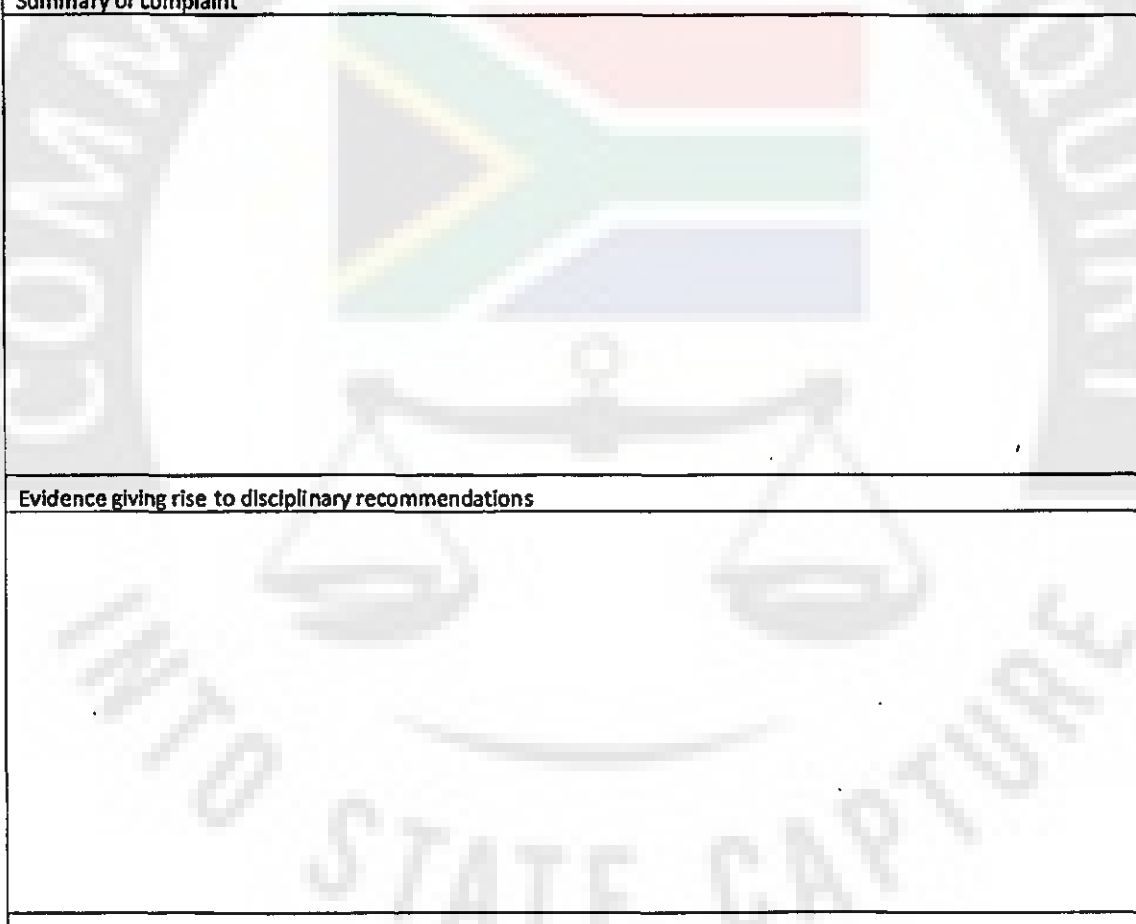
COMPLAINANT'S FULL NAMES:

COMPLAINANT'S SIGNATURE:

DATE:



**FORM 3**  
**DISCIPLINARY REFFERALS TO NATIONAL COMMISSIONER / PROVINCIAL**  
**COMMISSIONER**  
**(Regulation 12(1))**  
**CASE INVESTIGATIVE REPORT**

Complaint Details			
CCN		Incident description code	
Type of report		Report date	
Date of last report		Complaint class	
Complainant		Date of complaint	
SAPS CR/CAS number		Suspect Identification	
Investigator		Assignment	
Reporting staff member			
Source of complaint			
Summary of complaint			
			
Evidence giving rise to disciplinary recommendations			
Analysis and findings			

 MP

Recommendations regarding disciplinary action to be taken in terms of applicable disciplinary regulations or code

Signature of Investigator: \_\_\_\_\_

Recommended / not recommended

Full names of supervisor: \_\_\_\_\_

Signature of supervisor: \_\_\_\_\_

Full names of IPID Provincial head: \_\_\_\_\_

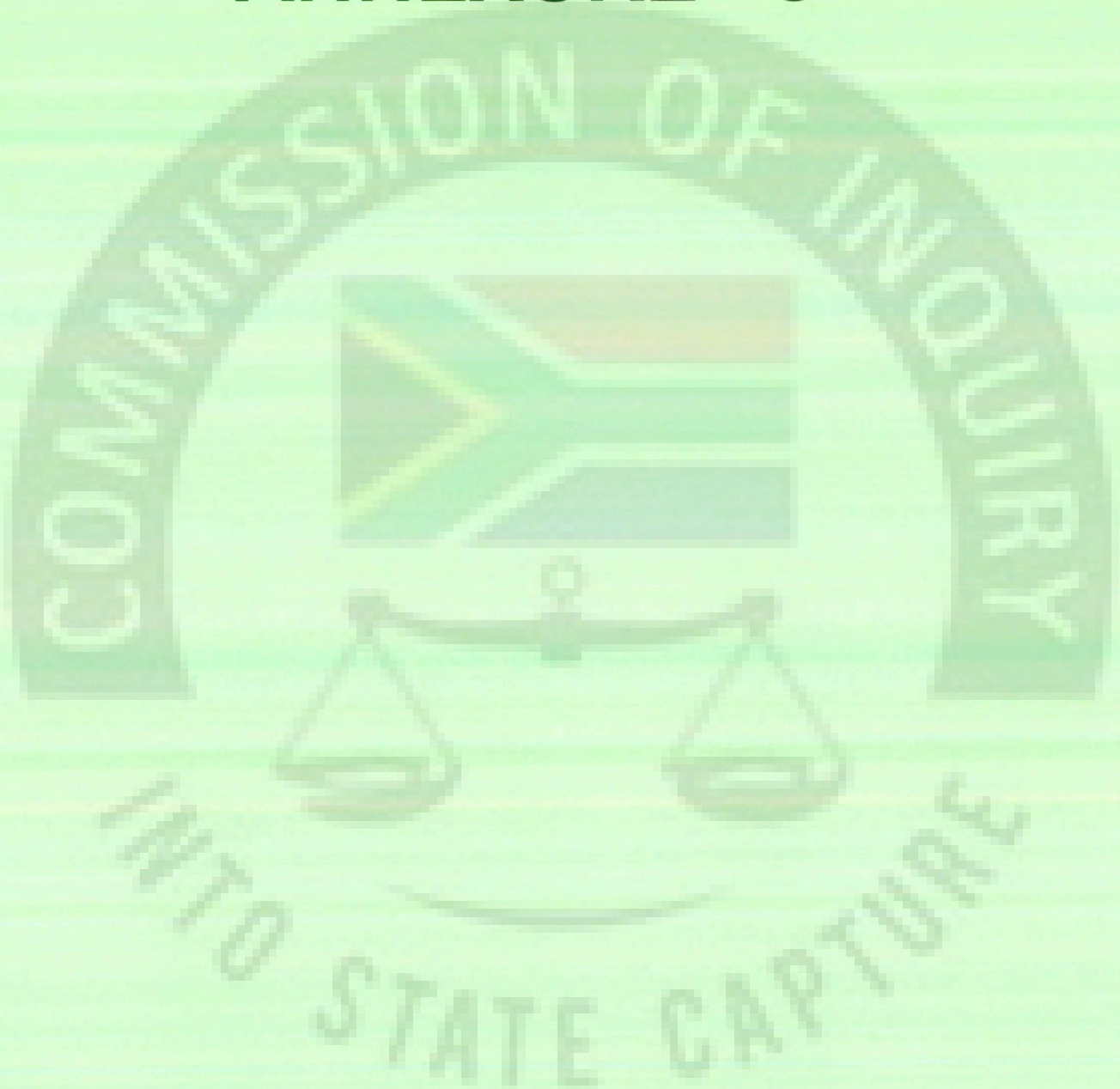
Signature of IPID Provincial head: \_\_\_\_\_

Full names of IPID Executive Director / member acting in terms of regulation 12(4):  
\_\_\_\_\_

Signature of IPID Executive Director / member acting in terms of regulation 12(4):  
\_\_\_\_\_

*Handwritten signature and initials*

## ANNEXURE “C”



**POLICY TITLE: INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE STANDARD  
OPERATING PROCEDURES**

POLICY NUMBER	INV/201/2017
POLICY REFERENCE	INV/201/SOP



**INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE (IPID)  
REPUBLIC OF SOUTH AFRICA**

APPROVED/NOT APPROVED

MR. R.J. MCBRIDE

EXECUTIVE DIRECTOR: IPID

EFFECTIVE DATE: 01 APRIL 2017

DATE

31/11/2017

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**INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE STANDARD  
OPERATING PROCEDURES**

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**This SOP repeals all the previous SOPs and shall be read and implemented in conjunction with the IPID Act, IPID Regulations, Firearm Control SOP, Registers and the Case Flow Chart.**

## **1. PREAMBLE/BACKGROUND**

The Independent Police Investigate Directorate Act, Act 1 of 2011 allows for the establishment and investigation of cases as per Section 28 of the Act. This SOP provides for standardisation in terms of investigation processes by IPID investigators.

## **2. PURPOSE**

The purpose of this Standard Operating Procedure (SOP) is to establish policy and methods by which cases should be received, registered, processed and disposed of, while being cognizant of the provisions of the Constitution of the Republic of South Africa Act, Act 108 of 1996; the Independent Police Investigative Directorate Act 1 of 2011; the South African Police Service Act 68 of 1995, as amended; the Criminal Procedure Act 51 of 1977, as amended, the Regulations promulgated under both the South African Police Service Act and the Independent Police Investigative Directorate Act and other relevant legislation.

## **3. POLICY**

It is the policy of the IPID to:

- 3.1. Ensure that investigative assignments to IPID staff are made in a clear and unambiguous manner;
- 3.2. Provide investigators with time frames within which to perform assigned investigative activities;
- 3.3. Require investigative staff to provide regular reports regarding investigations to supervisors;

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- 3.4. Ensure that supervisors actively manage the investigative activities of their subordinates;
- 3.5. Ensure that investigations are carried out in a coherent and standard method within the IPID;
- 3.6. To comply with the turnaround time agreed to in respect of the investigation of different Section 28 matters; and
- 3.7. Ensure compliance with established accountability mechanisms.

#### 4. SCOPE

The policy applies to all employees involved in the investigation and management of cases reported and investigated by IPID as well the support structure supporting the investigations.

#### 5. DEFINITIONS

For the purpose of this SOP the following words/ expressions shall mean:

5.1	<b>Act</b> – means the Independent Police Investigative Directorate Act, Act 1 of 2011;
5.2	<b>Acquitted (Criminal)</b> – means a member was found not guilty of a criminal offence and discharged;
5.3	<b>Acquitted (Departmental)</b> - means a member was found not guilty of departmental misconduct;
5.4	<b>Active Investigation</b> – means any case that is still under investigation and no report can be drafted in order to complete the investigation;
5.5	<b>Assistant Director Investigations (ASDI)</b> - means a person appointed at a level lower than the Deputy Director Investigations;
5.6	<b>Backlog</b> – means active cases carried over from previous financial years;
5.7	<b>Brought Forward (B/F)</b> – means a date by which a docket must be submitted to a Supervisor for evaluation of compliance with the directives. Cases should be submitted for inspection at least every 30 days irrespective if the case is Active or Completed (in the event that the NPA or Court gave a date, the B/F date will be five

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	(5) days before the date given by the stakeholder to give sufficient time for the Provincial Management Group and or Supervisor to verify that all outstanding directives/instructions have been attended to;
5.8	<b>Case Docket</b> - Refers to a docket that contains all evidential documents (or copies thereof), correspondence and the investigative journal. It consists of A-E clips. This docket is used to refer the investigation to the NPA for decision (where applicable);
5.9	<p><b>Case Classification</b> – Refers to the manner in which cases are classified in terms of legislation in terms of Sec 28 and 33 (3) of the IPID Act;</p> <p><b>28. (1) The Directorate must investigate:</b></p> <ul style="list-style-type: none"> <li>(a) any deaths in police custody;</li> <li>(b) deaths as a result of police actions;</li> <li>(c) any complaint relating to the discharge of an official firearm by any police officer;</li> <li>(d) rape by a police officer, whether the police officer is on or off duty;</li> <li>(e) rape of any person while that person is in police custody;</li> <li>(f) any complaint of torture or assault against a police officer in the execution of his or her duties;</li> <li>(g) corruption matters within the police initiated by the Executive Director on his or her own, or after the receipt of a complaint from a member of the public, or referred to the Directorate by the Minister, an MEC or the Secretary, as the case may be; and</li> <li>(h) any other matter referred to it as a result of a decision by the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case may be, in the prescribed manner.</li> </ul> <p><b>(2) The Directorate may investigate matters relating to systemic corruption involving the police.</b></p> <p><b>Section 33</b></p> <p><b>(3) Any police officer who fails to comply with Section 29 is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.</b></p>
5.10	<b>Case Investigative Journal (CIJ)</b> - refers to a journal used to record all directives and activities undertaken, on the docket and CMS, which journal must always be filed in the "C" clip of the docket;

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5.11	<b>Case Investigative Report (CIR)</b> – refers to an investigative report indicating the extent of the investigation and resulting request to generate the appropriate recommendation(s) (if applicable);
5.12	<b>Case Management System (CMS)</b> – means an IPID database used for the electronic recording and processing of cases;
5.13	<b>Case Control Number (CCN)</b> - means a unique computer generated number upon registration and recording of a case in the CMS. The number is relevant for use in all future correspondence by and between IPID and its stakeholders;
5.14	<b>Case Intake Committee (CIC)</b> - refers to a committee that is constituted by no less than three persons, (DI, DDI, ASDI and any available Investigator). In case of unavailability of personnel, the sitting by the PH or DI or DDI or ASDI or PI will constitute a valid sitting;
5.15	<b>Closure of a Case</b> – means the final disposal of a case where investigation, court processes and disciplinary processes have been concluded and the Provincial Management is able to conclude that the case can be closed after which the case is ready for closure on the CMS;
5.16	<b>Closure Report</b> – refers to the report that is generated that outlines the entire case, from receipt till outcome and closure and includes investigation conducted and report/recommendation made to stakeholder(s) and the outcome of the case as well the manner of disposal of exhibits;
5.17	<b>Convicted (Criminal)</b> – means a member has been found guilty of a criminal offence;
5.18	<b>Convicted (Departmental)</b> – means a member has been found guilty of Departmental misconduct;
5.19	<b>CPA</b> - means the Criminal Procedure Act 51 of 1977 as amended;
5.20	<b>Criminal Referral Memo</b> – means an investigative memorandum and cover letter which documents the entire investigation and contains summary of affidavits and technical reports, and requests the NPA to make a decision to prosecute or not;
5.21	<b>Death in Police Custody</b> – means death whether natural or unnatural, which occurred while the deceased was in the custody of the SAPS or MPS;
5.22	<b>Death as a Result of Police Action</b> - means the death of any person, including a member of SAPS/MPS or the action of SAPS/MPS, that was caused, or is reasonably believed to have been caused, by a member of the SAPS/MPS irrespective whether the member is on or off duty and/or any state asset was involved but provided that the member did not act in a private capacity;

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5.23	<b>Declined</b> – means a decision taken by the NPA, SAPS or MPS not to institute criminal or disciplinary proceedings against the member;
5.24	<b>Decision-Ready Investigation</b> – refers to an investigation where an Investigator has conducted quality investigation and obtained all the necessary evidence to either refer the case to the NPA for a decision, or make a recommendation to the SAPS/MPS, or make a Policy related recommendation or a General Recommendation.
5.25	<b>Decision-Ready Investigation (Criminal Referral)</b> – refers to an investigation where IPID is in the position to refer a case to the NPA for a decision;
5.26	<b>Decision-Ready Investigation (Departmental Recommendation)</b> – refers to an investigation where IPID is in the position to refer a Recommendation to the SAPS/MPS;
5.27	<b>Decision-Ready Investigation (Policy Recommendation)</b> – refers to an investigation where IPID is in the position to refer a Policy related Recommendation to the SAPS/MPS, Civilian Secretariat for Police or the Minister;
5.28	<b>Decision-Ready Investigation (General Recommendation)</b> – refers to an investigation where IPID is unable to complete a case based on the completion methods above. These types of recommendations are where cases are referred back to the any relevant stakeholder for investigation or the case is completed as "Undetected";
5.29	<b>Departmental Recommendation Report</b> – means a comprehensive case investigative report which documents the entire investigation and contains the conclusion, summary of affidavits, with or without technical reports, written recommendations to the SAPS/MPS with regard to whether a member should be departmentally charged or not;
5.30	<b>Deputy Director Investigations (DDI)</b> – means a person appointed as a deputy to the Director of Investigations;
5.31	<b>Directive(s)</b> – Instructions/guidelines issued to the Investigator by the Supervisor;
5.32	<b>Director Investigations (DI)</b> – means a person appointed at the level of Director for Investigations at both National and Provincial level and referred to as "Deputy Provincial Head" at provincial level;
5.33	<b>Discharge of an Official Firearm</b> – Any complaint made by a complainant where a member of SAPS/MPS discharged any official firearm, irrespective of whether the type of ammunition discharged, irrespective whether member was on or off duty or where any injury was sustained by the victim as a result of the discharge (attempted murder) or damage to property and should be registered as a Section 28(1)(c) matter. If a case does not meet the identified definition, it should be registered as an "outside mandate"

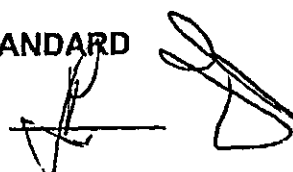
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**INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE STANDARD  
OPERATING PROCEDURES**

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	case and closed;
5.34	<b>Docket register</b> – Refers to a manual register to be kept in which docket movements and allocations must be recorded;
5.35	<b>DPP</b> – refers to the Director of Public Prosecutions;
5.36	<b>Duplicate</b> – refers to a manner of completion and closure where a case was registered as a duplicate of another case. The duplicated case, upon closure will be removed from the intake and will not generate any performance related statistic;
5.37	<b>EH</b> – Executive Head of the Metro Police Service;
5.38	<b>Exhibit</b> – refers to any item of evidential value collected or obtained during the course of investigation;
5.39	<b>Full Investigation</b> – refers to where an Investigator takes over a docket from the SAPS, conducts an independent enquiry and assessment and proceed with any other search/enquiry for further evidence to enable him/her to make a finding;
5.40	<b>High Profile Cases</b> – refers to an incident which involves a person with a high standing in the community and SAPS/MPS and/or a matter which draws or has the potential of drawing public interest or high media coverage;
5.41	<b>Immediately</b> – means at once, without hesitation or delay or as soon as it is practicable to act;
5.42	<b>Investigator</b> – means any official who investigates complaints as per the IPID Act and includes an Investigator, Senior Investigator, Principal Investigator, Assistant Director Investigation, Deputy Director Investigations, Director Investigation and Chief Director Investigations;
5.43	<b>Investigation</b> – refers to the systematic search of evidence or facts to prove or disprove the allegation being investigated;
5.44	<b>Investigative Support</b> – Any administrative support that assist with capturing of data which includes database clerks, data capturers, complaints receptionists and PA to the Provincial Head. Any person who has access to the system but cannot be allocated a case to be investigated is regarded as investigative support;
5.45	<b>IPID</b> – means the Independent Police Investigative Directorate;
5.46	<b>IPID Investigation Forms</b> – refers to applicable investigative forms that need to be completed whenever a case is being investigated;
5.47	<b>Manual Registration Number</b> – means a temporary number allocated to a case while the CMS is off-line and which will be updated immediately when the CMS is online (the format will be as follows: Province/year/month/number e.g. NW/2016/02/001);
5.48	<b>Manual Complaints Register</b> – refers to a manual register in which all written



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	complaints received are recorded;
5.49	<b>Member</b> – means an official appointed in terms of the South African Police Service Act 68 of 1995, as amended, and includes a member of the MPS;
5.50	<b>Misconduct</b> – includes any act or omission by a member which constitutes a violation of rules, regulations, and standing orders, code of conduct and National Orders;
5.51	<b>MPS</b> – means a Municipal Police Service established under Section 64A of the South African Police Service Act 68 of 1995;
5.52	<b>NPA</b> – refers to the National Prosecuting Service which is a body within the National Prosecuting Authority and includes the Director for Public Prosecutions (DPP) and the Senior Public Prosecutor (SPP);
5.53	<b>Offence</b> – includes any violation of common or statutory law;
5.54	<b>Official hours</b> – means normal business hours as contemplated in the Public Service Act, 1994 (promulgated under Proclamation No. 103 of 1994), (PSA) and includes hours stipulated by the IPID Flexi Time Policy and for the purposes of this policy it will be regarded as 7:30 – 16:30;
5.55	<p><b>Outside Mandate Case</b> – means a case:</p> <ul style="list-style-type: none"> <li>I. Which does not involve a member of the SAPS/MPS;</li> <li>II. Which occurred prior to 1 April 1997;</li> <li>III. That was adjudicated upon by a court of law; and</li> <li>IV. That relates to a <u>service delivery complaint</u> where the complainant/victim has not exhausted internal SAPS case mechanisms up to the office of the Provincial Commissioner and is not referred to the IPID by the Minister or the Member of the Executive Council or the Executive Director, <u>unless the Provincial Management of a province is of the opinion that it is in the public's interest that the matter be investigated in which case the case must be dealt with as Section 28(1)(h) matter</u>;</li> <li>V. Any matter not within the scope of Section 28 of the IPID Act;</li> </ul>
5.56	<b>Preliminary Investigation</b> – refers to an enquiry of limited scope undertaken to verify whether or not an allegation merits full investigation. This is only applicable to Section 28 (1)(c) cases reported;
5.57	<b>Post-Decision Monitoring (PDM)</b> – The continuous evaluation and monitoring of completed cases, but feedback and outcome is still outstanding which would allow closure of the case. Cases falling under this status should be reviewed every 30 days for feedback from the stakeholder;
5.58	<b>Programme Manager (PM)</b> - means any IPID Official who has been appointed as the Head of the Programme at National Level;

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5.59	<b>Provincial Head (PH)</b> – means an IPID Official appointed to head a Provincial Office at the level of a Chief Director;
5.60	<b>Provincial Management Group (PMG)</b> – means the management of provinces responsible for the completion, closure and monitoring of PDM cases and is on a level of Director or higher;
5.61	<b>Quality Investigation</b> – refers to an investigation where all possible avenues relating to evidence and its collection has been exhausted and allows for an informed decision by IPID on how to dispose of the case, by either referring the case to the NPA for a decision, or make a recommendation to the SAPS/MPS, or make a Policy related recommendation or a General Recommendation.
5.62	<b>Recommendation (Negative)</b> – Recommendation is made that disciplinary action should be instituted and can only be made against suspects whose identity is known;
5.63	<b>Recommendation (Positive)</b> – Recommendation is made that no disciplinary action should be instituted including inquests and can only be made against suspects whose identity is known;
5.64	<b>Recommendation (Policy Related)</b> – All recommendations that are not of a disciplinary or criminal nature / are not made against individual members, but rather speak to policy and system changes;
5.65	<b>Recommendation (General)</b> – Whenever no recommendation can be made.
5.66	<b>Referred</b> – means a case that is referred to the most appropriate organisation or institution by the IPID;
5.67	<b>Referral Authority</b> – refers to the Minister, MEC, Executive Director, Secretariat for Police;
5.68	<b>Result of Case</b> – means a case can be concluded in the following manners: <ul style="list-style-type: none"> <li>I. Criminal Result: <ul style="list-style-type: none"> <li>i. Acquitted;</li> <li>ii. Convicted;</li> <li>iii. Declined to prosecute;</li> <li>iv. Formal Inquest held with person liable identified;</li> <li>v. Formal Inquest held with no person liable identified;</li> <li>vi. Informal Inquest held with person liable identified;</li> <li>vii. Informal Inquest held with no person liable identified;</li> <li>viii. Withdrawn;</li> <li>ix. Alternative Dispute Resolution (ADR);</li> <li>x. Diversion;</li> <li>xi. Warrant issued;</li> </ul> </li> </ul>

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	<p>II. Departmental Result:</p> <ul style="list-style-type: none"> <li>i. Acquitted;</li> <li>ii. Convicted;</li> <li>iii. Declined to discipline;</li> <li>iv. Withdrawn by victim;</li> <li>v. Corrective Counselling;</li> </ul> <p>III. General Completion: (Where no recommendation can be made after investigation)</p> <ul style="list-style-type: none"> <li>i. Undetected – Complainant uncooperative;</li> <li>ii. Undetected – Suspect cannot be identified;</li> <li>iii. Undetected – Crime/Offence cannot be identified;</li> <li>iv. Closed as Referred;</li> </ul> <p>IV. Policy Completion</p> <ul style="list-style-type: none"> <li>i. Policy Related;</li> </ul> <p>V. Duplicate.</p>
5.69	<b>SAPS</b> – refers to the South African Police Service as contemplated in the South African Police Service Act 68 of 1995;
5.70	<b>Service Delivery Complaint</b> - refers to a complaint which alleges that a member of the SAPS or MPS failed to perform his/her duties or performed his or her duties in an improper manner and is not deemed to be outside the IPID's mandate as per the "Outside Mandate" definition as indicated above as per "IV" of the said definition;
5.71	<b>SOP</b> - means the Standard Operating Procedure;
5.72	<b>SPP</b> – Senior Public Prosecutor;
5.73	<b>Standby Notification Reference Number</b> – means a reference number issued immediately upon notification, by the Investigator on standby to SAPS/MPS member, consisting of the Provincial Office abbreviation, the number, which is a sequential series of numbers starting at 1 at the beginning of each month, the month, year and time (24 hour clock) of notification, e.g. NC001/03/20152250. The Investigator who gave the number must add their initials at the end of the given number;
5.74	<b>Supervisor</b> – means any person who supervises an Investigator (of any level);
5.75	<b>Systemic Corruption</b> - Systemic corruption is an institutionalised endemic

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	manipulation of a system by individuals or networks or organisations, taking advantage of weakness in the process and systems for illicit gains, where there are leadership deficiencies, collusion and abuse of power;
5.76	<b>Technical Reports</b> – refers to reports of an evidential value that are generated by experts required to reach an investigative conclusion, including but not limited to, FSL reports (Forensic Science Laboratory) post mortem reports, LCRC reports, pathology reports, medical reports, reports in terms of Sections 212 and 215 of the CPA and a report in terms of Section 34(3) (a) of the Prevention and Combating of Corrupt Activities Act 12 of 2004;
5.77	<b>Torture</b> – means any act by which severe pain or suffering, whether physical or mental, is <u>intentionally</u> inflicted on a person for such purposes as obtaining from him or her or a third person <u>information or a confession</u> , punishing him or her for an act that he, she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, whether such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising from, inherent or incidental to lawful sanctions;
5.78	<b>Undetected</b> – a method of completing a case without making any recommendations or referral reports. Provincial Management can endorse case docket as Undetected;
5.79	<b>Undetected (Complainant uncooperative)</b> – Completing a case without any recommendation or referral reports can be made to the NPS, SAPS or MPS due to the complainant not cooperating in the investigation;
5.80	<b>Undetected (Suspect cannot be identified)</b> – Completing a case without any recommendations or referral reports due to the fact that after the investigation, no suspect could be positively identified. <u>Where no suspect can be identified the case must be closed as “undetected” (excluding inquests);</u>
5.81	<b>Undetected (Crime/Offence cannot be established)</b> – Completing a case without any recommendations or referral reports due to the fact that after the investigation, no crime or offence could be established;
5.82	<b>Withdrawn by Victim</b> – means the victim indicated that he or she is no longer interested in proceeding with the case; and
5.83	<b>Withdrawn by Prosecutor</b> – means the Prosecutor has decided not to continue with criminal proceedings.

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**6. APPLICATION**

This SOP applies to all notifications and/or cases lodged with the IPID or initiated by the IPID against members of the SAPS/MPS by any person or organisation, alleging that a member committed an act or an omission which constitutes an offence and/or misconduct.

**7. DUTIES AND RESPONSIBILITIES**

The duties and responsibilities assigned to various officials and Committees:

**7.1 The Executive Director (ED)**

The Executive Director, in addition to the duties and responsibilities as contained in Section 7 of the IPID Act 1 of 2011 and such other duties as may be imposed in the Regulations promulgated under that Act, must:

7.1.1	Ensure that there are systems in place for the lodging, receiving, processing, recording and disposal of cases;
7.1.2	Provide for the development and enforcement of policies to enable an environment that is conducive to lodge a case and receive cases reported;
7.1.3	Ensure compliance with the provisions of the IPID Firearm Control Standard Operating Procedure;
7.1.4	Evaluate all discretionary cases that could possibly be investigated in terms of Section 28 (1)(h) based on nature, public or media interest;
7.1.5	Ensure all systemic corruption case applications are evaluated and a decision is made.

**7.2 Programme Manager (PM)**

The Programme Manager must, in addition to any duties imposed under Section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act:

7.2.1	Maintain an up-to-date SOP;
7.2.2	Determine investigation standards;
7.2.3	Identify priority areas to be attended during a financial year;



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7.2.4	Monitor programme performance monthly, quarterly and annually;
7.2.5	Provide feedback on the programme performance;
7.2.6	Provide systems for the registration and processing of cases;
7.2.7	Ensure data integrity is maintained;
7.2.8	Ensure that the monthly reports and the database are quality assured;
7.2.9	Ensure and comply with the provisions the IPID Firearm Control Standard Operating Procedure;
7.2.10	Coordinate and supervise national task team investigations and draft Terms of Reference for relevant task team;
7.2.11	Evaluation of complaints relating to possible systemic corruption and consulting with the ED for possible investigation of such complaints;
7.2.12	Evaluate all cases relating to Section 28(1)(h) received from the provinces and make recommendations to the ED.

### 7.3 Provincial Management Group

7.3.1	Ensure all cases on the provincial workload is attended to and oversee the investigation and progress of all active cases;
7.3.2	Ensure data integrity, which is consistent with the CMS monthly, quarterly and annually;
7.3.3	Complete active cases on the CMS;
7.3.4	Review all investigation reports, assess its quality, raise queries, if any, endorse recommendations to SAPS/MPS and DPP referrals and sign off on them;
7.3.5	To verify, on a monthly basis, the content of all recommendation reports and referral reports and ensure quality control was done regarding the report and the recommendation(s) speak to the matter that was investigated;
7.3.6	Ensure that outstanding aspects on cases are attended to at PDM level;
7.3.7	Evaluate the decision related to IPID recommendations by the SAPS and decide on further action to be taken;
7.3.8	Approve/disapprove requests for closure of an investigation;
7.3.9	Whoever is acting as a part of the provincial management and who is not, permanently appointed as provincial management, must attach a copy of their acting letter when completing or closing an investigation except where the investigation was done by the person acting (Acting official cannot complete/close own cases);
7.3.10	Ensure PDM B/F dates are adhered to, directives are met and that the information is

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	captured on the CMS;
7.3.11	Ensure proper investigation of service delivery complaints lodged against the IPID;
7.3.12	Ensure that the province conduct docket audits on a quarterly basis on all PDM cases;
7.3.13	Ensure relevant recommendation/ referral reports are sent to stakeholder within 30 days after it has been approved;
7.3.14	Ensure provincial investigative staff is trained in terms of the Legislation and relevant Regulations of Act 37 of 2013 and its Regulations;
7.3.15	Forward to Executive Director for a decision, cases that could be investigated in terms of Section 28 (1)(h) in the supplied format;
7.3.16	Ensure community outreach programs for the Provincial Office are done and ensure the relevant reporting template is completed and the consolidated report is forwarded through the PH to National Office monthly;
7.3.17	Ensure meeting with Community Policing Forum (local/station level CPF) are held quarterly and ensure the relevant reporting template is completed and the consolidated report is forwarded through the PH to National Office quarterly;
7.3.18	Give guidance to the Investigators as to which referrals/reports/recommendation(s) should be generated on the CMS based on their case investigative report (CIR);
7.3.19	Ensure that all information, both criminal and departmental related is uploaded onto the CMS before the docket is returned and the case is closed on the CMS;
7.3.20	Endorsing the docket as Undetected where no recommendations/ referrals will be made;
7.3.21	Ensuring that at the conclusion of the investigation that the exhibits are disposed of as required;
7.3.22	Ensuring that every case that is sent for completion has a completed Investigation checklist attached and completed.

#### 7.4 Provincial Head (PH)

The Provincial Head, in addition to the duties and responsibilities as contained in Section 21 of the IPID Act 1 of 2011 and such other duties as may be imposed in the Regulations promulgated under that Act, must:

7.4.1	Ensure that systems put in place by the ED for the lodging, receiving, processing, recording and disposal of cases against the members, are implemented on provincial level;
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7.4.2	Ensure compliance with the provisions of this SOP, the IPID Firearm Control Standard Operating Procedure and the ED guidelines;
7.4.3	Ensure that the relevant province conduct an workload verification on a monthly basis and compile and submit a report;
7.4.4	Ensure that the Provincial Commissioner is informed of any arrest effected by an IPID member;
7.4.5	Ensure provincial compliance in terms of effective use of the CMS;
7.4.6	Ensure all applications for cases to be registered as a systemic corruption case is forwarded to the Program Manager: Investigations;
7.4.7	Will be responsible for the procurement of all disposable and other equipment that can be used during the investigative process. (Examples but not limited to: medical equipment for attending post mortems, handcuffs, printers, scanners, IT related equipment);
7.4.8	Ensure all identified high profile cases are investigated;
7.4.9	Ensure meetings with Provincial SAPS, MPS and Secretariat monthly to discuss progress on recommendations made to SAPS by IPID;
7.4.10	Ensure provincial investigative staff is trained on the IPID Investigation and Firearm SOPs, and a register regarding the training is kept.

#### 7.5 Deputy Provincial Head/Director Investigations (DI)

The Director Investigations must, in addition to any duties imposed under Section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act, must:

7.5.1	Supervise an investigation conducted by the Deputy Director Investigations;
7.5.2	Ensure that the Case Intake Committee (CIC) meets daily to evaluate and allocate cases;
7.5.3	Ensure that cases are registered and updated on the CMS in terms of the strategic objectives;
7.5.4	Ensure data integrity, which is consistent with the CMS monthly, quarterly and annually;
7.5.5	Immediately upon being notified by the Investigator, notify the PH, the National Spokesperson, the PM and the ED in writing of a high profile case, conviction or arrest;
7.5.6	Ensure that the province conduct workload verification on a monthly basis;
7.5.7	Ensure compliance with the provisions of the IPID Firearm Control Standard Operating

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	Procedure;
7.5.8	Ensure that the Commander of the member arrested is informed accordingly;
7.5.9	Ensure CMS is updated monthly and all relevant documents are uploaded on the system where after closure of case can be initiated;
7.5.10	Forward to Executive Director for a decision, that could be investigated in terms of Section 28 (1)(h) in the supplied format;
7.5.11	Ensure all identified high profile cases are investigated;
7.5.12	Ensure meetings with Provincial SAPS, MPS and Civilian Secretariat monthly to discuss progress on recommendations made to SAPS by IPID;
7.5.13	Ensure compliance with the Criminal Law (Forensic Procedures) Amendment Act 37 of 2013 and its Regulations;
7.5.15	Lead and/or undertake investigations on high profile cases as directed by the PM and/or ED.

#### 7.6 Deputy Director Investigations (DDI)

The Deputy Director Investigations must, in addition to any duties imposed under Section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act, must:

7.6.1	Ensure that cases are captured and allocated in line with the strategic objectives;
7.6.2	Ensure all active B/F dates are adhered to, determine and record active B/F dates, directives and investigative targets and ensure that the information is captured on the CMS;
7.6.3	Ensure that prescribed registers are in place and kept up to date;
7.6.4	Lead and/or undertake investigations on high profile cases when such cases are assigned to him/her as the Investigator;
7.6.5	Review case reports pertaining to investigations where Investigator providing such report is directly reporting to DDI;
7.6.6	Ensure proper investigation of service delivery complaints lodged against the IPID;
7.6.7	Ensure, before the Provincial Management can close the case that the Investigator has complied with all the administrative requirements and updated the CMS;
7.6.8	Ensure that every activity undertaken by the Supervisor and Investigator in the IPID docket is entered in the Case Investigative Journal (CIJ);
7.6.9	Conduct workload verification on a monthly basis;
7.6.10	Ensure compliance with the provisions of the IPID Firearm Control Standard Operating

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	Procedure;
7.6.11	Complete/ Close cases while acting as Provincial Management, in the absence of the Provincial Management, notwithstanding the fact that a person might be closing/ completing a case that he/she supervised and ensure that the acting letter is attached;
7.6.12	Ensure that a case that was investigated by the person's Supervisor, while he/she is acting as Provincial Management, is not completed/closed;
7.6.13	Whomever is acting as the DDI must ensure that an acting letter is attached in the docket that were attended to by the acting DDI;
7.6.14	Ensure that a <b>Recommendation Register</b> , subject to the approval of the PH, containing all cases referred to and acknowledged by SAPS or the Provincial Commissioner's office is sent to IPID National Office weekly. Scanned copies of these original recommendations must be scanned at a minimum of at least 200dpi.
7.6.15	Ensure that a <b>Referral Register</b> , subject to the approval of the PH, containing all cases referred to and acknowledged by the NPA is sent to IPID National Office weekly. Scanned copies of these recommendations are sent to IPID National Office weekly. Scanned copies of these original recommendations must be scanned at a minimum of at least 200dpi.
7.6.16	Meet with Provincial SAPS, MPS and Secretariat monthly to discuss progress on recommendations made to SAPS by IPID;
7.6.17	Ensure CMS is updated monthly and all relevant documents are uploaded on the system where after closure of a case can be initiated;
7.6.18	Conduct quality control before the case is closed;
7.6.19	Ensure that all Section 205 requests are submitted to the relevant service provider and where applicable be registered on the service providers system to submit on behalf of province.
7.6.20	Ensure the recommendation forwarded to the DPP/SAPS/MPS are followed up on, on a monthly basis, and proof of correspondence is attached on the CMS;

## 7.7 Investigators

The Investigator must, in addition to any duties imposed under Section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act:

7.7.1	Receive and screen a case/complaint;
7.7.2	Consult with the complainant/victim/referral authority (only walk-in, written, emailed or faxed cases will be registered). Telephonically reported cases will only be registered if

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	followed in writing;
7.7.3	Complete an IPID registration form, and ensure that the complainant/victim confirms the correctness of the information and appends his/her signature/mark or thumb print;
7.7.4	Register the case on the CMS and upload the notification received from SAPS/MPS or a signed IPID registration form, fax or email;
7.7.5	Acknowledge receipt of a case and issue an acknowledgement letter/SMS/e-mail to complainant/victim/referral authority within 7 days of registration of the case;
7.7.6	Acknowledge receipt of a case and issue an acknowledgement letter/SMS/e-mail to next of kin (if information available);
7.7.7	Receive a docket allocated for further investigations from the Supervisor or CIC;
7.7.8	Update the CMS, generate letters/SMS's/emails to the complainant/victim/next of kin/referral authority and relevant stakeholders, indicating that he/she had been assigned to investigate the case;
7.7.9	Conduct investigations and submit docket for inspection as directed in writing in the CIJ;
7.7.10	Comply with brought forward dates as determined by the Supervisor/CIC;
7.7.11	Ensure CMS is updated monthly and all evidential documents in the docket are uploaded at the Capture Incident Information (CII) stage, and submit the docket with Recommendations/Referral Report to the Supervisor for a recommendation/review;
7.7.12	Send the Recommendations/Referral Report to SAPS/MPS/DPP for a decision on disciplinary steps/possible prosecution of a member;
7.7.13	Follow-up on the recommendation forwarded to the DPP/MPS/SAPS, on a monthly basis, and attach proof of correspondence on the CMS;
7.7.14	Update CMS and generate progress letters/SMS's/emails to the complainant/victim/referral authority and relevant stakeholders; such progress should be limited to the status of the investigation (investigation is pending/completed and recommendations have been forwarded to the DPP/SAPS/MPS, the case is pending in court and report on the court dates), the report should <u>never</u> contain the merits or demerits of the case;
7.7.15	Feedback on active cases should be done at least every 30 days and feedback on completed cases should be done at least every 90 days or when the status of the case change, including but not limited to, when feedback is received pertaining to the criminal case or disciplinary process;
7.7.16	Enter every activity undertaken in the case docket in the CIJ (manual entry in docket and updates on CMS);

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7.7.17	Updated CMS monthly and upload all relevant documents on the system where after closure of case can be initiated;
7.7.18	Before closure of the case a final correspondence must be sent to the complainant/victim/ next of kin/ referral authority/ National Office and/or relevant stakeholders detailing the outcome of the case within 10 days of outcome received and must be recorded in the CIJ and CMS;
7.7.19	Immediately report to the Provincial Management any high profile case;
7.7.20	Comply with the provisions of the IPID Firearm Control Standard Operating Procedure;
7.7.21	Keep prescribed Standby Notification Reference Number register up to date;
7.7.22	Reporting any intention to arrest to the Provincial Management before effecting the arrest;
7.7.23	Comply with the requirements and duties of the Criminal Law (Forensic Procedures) Amendment Act, Act 37 of 2013 and its Regulations;
7.7.24	In case of the possibility of arrest an Investigator should preferably obtain a warrant of arrest, in the event of an arrest without a warrant, the Investigator should consult with the Provincial Management as well as Legal Services before affecting the arrest. In high profile cases the ED and/or PM should always be consulted prior to the arrest;

## 7.8 Supervisor

The Supervisor must, in addition to any duties imposed under Section 24 of the IPID Act and such other duties as may be imposed in the Regulations promulgated under that Act:

7.8.1	Have the supervisory role over all responsibilities as outlined in the Investigator section above;
7.8.2	Allocate dockets and give directives to the Investigator;
7.8.3	Determine and record B/F dates and ensure that B/F is adhered to in terms of both active and PDM dockets;
7.8.4	Ensure that all investigation cases are inspected every 30 days;
7.8.5	Ensure that every activity undertaken by the Investigator in the IPID docket is entered in the CIJ (manual entry in docket and updates on CMS);
7.8.6	Immediately report to the Provincial Management any high profile case, conviction and arrest as well as any death of a suspect of a high profile case;
7.8.7	Check the reports and recommendations by the Investigator before submitting to the Provincial Management through the CIC activity;
7.8.8	Ensure compliance with the provisions of the IPID Firearm Control Standard Operating



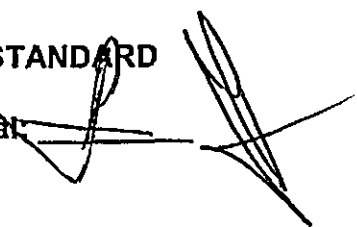
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	Procedure;
7.8.9	Conduct workload verification on a monthly basis and compile a report;
7.8.10	Complete/Close cases while acting as Provincial Management notwithstanding the fact that a person might be closing/completing a case that he/she supervised;
7.8.11	Ensure that a case that was investigated by the person's Supervisor, while he/she is acting as Provincial Management, is not completed/closed;
7.8.12	Ensure that prescribed registers are in place and kept up to date;
7.8.13	Ensure CMS is updated monthly and all relevant documents are uploaded on the system where after closure of case docket can be initiated;
7.8.14	Ensure provincial investigative staff is trained in terms of the legislation and relevant Regulations of Act 37 of 2013;
7.8.15	Ensure the recommendation forwarded to the DPP/SAPS/MPS by subordinate are followed up on, on a monthly basis, and proof of correspondence is attached on the CMS;

#### 7.9 Case Intake Committee (CIC)

The Case Intake Committee must, in addition to any duties imposed under Section 24 of the IPID Act, and such other duties as may be imposed in the Regulations promulgated under that Act:

7.9.1	Receive new cases from Investigators/ Investigative support;
7.9.2	Ensure case is not a duplicate case;
7.9.3	Ensure that time and date received as per the stamp on the notification corresponds with the data as captured on the CMS;
7.9.4	Discuss new cases to ensure that they are properly classified;
7.9.5	Give directives on what investigation must be conducted in terms of all Section 28(1) cases;
7.9.6	The chairperson must ensure the directives are recorded in the CIJ and the CMS;
7.9.7	Allocate the docket to an Investigator;
7.9.8	Identify person who will supervise the Investigator for specific case and who will review Reports (Recommendation Reports and Referral Reports);
7.9.9	Should ensure that the docket is allocated within the time specified and if not a reason must be recorded in both the CIJ of the docket as well as on the CMS;
7.9.10	Be constituted by no less than three persons, (DDI, ASDI, PI and any available

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	Investigator). In case of unavailability of personnel, the sitting by the PH or DI or DDI or ASDI or PI will constitute a valid sitting;
7.9.11	In the event a sitting constituted out of one person, that person cannot assign the dockets to themselves;
7.9.12	Ensure that the written complaint and crime scene form (where applicable) is uploaded;
7.9.13	Review all reports submitted by Investigator (by supervisor of said Investigator);
7.9.14	No minutes will be kept of the sitting.

## 8. GENERAL GUIDELINES AND PROCEDURES

### 8.1 General Guidelines for Filing Documents in a Case Docket

NO	GENERAL GUIDELINES
8.1.1	All evidential documents e.g. statements, technical reports etc. must be filed in the "A" clip of the docket;
8.1.2	All correspondence (internal and external) e.g. Progress Reports, Referral Memorandum to DPP and Acting letters, must be filed in the "B" clip of the docket; All non-criminal investigative related documentation such as the complaints form, relevant recommendation(s), feedback and outcome must be filed in the "B" clip of the docket.  Copies of counter claim dockets (against victim) to be filed under "A" clip where used for evidentiary purposes of IPID investigation and under the "B" clip where just used for reference purposes;
8.1.3	Investigative journals must be filed in the "C" clip of the docket; with the A1 statement being at the bottom and all subsequent additions being added on top.
8.1.4	All documents must be numbered and filed in numerical order and recorded on the CIJ;
8.1.5	All documents must be uploaded on the CMS and the CMS must be updated monthly in terms of uploads. For the purposes of uploading scanned documents, all scanned documents must be scanned at least 200dpi.

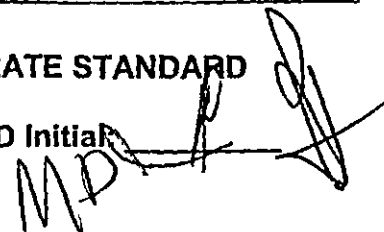
### 8.2 General Guidelines Relating to IPID Communication

NO	GENERAL GUIDELINES
8.2.1	All communications must be generated outside the CMS as per the IPID



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	Communication Template and uploaded onto the CMS via the relevant activity. For the purposes of uploading scanned documents, all scanned documents must be scanned at least 200dpi;
8.2.2	<p><b>Registration:</b></p> <p>An Acknowledgement/ Referral letter must be generated and handed/ send it to the complainant/ victim/ referral authority via the requested method, e.g. SMS/ email/fax/telephone facilities within 7 days after registration; (As per Regulation 3)</p> <p>SAPS/MPS communication at this stage (i.e. who sent the complaint) will be limited to acknowledgment of the complaint only but is not mandatory.</p> <p>Acknowledgement/ Referral letter must also be generated to the complainant (non-SAPS/MPS complainant), victim or next of kin informing them about the complaint forwarded by SAPS/MPS and that IPID will be investigating and providing feedback on the complaint received;</p>
8.2.3	<p><b>Whilst the Case is Under Active Investigation:</b></p> <p>Progress notification must be sent to the complainant/ victim/ next of kin/ referral authority and relevant stakeholders;</p> <p>Progress notification should be forwarded regularly on the status of the case but should not exceed 90 days; such progress should be limited to the status of the investigation (investigation is pending/completed and the case has been referred/recommendations have been forwarded to the DPP/SAPS, the case is pending in court and report on the court dates), the report should <u>never</u> contain the merits or demerits of the case;</p> <p>Progress notifications for National Investigations and high profile investigations should be forwarded monthly to National Office: attention Programme Manager, on the status of the case until the case is completed; such progress should be limited to the progress of the investigation;</p> <p>In the event that the case was referred by the Minister, Member of Parliament or the Presidency it should be regarded as a priority and should be dealt with by senior members and progress should be provided within 2 weeks of registration to the reporting member where after the normal reporting periods as per active and completed investigations will be applicable;</p>



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8.2.4	<b>Whenever the Case Has Been Completed:</b> Progress notification to complainant/ victim/ next of kin/ referral authority/ National Office and relevant stakeholders should be forwarded quarterly (90 days) or when there is a change in the progress of the case;
8.2.5	<b>Whenever the Case is Prepared/Ready for Closure:</b> Progress notification should be forwarded to complainant/ victim/ next of kin/referral authority/ National Office and relevant stakeholders indicating that the case is to be closed and also indicate the outcome of the investigation/ court process/ disciplinary process;
8.2.6	<b>Communication Received:</b> Communication that has a bearing in the investigation must be scanned and uploaded onto the CMS and the original filed in the "B" clip of the docket;

### 8.3 General Guidelines Relating to Case Investigative Reports and Resulting Recommendations and/or Referrals Leading to Completion as well as Closure Reports

NO	GENERAL GUIDELINES
8.3.1	All registered cases can only be completed if an case investigative report and referrals/reports/recommendation(s) has been generated indicating what investigative activities have been done in order to reach the completion stage; <u>Note that no recommendation or referral (excluding inquests) can be made when the suspects are unknown. Where suspects are unknown after a thorough investigation the case should be closed as "Undetected (Suspect cannot be identified)"</u> Both positive and negative recommendations must be sent to the relevant stakeholder;
8.3.2	All case Investigative report(s) and referrals/reports/recommendation(s) will be generated outside the CMS and signed copies will be uploaded onto the system at the appropriate activity; The date that should be attached on the report when signed by respective IPID officials designated on the referrals/reports/recommendation(s) is the date on which the activity is completed on the CMS;

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8.3.3	<p>All case investigative reports are internal reports and are not intended for distribution to any outside stakeholder;</p> <p>The case investigative report needs only to be signed by the Investigator as an indication of the investigative activities undertaken and the result of his/her investigation.</p> <p>Based on the case investigative report, the Investigator will request their Provincial Management Group to approve/disapprove the referrals/reports/recommendation(s) which can be made or should be generated;</p>
8.3.4	<p>All referrals/reports/recommendation(s) emanating from the case investigative report(s) are external reports and are to be sent to stakeholders if applicable.</p> <p>The referrals/recommendation(s) needs to be signed by the Investigator, and Provincial Management in the case of a Provincial Investigation and by the Investigator and the Programme Manager in the case of a National Investigation;</p>
8.3.5	<p>Closure reports are a culmination of the entire investigation process and needs to be completed whenever the investigation has a criminal and/or departmental outcome.</p> <p>This report is brief summary of the case and includes all outcomes and needs to be completed before the case can be closed;</p>

#### 8.4 Procedure for the Registration of Cases

NO	PROCEDURE
8.4.1	<p>An Investigator or Investigative Support must immediately upon receipt of a case in writing, screen the case to determine whether or not it falls within the mandate of the IPID [Reg 3(1)];</p> <p>A "case in writing" includes any formal communication from SAPS/MPS and includes a "shooting report" as well as a signed "crime scene report".</p> <p>All written complaints must be stamped with a receipt date and time. In the event that the written complaint is received outside normal working hours, the first available working day date will be regarded as the date of receipt and the case will be registered</p>

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	<p>and allocated as per normal registration procedures (case registered and allocated within timeframes);</p> <p>A written complaint must be uploaded onto the CMS as well as the crime scene form (where applicable/available). For the purposes of uploading scanned documents, all scanned documents must be scanned at least 200dpi;</p>
8.4.2	If the case falls within the mandate of the IPID, the Investigator/ Investigative Support must record the case on the CMS;
8.4.3	<p>If a case falls outside the mandate of the IPID, the Investigator/ Investigative support must record it in the CMS as an Outside Mandate case and refer it to the CIC for confirmation;</p> <p>In the event that the CIC confirms it as an Outside Mandate matter, a referral letter must be drafted to the sender of the complaint and a copy uploaded onto the CMS;</p> <p>* Refer to definition of cases deemed to be Outside mandate.</p>
8.4.4	<p>The classification is provisionally confirmed by the CIC; the CIC must also update the allocation details on the CMS by identifying who the Investigator responsible will be as well as the relevant Supervisor;</p> <p>The CIC must also give provisional directives to the investigating officer and also indicate the next date the docket must be submitted for inspection to the Supervisor (Brought Forward);</p> <p>The CIC must ensure that the written complaint as well as the crime scene form (where applicable) is uploaded onto the CMS and filed in the docket.</p> <p>The CIC must also confirm that the complaint details including date and time received was captured correctly on the CMS.</p>
8.4.5	The identified Investigator to whom the case is allocated must generate and print the acknowledgement letter and send it to the complainant/victim/referral authority via the requested method, e.g. SMS/email/ fax facilities or telephonically and thereafter record it on the CIJ;
8.4.6	<p><b><u>Deviation to the Abovementioned Process:</u></b></p> <p><b><u>Section 28(1)(g) Matters:</u></b></p> <p>Where a complaint is made but no docket has been opened, IPID may continue with a preliminary investigation based on the written complaint received.</p>

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Upon obtaining sufficient information, IPID should engage the NPA for a decision as to open a criminal case or not as well as possible criminal prosecution.

If the complainant is not interested in opening a criminal case after engagements the case should be closed as Undetected/Complainant Uncooperative.

**Section 28(1)(h) Matters:**

Upon the registration of a matter that could fall within Section 28(1)(h), the confirmation of the classification of the case as indicated as per point 8.4.4 above shall be amended in terms of the following procedure:

After the CIC has provisionally confirmed and allocated the case, the case will be routed to the Provincial Management to write a memo, as per the supplied template, addressed to the Executive Director via the Programme Manager outlining the merits of the case and recommendation if the case should be investigated by IPID or not. All information available supporting the provinces recommendation must be attached;

This memo must be scanned and attached and upon submission of the activity will be sent to the Programme Manager, who will discuss with the Executive Director and complete the activity with the Executive Directors decision, which will be completed on the template provided;

Upon approval the case will be routed back to the Investigator as identified by the CIC to continue with the investigation. If the request is declined, the case will route back to the identified Investigator with an instruction to complete a case investigative report and request to complete the investigation in terms of a General Completion and refer to relevant stakeholder.

The decision of the Executive Director is final and no province is allowed to act contrary to the Executive Directors decision;

Where any matter is referred directly to the office of the Executive Director, the matter will be referred to the relevant Provincial Office and the abovementioned process must be followed. The date the province receives the matter from the Office of the Executive Director shall be regarded as "the date received" for registration purposes.

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Service delivery complaints must be dealt with in line with the definition 5.71. Where the complainant has not exhausted all internal SAPS/MPS mechanisms the case must be registered and regarded as outside mandate even when it was referred to the province from the office of the Executive Director. Should the Executive Director decide that the matter should be investigated, he/she would direct so at the time of referral of the matter to the provincial office.

Pre-approval must be submitted along with document to Programme Manager who will approve based on the decision by the ED.

**Section 28(2) Matters:**

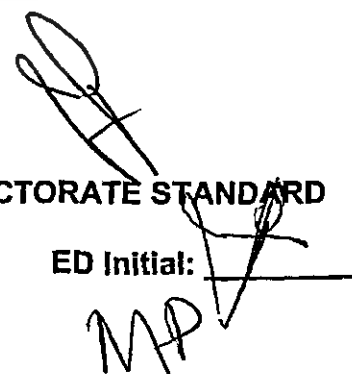
Upon identification of a case of possible systemic corruption, where the case has not been registered on the CMS, obtain written approval from the Programme Manager for permission to register such a case;

This is done by means of a memorandum drafted to the Programme Manager with a brief discussion of the merits leading to the request and estimated timelines relating to the investigation;

Upon receipt of such a request, the Programme Manager will grant/ decline the request;

In the event that the request is approved, the said case can be registered as a Section 28(2) matter with the approval letter granting the registration is to be uploaded as the "complaint" on the CMS. For the purposes of uploading scanned documents, all scanned documents must be scanned at least 200dpi;

In the event approval is not granted, the case may not be registered as a Section 28(2) matter and must be dealt with as per the instruction of the Programme Manager. The date the feedback is received from the Programme Manager should be regarded by the province as the "date received";



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**8.5. Procedure for the Investigation of a Case**

Note that the following generic principles will be applicable to all cases investigated as indicated in the IPID Regulations:

Regulation	Deals With:	Focuses On:
3	Receiving, registering, referral and disposal of complaints	Communication after registration – Acknowledgement and referral must be done within 7 days
4	Deaths in custody or as a result of SAPS/MPS action	Reg. 4(3) – Investigation at scene Reg. 4(4) – Possible arrest of member at scene Reg. 4(6) – Complete investigation within 90 days or give reasons Reg. 4(8) & (9) – Late notifications by SAPS/MPS in terms of death related cases
5	Investigation of criminal matters	Reg. 5(2)(a & b) read with 5(3)(e) – Duties in terms of rape related cases Reg. 5(2)(d) read with 5(3)(f) – Duties in terms of corruption cases Reg. 5(2)(c) read with 5(3)(g) – Duties in terms of torture related cases
6	Investigation of discharge of official firearms	Reg. 6(3) – Must conduct prelim investigation, not exceeding 30 days, to establish if full investigation is warranted Reg. 6(4) – Duties in terms of discharge complaint investigation Reg. 6(5) – Complete investigation within 90 days or give reasons
7	Investigation of referred matters	Reg. 7(3)(c) – Matters not dealt with in terms of Reg. 4 or 5 – Executive Director or Provincial Head can give directions as to investigations.



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**8.6 Notifications to IPID**

NO	PROCEDURE
8.6.1	<p>An Investigator on standby/ call (being automatically authorised to attend crime scenes) must immediately upon receiving a telephonic notification of a death or any relevant crime scene, notify the Provincial Management and attend the crime scene as soon as it is practicably possible to do so;</p> <p>The said member must record the <b>Standby Notification Reference Number</b> given to the reporting member;</p> <p>In the event that a crime scene cannot be attended, permission for the non-attendance of the crime scene must be obtained from the Provincial Management and reasons must be noted in the CIJ as well as the on CMS;</p>
8.6.2	Obtain and record all relevant information regarding the location of the crime scene, the time that the notification was made, the SAPS/MPS member reporting the incident on applicable IPID crime scene form;

**8.7 Arrival at the Crime Scene and Cooperation with SAPS/MPS Member in Charge of Crime Scene Read with Regulation 8**

NO	PROCEDURE
8.7.1	In the event that the crime scene will be attended, advise the SAPS/MPS member in charge, to preserve the crime scene and to keep it intact until the IPID Investigator on standby/call, arrives at the crime scene;
8.7.2	Introduce himself/herself by production of a valid IPID appointment certificate to the SAPS/MPS member in charge of the crime scene and take over the scene;
8.7.3	Receive a briefing on what transpired at the crime scene from SAPS/MPS;
8.7.4	Record observations made at the scene;
8.7.5	Record the particulars of victim(s);
8.7.6	Ensure that all vital clues and forensic evidence have been marked and photographed in their original position by the Local Criminal Record Centre (LCRC);
8.7.7	Collect or ensure the collection of exhibits from the crime scene for processing by the

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	Forensic Science Laboratory (FSL); ensure that the evidence is placed in and sealed in a designated evidence bag and that the serial number is recorded in full in the IPID form; ensure that the exhibits are booked in with the SAP 13 at the Police Station within that jurisdiction;
8.7.8	The Investigator must submit a detailed statement mentioning that the exhibits were handed to the FSL or LCRC member intact in a sealed bag. The statement must be attached in "A" clip of the docket.  During Investigations the Investigator must obtain a detailed statement of the FSL or LCRC member to whom the evidence was handed. (for the purpose of chain statement);
8.7.9	Identify all witnesses to the crime and obtain their particulars for interview as soon as it is practically possible;
8.7.10	Obtain particulars of the members involved for future interviews;
8.7.11	Complete the applicable sections on the IPID crime scene form, with all the required crime scene information (This includes obtaining the signature of the SAPS member in charge at the scene);

### 8.8 Post-Scene Investigation

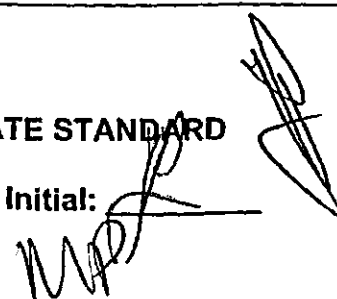
NO	PROCEDURE
8.8.1	Ensure that the exhibits (obtained by IPID Investigator) are booked in the SAP 13 and booked out before it is sent to the Forensic Science Laboratory (FSL) for processing within 72 hours;
8.8.2	Where IPID is investigating any firearm-related offence (Deaths or Complaints of Discharges), obtain the relevant permit allowing the SAPS/MPS member(s) involved to handle and use the firearm in question as well as a report relating to when last the said member was practically trained and evaluated/tested for the handle and use of the said firearm;
8.8.3	Upon receiving exhibits back from the FSL, the exhibits need to be returned to the Police Station for it to be booked back into the SAP 13;
8.8.4	Visit all the identified witnesses to conduct interviews and obtain statements;
8.8.5	Establish the identity of the person who allegedly committed the offence and obtain a warning statement;
8.8.6	In case of a death-related scene, visit the next of kin (where possible) to notify them

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	of the incident and your role as an IPID Investigator; and interview them to obtain any information that may assist in the investigation (Within 24 hours of positive identification of deceased person);
8.8.7	Once case has been registered on the CMS, confirmed and allocated, the member who attended the scene (and completed the IPID form) must scan and upload the crime scene form at the applicable location on the CMS. For the purposes of uploading scanned documents, all scanned documents must be scanned at least 200dpi.  In the event that the document still has outstanding information that needs to be captured, it should be completed during the investigation and a completed document must be scanned and uploaded;
8.8.8	Where a crime scene needs to be reconstructed, permission should be obtained from Provincial Management so as to justify the costs.

**8.9 Post Mortem**

NO	PROCEDURE
8.9.1	Attend Post Mortem on the date, time and place identified for purposes of observing the conducting of the post mortem; in the event the post mortem cannot be attended an entry must be made on the CIJ and the CMS as to why the post mortem could not be attended and the Provincial Management must be informed;
8.9.2	Advise the pathologist of any investigations you would like to concentrate on;
8.9.3	Ensure the LCRC is present at the Post Mortem and that photos of the Post Mortem is taken (if required);
8.9.4	Ensure that all vital clues and forensic evidence have been marked and photographed in their original position by the LCRC;
8.9.5	Inform the pathologist of observations made at the crime scene and in the event of any inconsistencies with their (pathologists) findings or, where there is disagreement with the Pathologist report, this should be brought under the attention of the Investigators' Supervisor;
8.9.6	The IPID members' attendance of the Post Mortem must be verified by any person at the venue where the Post Mortem took place by means of such person's name and signature on the relevant form.



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**8.10 Further Investigation: Active Investigations**

NO	PROCEDURE
8.10.1	Upon receipt of the docket, assess evidence contained in the docket, conduct outstanding investigations as per directive(s);
8.10.2	Where resources are utilised from multiple offices, such as in a National Level Investigation, the jurisdiction will remain within the province where the matter arose, but custodianship and supervision will reside with the Programme Manager: Investigations who will establish Task Teams and Terms of Reference as well as reporting structure if required;
8.10.3	<p>All dockets should be inspected as per the B/F indicated by the Supervisor. Upon inspection of the docket, the inspecting official must evaluate the compliance with the instruction issued and give guidance to the Investigator as to outstanding aspects.</p> <p>Generic instructions such as:</p> <ul style="list-style-type: none"> <li>i. "Docket perused"</li> <li>ii. "Docket seen"</li> <li>iii. "Continue with investigation"</li> <li>iv. "Obtain outstanding statements"</li> </ul> <p>should not be used;</p>
8.10.4	<p>Update the CMS and upload all evidence collected in the docket. For the purposes of uploading scanned documents, all scanned documents must be scanned at least 200dpi;</p> <p>Confirmation as to the completeness of information on system must be verified every with every B/F;</p>
8.10.5	<p>Compile a case investigative report indicating what has been done relating to the investigation;</p> <p>Forward the report to Provincial Management (through CIC activity) and suggest what method of completion would be recommended relating to methods mentioned below.</p> <p>Provincial Management will make a determination on the CMS as to which reports should be generated based on the case investigative report submitted.</p>

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1. **Decision-Ready Investigation (Criminal Referral)**
2. **Decision-Ready Investigation (Departmental Recommendation)**
3. **Decision-Ready Investigation (Policy Recommendation)**
4. **Decision-Ready Investigation (General Recommendation)**
5. **Duplicate**

The Investigator who dealt with the investigation also indicates if the case needs to be reclassified or if the original classification is still applicable;

If the classification is to be changed – a short reason should indicate the reason for the change;

Only one request to make a change of classification will be allowed and that the change request be limited to the Criminal Referral leg or the highest in terms of the completion "hierarchy";

There will be a hierarchy in terms of which cases will be deemed "decision ready" and will be:

1. **Decision-Ready Investigation (Criminal Referral)**
2. **Decision-Ready Investigation (Departmental Recommendation)**
3. **Decision-Ready Investigation (Policy Recommendation)**
4. **Decision-Ready Investigation (General Recommendation)**
5. **Duplicate**

These types of reports should be seen in a hierarchical form meaning that the highest form of report will be the report that changes the status.

A Criminal Referral report that is approved will change the case status from "Active" to "Decision-Ready";

A Departmental Recommendation report that is approved and referred will not change the case status from "Active" to "Decision-Ready". The status will remain "Active" until such time a Criminal Referral is approved (if able to generate such a report based on recommendation as to completion method given to Provincial Management and approved by Provincial Management);

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	<p>A Policy Recommendation report that is approved and referred will not change the case status from "Active" to "Decision-Ready". The status will remain "Active" until such time a determination is made that a Criminal Referral or Departmental Recommendation is approved (if able to generate such a report based on recommendation as to completion method given to Provincial Management and approved by Provincial Management);</p> <p>A General Recommendation report that is approved will change the case status from "Active" to "Decision-Ready" and there will be no need to indicate that no Criminal Referral can be made;</p> <p><b>Note:</b></p> <p>Any unnatural death must still be referred to the DPP for a decision unless it was found that there was no SAPS/MPS involvement in which case the case can be completed with the above-mentioned process and the case be referred back to SAPS for further investigation.</p> <p>Where a rape in police custody is being investigated [Section 28(1)(e)], and it is found that the suspect is not a SAPS/MPS member; the Investigator should still ascertain the reason(s) that could have contributed to the rape in custody and make the appropriate recommendation by making copies of the SAPS docket and continuing with their investigation focussing on the departmental aspects;</p>
8.10.6	<p>The Referral/Recommendation report is sent to a Supervisor for review and electronic approval of report as well as the final post investigation classification. The supervisor completes the "Quality Control Form/Docket Checklist" and verifies that the investigation complies with a quality investigation;</p>
8.10.7	<p>Refer to the Provincial Management to approve investigation and as well as the final post investigation classification. The Provincial Management verifies the "Quality Control Form/Docket Checklist" and confirms that the investigation complies with a quality investigation;</p>
8.10.8	<p>Upon approval of relevant report by the Provincial Management:</p> <p>The Investigator must forward and obtain acknowledgement of receipt of the referral/recommendation to the relevant stakeholder within 30 days which includes weekends and public holidays. This includes cases that are closed based on policy and general completion as per the template provided.</p>



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	<p>The referral/ recommendation as well as the acknowledgement must be scanned and forwarded to relevant section monitoring compliance on a <u>weekly basis</u> with a last date of stakeholder acknowledgement suggested being the 25<sup>th</sup> of each month (for practicality purposes). All referrals/ recommendations that has been sent and acknowledged must be received by the monitoring section by the 1<sup>st</sup> day of the month.</p> <p>Thus everything sent to the monitoring section by the 1<sup>st</sup> day of the month will be acknowledged by the stakeholder within the same month of reporting forwarded it to National Office.</p> <p>This includes the relevant register indicating that what has been submitted. The scanned recommendations and register must correlate in terms of documents submitted and acknowledged.</p> <p>These electronic scans to National Office must be of an acceptable quality as to be able to verify details required such as date stamp details, signatures, dates on reports and should be at minimum scan quality of 200dpi;</p> <p>Where a case was completed by means of Policy Ready or General Completion (where no criminal referral or departmental recommendations were made): – once the stakeholder to whom the report was sent to has acknowledged the report, upload the acknowledgement and prepare the case for closure;</p>
8.10.9	<p>In the event that the SAPS/MPS member is arrested at the scene and the member(s) appears before court, it will be recorded as such on the CMS during registration and when confirmed by the CIC and the case will be deemed Decision Ready Investigation (Criminal Referral);</p> <p>All instructions and court dates will be recorded and the PDM process discussed below will be applicable;</p>
8.10.10	<p><b><u>Deviation to the Abovementioned Process:</u></b></p> <p><b><u>Section 28(1)(c) Matters:</u></b></p> <p>All Section 28(1)(c) matters <b>must</b> have a prelim investigation, which may not exceed 30 days, in order to establish if the matter warrants a full investigation as per Regulation 6(3);</p>



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	<p>The prelim investigation and case investigative report can be used to complete the case if the case is to be completed under General Completion but if the matter is to be completed by means of a full investigation, the relevant report/ recommendation must be drafted;</p> <p><b><u>National Level Investigations:</u></b></p> <p>When cases are investigated at a National Level, the following shall apply:</p> <p>The task team leader (person to whom the docket/ case is allocated) needs to ensure that the information gathered during the investigation is uploaded onto the CMS;</p> <p>Where the investigation is of a National Level, the reporting route in order to obtain completion will be:</p> <ul style="list-style-type: none"> <li>• Investigator</li> <li>• Identified supervisor as per instruction (Supervisor review approve)</li> <li>• Programme Manager (Management review approve)</li> </ul>
8.10.11	Where a suspect received a criminal conviction that will lead to their dismissal (direct imprisonment) from SAPS/MPS but their departmental sanction was not a dismissal sanction, IPID must inform the SAPS/MPS about the criminal sanction.
8.10.12	<p>Where IPID is not in agreement with the departmental sanction, based on the seriousness of the charge, IPID should request SAPS/MPS to send the departmental case for review.</p> <p>On receipt of a departmental outcome, the Provincial Management must indicate on said feedback if they are satisfied with the outcome/sanction prior to sending it scanned copy to National Office (applicable monitoring section).</p>

**8.11 Further Investigation: PDM Cases:**

Once the referral/recommendation has been sent to the relevant stakeholder (NPA, SAPS or MPS) the following process will apply:




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NO	PROCEDURE
8.11.1	<p><b>Criminal PDM Process:</b></p> <ul style="list-style-type: none"> <li>i. Upon receipt of the feedback of the referral to the NPA, update the CMS and attend to any outstanding enquiries and/or directives;</li> <li>ii. All queries and B/F's given by the NPA should be recorded on the CMS (also refer to 8.10.3 above);</li> <li>iii. All dockets where the NPA has given a B/F must be submitted to the Provincial Management group and/or Supervisor five (5) days before the docket must be submitted to the NPA for inspection and compliance with the NPA directives.</li> <li>iv. Upon receipt of the decision for the NPA, the CMS should be updated and based on the decision the case will be regarded as ready for court, or ready for disposal/closure if applicable;</li> <li>v. Once the case has been to court and is on the court roll, update the CMS with appearance dates and every subsequent appearance date until such time the case is concluded in court;</li> <li>vi. Upon receipt of an outcome after the case had gone to court, update the CMS with the outcome within fourteen (14) days after receiving the outcome, draft a closure report and refer the case to the Provincial Management for closure;</li> <li>vii. In the event that a warrant is issued, the case can be closed after six (6) months of the date of issue using "warrant issued" as closure reason on criminal outcome;</li> <li>viii. In the event that the warrant is executed after the case has been closed, the case can be reopened and the case will continue as per the original process flow on the CMS;</li> </ul>
8.11.2	<p><b>Departmental PDM Process:</b></p> <ul style="list-style-type: none"> <li>i. Upon receipt of the feedback of the recommendation, update the CMS;</li> <li>ii. Upon receipt of an outcome after the case had been through the disciplinary process, update the CMS with the outcome within fourteen (14) days after</li> </ul>

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	receiving the outcome.
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**8.12 Special Attention Relating to each Case Classification:**

	<p><b>Deaths in Custody or As a Result of Police Action:</b>  <b>Section 28(1)(a) or (b) of Act Read with Regulation 4 and 8</b></p> <ul style="list-style-type: none"> <li>• Recording notifications</li> <li>• Attending scenes</li> <li>• Safety on scene</li> <li>• LCRC</li> <li>• Firearm proficiency of SAPS/MPS members</li> <li>• Evidence collected and recorded in CIJ</li> <li>• Attending post mortem</li> <li>• LCRC</li> <li>• Evidence collected and recorded in CIJ</li> <li>• Communication with stakeholders <ul style="list-style-type: none"> <li>○ 7 days after registration</li> <li>○ 90 days whilst investigation on-going</li> <li>○ 90 days after case status has changed to decision ready</li> </ul> </li> <li>• Completion and uploading of relevant IPID forms</li> </ul>
	<p><b>Complaints of a Discharge of an Official Firearm:</b>  <b>Section 28(1)(c) of Act Read with Regulation 6</b></p> <ul style="list-style-type: none"> <li>• Determine if IPID has been provided with a complaint of a discharge or a notification of a discharge?</li> <li>• Firearm proficiency of SAPS/MPS member(s)</li> <li>• Prelim report as to investigation and does it merit a full investigation.</li> </ul>
	<p><b>Complaints Relating to any Rape Matter:</b>  <b>Section 28(1)(d)-(e) of Act Read with Regulation 5</b></p> <ul style="list-style-type: none"> <li>• Medical practitioner</li> <li>• J88 and sexual assault kit</li> <li>• Evidence collected and recorded in CIJ</li> </ul>

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	<ul style="list-style-type: none"> <li>• Statement of person to which rape was first reported to</li> <li>• Compliance with Criminal Law (Forensic Procedures) Amendment Act 37 of 2013 and its Regulations</li> </ul>
	<b>Complaints Relating to any Assault/Torture Matter:</b> <b>Section 28(1)(f) of Act Read with Regulation 5</b> Preserve crime scene if possible and attend scene <ul style="list-style-type: none"> <li>• Medical practitioner – J88</li> <li>• Blood samples (where applicable) – Torture-related cases</li> <li>• Evidence collected and recorded in CIJ</li> </ul>
	<b>Complaints Relating to any Corruption Matter:</b> <b>Section 28(1)(g) of Act Read with Regulation 5:</b> <ul style="list-style-type: none"> <li>• Above R 100 000 ensure compliance with Section 34(1) and 34(3)(a) of the Prevention and Combating of Corrupt Activities Act.</li> </ul>

**8.13 Procedure for the Investigation of Section 28(2) Cases Where the Case has Initially Been Registered under Another Classification**

NO	PROCEDURE
8.13.1	Upon identification of a case of possible systemic corruption where the case was not registered as a systemic corruption case, write a report and submit said report as per the CMS activity requesting that the case be re-classified as a systemic corruption investigation upon <b>completion</b> of the investigation. The request along with the signed and scanned report is forwarded to the Programme Manager;
8.13.2	If approval is granted by the Programme Manager, the response is forwarded and acknowledged to the respective province. The case can then be <b>completed</b> as a systemic corruption investigation (through reclassification) once the case is ready to be completed; No case can be re-classified at completion as a Section 28(2) matter without approval of such change by the Programme Manager;
8.13.3	Irrespective if the case has already been registered or not and approval is not granted continue with the case as directed by National Office;
8.13.4	Where no docket is opened, ensure that the case docket is opened if applicable;
8.13.5	Follow Further Investigation: Active Investigations process, as indicated as per par

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	8.10 above, in terms of completion the case.
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**8.14 Procedures Relating to Identification Parades, Taking of Affidavits, Giving Evidence, Production of Documents and Submission of Information and Cooperation by Police**

NO	PROCEDURE
8.14.1	This is to be dealt with in terms of Regulation 9;
8.14.2	The procedures relating to the arrangement and holding of identification parades, the taking of affidavits or the production of documents in the possession or under control of the SAPS or MPS which have a bearing on the matter being investigated and the submission of any other information or documentation required for investigation purposes must be conducted in accordance with the relevant procedures applicable to members of the SAPS/MPS;
8.14.3	A member of IPID may require written reasons for failure by a member of SAPS/MPS to comply with the above-mentioned request for cooperation and may make recommendations to the Executive Director or relevant Provincial Head regarding disciplinary measures to be taken against the said, offending member.

**8.15 Procedure for Electronic Archiving of Investigative Documentation at Closure of the Case**

	PROCEDURE FOR ARCHIVING OF DOCKETS
8.15.1	At the time the case is ready for closure, investigative support must conduct a docket vs CMS comparison to establish if the entire case is uploaded onto the CMS and give feedback to the I/O if anything is outstanding;
8.15.2	Provincial Management must confirm that the entire content of the docket has been uploaded onto the CMS by means of a journal entry before the docket can be returned to SAPS;

\*\*\* Confidential\*\*\*

**8.16 Procedure for Obtaining and Returning SAPS Dockets**

	<b>PROCEDURE FOR OBTAINING SAPS DOCKETS</b>
8.16.1	Request docket from the Provincial/ Station/ Branch Commander;
8.16.2	Ensure that the Provincial/ Station/ Branch Commander transfers the docket on the CAS system and records on the register in accordance with the provision of the SAPS Standing Operating Procedure (SOP) dated 20/11/2007;
8.16.3	Make an OB Entry to confirm receipt of docket from the station and member concerned;
8.16.4	Record the transaction on the IPID manual docket register;
8.16.5	On arrival at the office ensure that the information CMS is updated;
	<b>PROCEDURE FOR RETURNING SAPS DOCKETS</b>
8.16.6	Before any docket can be returned, it must be confirmed that the entire content of the docket has been uploaded unto the CMS as per 18.5.2 above;  When returning the docket ensure that the Provincial/ Station/ Branch Commander transfers the docket on the CAS system and records in the register in accordance with the provisions of the SAPS Standing Operating Procedure (SOP) dated 20/11/2007;
8.16.7	Make an OB Entry to confirm return of the docket to the station and member concerned; or when the docket is returned to SAPS (other than at the station), written proof should be obtained;
8.16.8	Record the transaction on the IPID manual docket register;
8.16.9	On arrival at the office ensure that the information CMS is updated;
8.16.10	Any other provincial arrangements may be made as to the logistical arrangements regarding obtaining and returning of dockets as the case may be. These arrangements should be documented and signed by the relevant Provincial Head and SAPS/MPS counterpart.

**8.17 Arrests by IPID (Read with ED Directive 10 of 2014)**

NO	PROCEDURE
8.17.1	In case of the possibility of arrest an Investigator should preferably obtain a warrant of arrest, in the event of an arrest without a warrant, the Investigator must consult with the Provincial Management before affecting the arrest. In the



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	event that the Provincial Management is unsure as to arrest, Legal Services must be consulted; In high profile cases the ED, Programme Manager and Provincial Management should always be consulted and informed prior to the arrest;
8.17.2	The EH of MPS, the Station Commander as well as the Provincial Commissioner of SAPS must be informed within 24 hours after the arrest has been effected;

**8.18 DNA - Forensic Samples**

NO	PROCEDURE
8.18.1	In any case where any "buccal sample" may be required, only IPID officials authorised to do so in terms of the Criminal Law (Forensic Procedures) Amendment Act 37 of 2013 and its Regulations may take the samples;
8.18.2	Where IPID officials are not allowed to take said (DNA related) sample, he/she should ensure that the sample(s) are taken by an qualified medical practitioner as indicated in the said Act;
8.18.3	Once samples are collected ensure delivery of the samples to the relevant laboratory for analysis of same;
8.18.4	Record all activities undertaken and results on CMS.

**8.19 Conflict of Interest**

NO	PROCEDURE
8.19.1	In the case where the Investigator has an actual or perceived conflict of interest in the case that they are investigating, the Conflict of Interest form must be completed;
8.19.2	Upon completion of the said form, it must be escalated to the Investigator's immediate Supervisor for an evaluation;
8.19.3	The matter must be referred to the Director Investigations for final decision;
8.19.4	Whilst the declaration is under consideration, the effected Investigator may not continue with the investigation in question and should hand in all relevant case material to their Supervisor;
8.19.5	In the event it is found that there is a conflict of interest, the case will be re-allocated to an Investigator who is not conflicted;



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8.19.6	All applications, communication and decisions relating to the conflict of interest declaration will be done in writing.
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**8.20 Investigators' Security**

NO	PROCEDURE
8.20.1	In the case where the Investigator is threatened in any way during the execution of their duties, the following steps must be taken:
8.20.2	The affected/threatened Investigator immediately reports the incident/threat to their Provincial Management;
8.20.3	The day following the threat, the effected member will draft a report/memorandum to the said Provincial Management who in turn will escalate it matter to the Programme Manager;
8.20.4	The Programme Manager will after consultation, respond to the Provincial Management and indicate the most appropriate way to proceed in the regard;
8.20.5	Possible responses to the threat could include (but is not limited to): <ul style="list-style-type: none"> <li>i. Activation of NSIT members to assist with investigation of threat and protection of the Investigator;</li> <li>ii. Instructions to open criminal dockets ;</li> <li>iii. Instructions that case(s) should be handed over to another Investigator within the province;</li> <li>iv. Instructions that case(s) should be handed over to the provincial NSIT Investigator within the province.</li> </ul>

**9. REGULATIONS**

This SOP should be read together with the Regulations promulgated under Section 34(1) of the Independent Police Investigative Directorate Act 1 of 2011.

**10. DELEGATION**

**10.1** Provincial Heads and Director Investigations should under no circumstances delegate their functions, in terms of this SOP, on a permanent basis to another member of his/her staff.

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10.2 The Executive Director delegates authority to the Provincial Head/Director Investigation relating to matters of conflict of interest.

## 11. PENAL PROVISION

Failure to comply with any provision of this SOP amounts to misconduct and shall be dealt with in terms of the disciplinary code of conduct of the Public Service.

## 12. REVISION

This SOP shall be revised as and when a need arises. When there is revision or amendment to the SOP – only the effected part/paragraph will be amended and communication will be sent to the Provincial Management with instructions as to the dissemination of information and the date as from which the change will take effect.

## 13. LIST OF ATTACHED ANNEXURES

- 13.1 Acknowledgement communication;
- 13.2 Progress communication;
- 13.3 Closure communication;
- 13.4 Section 28(1)(h) memo template;
- 13.5 Crime scene report;
- 13.6 Preliminary report template;
- 13.7 Case Investigative Report template;
- 13.8 Departmental Recommendation template;
- 13.9 Criminal Referral template;
- 13.10 Declaration of interest template;
- 13.11 Manual registration/complaints register;
- 13.12 Closure report template;
- 13.13 Archiving template;
- 13.14 Standby Notification Reference Number register;
- 13.15 Quality Control Form/Docket Checklist;
- 13.16 Docket movement register;
- 13.17 Brought Forward register;
- 13.18 General Completion Recommendation template;
- 13.19 General Recommendation template;
- 13.20 Policy Recommendation template;

## **ANNEXURE “D”**



"RMB.D"

RJM-0137

**Robert John McBride**

Date of Birth 6, July 1963

ID Number: 630706 5082 08 6

Cell: 082 469 3937

Email: [rjmcbride63@gmail.com](mailto:rjmcbride63@gmail.com)

### **QUALIFICATIONS**

BA International Politics  
UNISA – 2002

B.Tech Degree in Policing (Honours)  
Tshwane University of Technology – 2007

Diploma in Foreign Relations  
Institute of Diplomacy and Foreign Relations Kuala Lumpur, Malaysia  
June – November 1993

Attachment to Norwegian Department of Foreign Affairs  
November 1993

Diplomatic Training  
Foreign Service Institute of the Department of Foreign Affairs, South Africa  
(DIRCO)  
1995 – 1996

Training in Diplomatic Relations and Management, Foreign Service  
Institute, India  
1996

 MP

## **EMPLOYMENT HISTORY**

**Co-ordinator – ANC Peace Desk PWV Region (Gauteng)**  
1992 - 1994

**Member of Provincial Legislature (ANC), Gauteng Province**  
April 1994 – May 1995

**Member of Parliament (ANC), National Assembly**  
June 1995

**Appointed to Head DIA Committee tasked with negotiating and co-ordinating the integration of the ANC's overseas-trained officials into the Department of Foreign Affairs (DIRCO)**  
June 1995 – October 1995

**Appointed as a Deputy Director: Foreign Service, in the Department of Foreign Affairs, Pretoria (DIRCO)**  
Nov 1995

**Director: South East Asia**  
**Director: Operational Services**  
1 August 1997 – 1 August 2001

**Head Consular and Agency Services.**  
1 August 2001 – Nov 2003

**Chief of Police, Ekurhuleni Metropolitan Municipality**  
2003 – 2008

**Executive Director (Director-General), Independent Police Investigative Directorate**  
2014 – To present





## **APPOINTMENTS**

Appointed to the National Intelligence Estimates Board (NIEB)  
1997 - 1998

Appointed to the Immigration Advisory Board  
2001 - 2002

## **OTHER RELEVANT COURSES**

Negotiations, Mediation, Arbitration and Conflict Resolution: IDASA,  
ACCORD and the Wits/Vaal Peace Secretariat  
1993

Course on Project Management: Wits Business School, South Africa  
2002

Korea-African Partnership Course in Korea (KOICA Programme)  
May 2002

Economic Literacy Workshop, University of Pretoria  
Oct 2002

Finance for non-financial Managers, ExecuPrime Training  
Sept 2003

Performance Management, DFA Human Resource Development  
Sept 2003

Targeted Selection Training, Deloitte&Touche  
Sept 2003

Management and Leadership Training, SAPS  
July 2006





## **PEACE PROCESSES**

East Rand/ Katorus Peace Process, 1993

Irish Peace Process, 1994

East Timor, 1996

Spanish / Basque Peace Process, 2004

## **MEDALS / AWARDS**

Service Medal in MK, Minister of Defence, 1997

South African Operational Medal for Operational Services rendered within the borders of the Republic of South Africa, Minister of Defence, 2004

Operational Medal for Southern Africa for Operational Services rendered beyond the borders of the Republic of South Africa, Minister of Defence, 2004

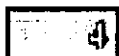
Merit Medal in Bronze for service of a high order and devotion to duty in Umkhonto We Sizwe, Minister of Defence, 2006

Merit Medal in Silver for exceptionally meritorious service and particular devotion to duty in Umkhonto We Sizwe, Minister of Defence, 2006

Conspicuous Leadership Star for conspicuous conduct and exceptional combat leadership whilst serving in Umkhonto We Sizwe, Minister of Defence, 2006

Citation of Honour – Benoni Centenary Association, 2007

Award for Courage and Integrity, the Ahmed Kathrada Foundation, 23 September 2018



*RJ* *MP*

## **REFERENCES**

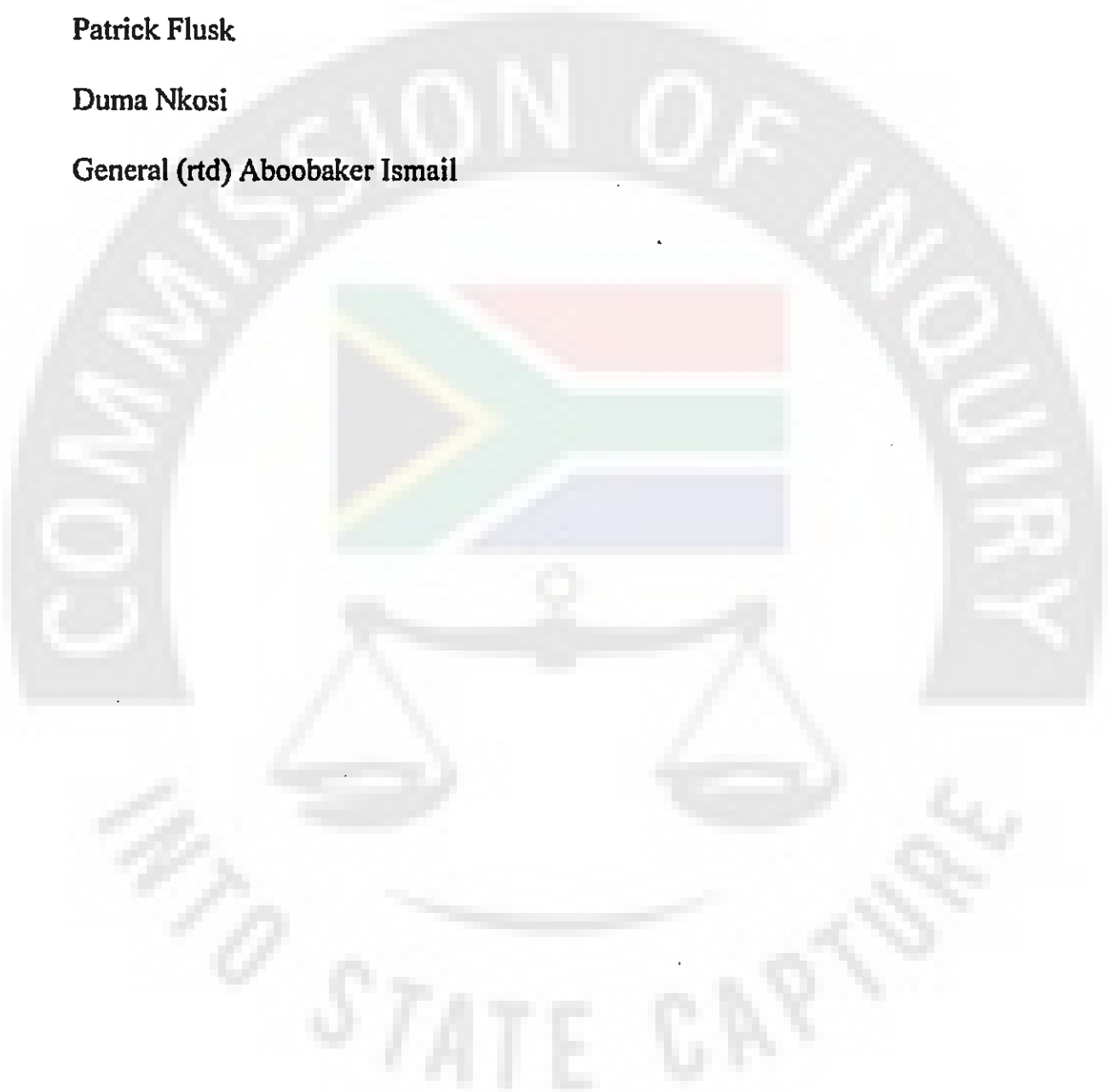
Cyril Ramaphosa

Moe Shaik

Patrick Flusk

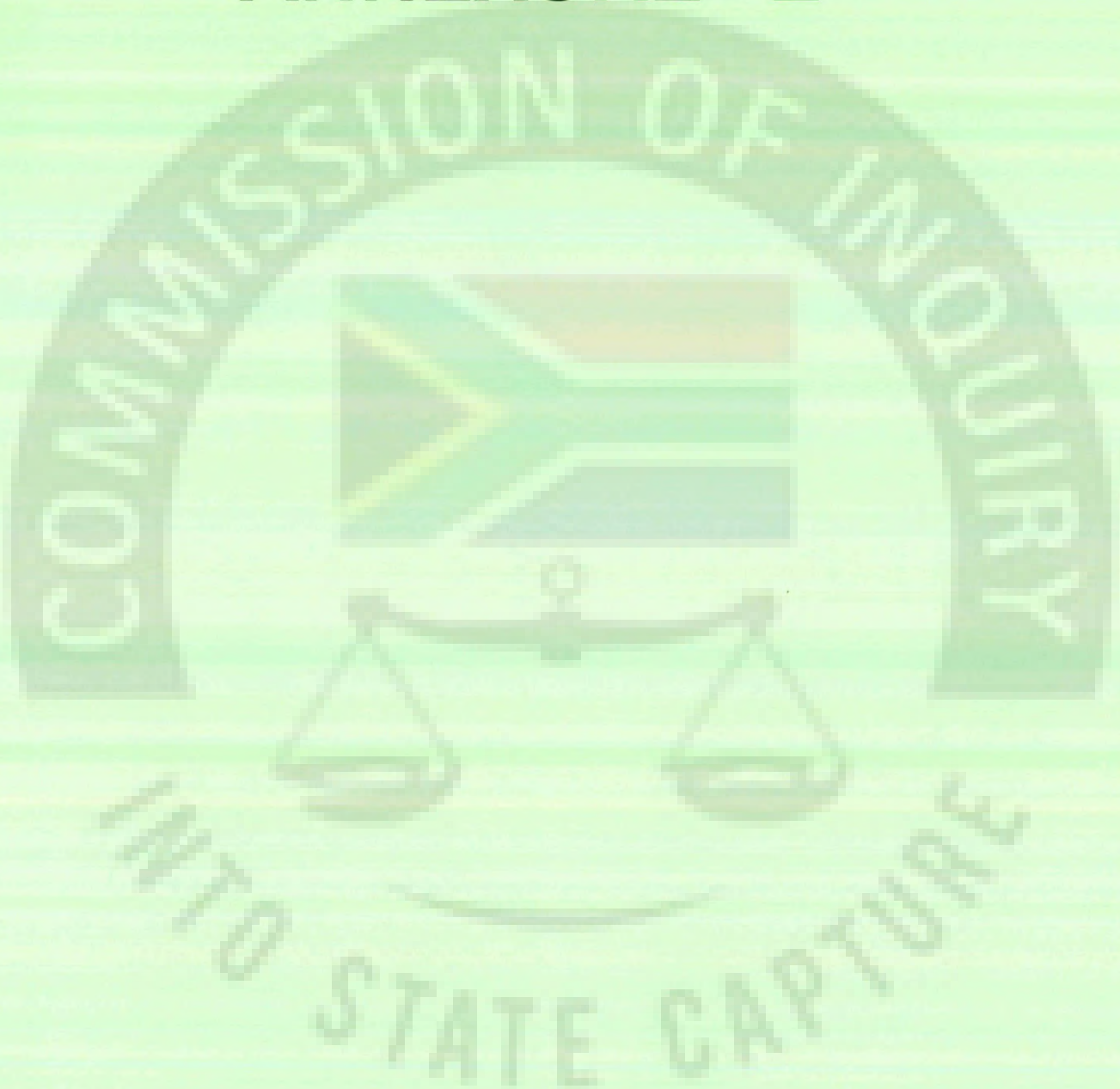
Duma Nkosi

General (rtd) Aboobaker Ismail



*[Handwritten signature]* *MP*

## **ANNEXURE “E”**



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

In the matter between:

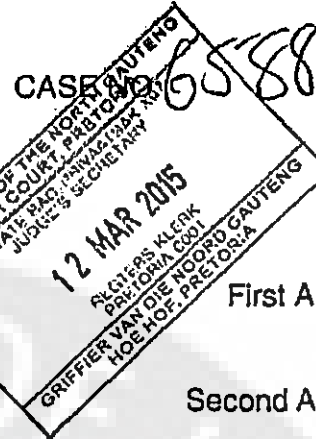
THE INDEPENDENT POLICE INVESTIGATIVE  
DIRECTORATE

ROBERT MCBRIDE

and

MINISTER OF POLICE

MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION



First Applicant

Second Applicant

First Respondent

Second Respondent

NOTICE OF MOTION

PART A

KINDLY TAKE NOTICE that the Applicants intend to make application to this Honourable Court on 13 March 2015 at 10h00 or as soon thereafter as counsel may be heard for an order in the following terms:

1. Dispensing with the forms and service and ordinary time periods provided in the rules and disposing of Part A of this application as one of urgency in terms of Rule 6(12).
2. Pending the final determination of the application in terms of Part B below:

*MP*

- 2.1. Interdicting and restraining the First Respondent from suspending the Second Applicant from his position as the Executive Director of the Independent Police Investigative Directorate.
- 2.2. Directing the First Respondent to pay the Applicants' costs, including the costs of two counsel.
- 2.3. Further and/or alternative relief.

**TAKE NOTICE FURTHER** that the accompanying affidavit of **ROBERT MCBRIDE** will be used in support of Part A of this application.

**TAKE NOTICE FURTHER** that the Applicants have appointed the offices of **ADAMS & ADAMS ATTORNEYS** as set out below as the address at which it will accept service of all process in these proceedings.

**TAKE NOTICE FURTHER** that if you intend opposing Part A of this application, you are required:

- (a) to notify Applicants' attorney in writing (and by e-mail at [jac.marais@adamsadams.com](mailto:jac.marais@adamsadams.com)) on or before **09h00 on 13 March 2015** that you intend opposing;
- (b) to appoint in such notification an address referred to in rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings;
- (c) to file your answering affidavits, if any, in respect of your opposition to Part A of this application, on or before **09h00 on 13 March 2015**.

 MP

Kindly set the matter down for hearing accordingly.

**PART B**

**KINDLY TAKE NOTICE** that the Applicants intend to make application to this Honourable Court on a date to be determined by the Registrar for an order in the following terms:

1. It is declared that the decision of the First Respondent (the Minister of Police) to initiate a process to suspend the Second Applicant from his position as Executive Director of the First Applicant (the Independent Police Investigative Directorate) is unlawful and invalid and the decision is set aside.
2. It is declared that the following provisions are unconstitutional and unlawful to the extent that they purport to authorise the Minister of Police to suspend or remove from office the Executive Director of the Independent Police Investigative Directorate:
  - 2.1. section 6(6) of the Independent Police Investigative Directorate Act, No. 1 of 2011;
  - 2.2. section 17(1) and 17(2) of the Public Service Act, 1994; and
  - 2.3. paragraph 2.7(2) of chapter 7 and paragraph 18 of chapter 8 of the Senior Management Service Handbook, 2003.
3. The First Respondent is directed to pay the Applicants' costs, including the costs of two counsel.



4. Further and/or alternative relief.

**TAKE NOTICE FURTHER** that the accompanying affidavit of **ROBERT MCBRIDE** will be used in support of Part B of this application.

**TAKE NOTICE FURTHER** that the Applicants have appointed the offices of **ADAMS & ADAMS ATTORNEYS** as set out below as the address at which it will accept service of all process in these proceedings.

**TAKE NOTICE FURTHER** that should the Respondents wish to oppose the order prayed for in Part B, they are required:

- (a) to notify the Applicants' attorney in writing within 15 days of service of this Notice;
- (b) within 30 days after having given notice of the intention to oppose the application, to file answering affidavits, if any; and
- (c) to appoint in such notification an address referred to in Rule 6(5)(b) at which the respondent will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose is given, the application for the relief in Part B will be made on **12 May 2015** at 10h00 or so soon thereafter as counsel may be heard.

DATED at PRETORIA this 12<sup>th</sup> day of MARCH 2015.

MP

  
.....  
**ADAMS & ADAMS****ATTORNEYS FOR THE  
APPLICANTS**

4 Davenry Street, Pretoria

E-mail:

jac.marais@adamsadams.com

**TO: THE REGISTRAR  
NORTH GAUTENG HIGH COURT,  
PRETORIA**

**AND TO: THE MINISTER OF POLICE**  
c/o State Attorney, 316 Thabo Sehume Street  
Pretoria

**AND TO: THE MINISTER PUBLIC SERVICE AND ADMINISTRATION**  
c/o State Attorney, 316 Thabo Sehume Street  
Pretoria

  
MP

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

CASE NO:

In the matter between:

**THE INDEPENDENT POLICE INVESTIGATIVE  
DIRECTORATE**

First Applicant

**ROBERT MCBRIDE**

Second Applicant

and

**MINISTER OF POLICE**

First Respondent

**MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION**

Second Respondent

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**FOUNDING AFFIDAVIT**

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I, the undersigned

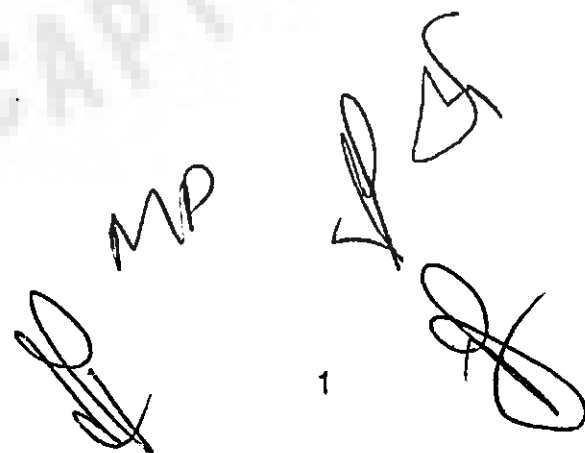
**ROBERT MCBRIDE**

do hereby make oath and state as follows:

- 1 I am an adult male and the Executive Director of the Independent Police Investigative Directorate ("IPID" or "the Directorate"), situated at 114 Madiba Street, Pretoria.

MP

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- 2 I am the Second Applicant in this matter and am duly authorised to represent the First Applicant in my official capacity as its Executive Director.
- 3 The facts set out in this affidavit are within my personal knowledge unless otherwise stated or apparent from the context. Where I make legal submissions, I do so on the advice of my legal representatives.

#### THE NATURE OF THIS APPLICATION AND URGENCY

- 4 This is a two-part application arising from my threatened suspension as Executive Director of IPID by the Minister of Police ("the Minister"). For the reasons set out herein, this suspension would be unlawful and unconstitutional, and would fundamentally undermine the independence of IPID.

#### Part A and urgency

- 5 In Part A, the applicants seek urgent interim relief, interdicting the First Respondent (the Minister of Police) from suspending me from the position of Executive Director of the First Applicant, IPID, pending the outcome of Part B of this application.
- 6 Part A is brought on an urgent basis. I only received notice of the Minister's intention to place me on precautionary suspension on Wednesday, 11 March 2015. I was given until the close of business on

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Thursday, 12 March 2015 to respond. As a matter of caution I have made representations to the Minister in this regard. However, in view of the facts that follow, it is clear that the Minister has prejudged the issue and that there is no realistic possibility of my representations being successful before him. It is thus inevitable that, absent the interdict sought in these proceedings the Minister will imminently take a decision to suspend me.

7 This application has accordingly been set down for 10:00 am on Friday 13 March 2015. I appreciate that this affords the respondents very limited time to answer this application. Should the respondents require further time to answer this application, I am prepared to accord them such further time. However, this is conditional on the Minister undertaking not to suspend me pending the outcome of Part A of this application.

8 The urgent prevention of any further steps being taken to suspend me unlawfully is necessary not only to protect my rights, but also to preserve the independence and effective functioning of IPID and to prevent further unlawful Ministerial interference without delay. IPID is an indispensable, constitutionally required investigative body, which is mandated to investigate police misconduct and offences. Its investigations extend to the highest offices in South Africa. It must be given substantial protections to carry out its mandate without political interference.

MP

- 9 The Executive Director is at the very heart of IPID's ability to function effectively to fulfil its constitutional mandate, and is critical to ensuring the proper conduct of investigations by IPID. Under section 7 of the IPID Act (read together with sections 22(1), 24(1), 28(1)(g) and (h)), the Executive Director manages and directs IPID; controls the Directorate's funds and expenditure; appoints the staff; controls and directs the investigation and management of cases; is responsible for referring criminal matters to the National Prosecuting Authority or other responsible authority; and provides strategic leadership to the Directorate.
- 10 Should it be effected, my suspension as the Executive Director of IPID would likely have immediate deleterious consequences for the effective functioning of IPID. This is especially so in the current political climate and given the extent of Ministerial interference in the independent institutions in the criminal justice sector. The suspension of the Executive Director would, in all likelihood, be followed by the Minister's appointment of a new acting Executive Director, who could fundamentally undermine the effective functioning of the institution and impede high profile investigations. This is demonstrated by the events that have followed the suspension of the Head of the Directorate for Priority Crime Investigation (the DPCI or the Hawks), Lieutenant-General Dramat and the appointment of Major-General Ntlemeza as the Acting National Head of the DPCI. These events are detailed in the founding affidavit filed by the Helen Suzman Foundation in the

MP



Constitutional Court on 25 January 2015, which is attached as annexure RM5 to this application. I refer in particular to paragraphs to 38 to 49 thereof.

## Part B

11 In Part B, the applicants seek the review and setting aside of the Minister's decision to initiate a process to suspend me as Executive Director of IPID. The applicants challenge this decision as unlawful and unconstitutional on the grounds that –

11.1 The Minister does not have the power to suspend the Executive Director of IPID, as this would contravene the independence of IPID enshrined under section 206(6) of the Constitution. Alternatively, even if the Minister has the power to suspend the Executive Director, the Minister has exercised this power unlawfully by creating a reasonable perception that IPID's independence is under threat;

11.2 The Minister's decision is vitiated by ulterior purpose or improper motive and bad faith; and

11.3 The Minister's decision is irrational and unreasonable.

12 In Part B, the applicants also seek an order declaring the following provisions to be unconstitutional and unlawful to the extent that they purport to authorise the Minister to suspend or remove the Executive Director of IPID, in contravention of s 206(6) of the Constitution:

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12.1 section 6(6) of the Independent Police Investigative Directorate Act, No. 1 of 2011 ("the IPID Act");

12.2 section 17(1) and 17(2) of the Public Service Act, 1994; and

12.3 paragraph 2.7(2) of chapter 7 and paragraph 18 of chapter 8 of the Senior Management Service Handbook, 2003.

13 The review under Part B is brought on the basis of the principle of legality and the Promotion of Administrative Justice Act 3 of 2000 ("PAJA").

14 This affidavit is filed in support of the relief sought in Part A and Part B of the notice of motion. However, in view of the extreme urgency within which this application has been drafted and launched, I reserve the right to file supplementary founding affidavits should the need arise.

#### THE PARTIES

15 The First Applicant is **THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE (IPID)**. IPID is an independent institution, required and protected under s 206(6) of the Constitution. It is constitutionally mandated to investigate any alleged misconduct of, or offence committed by, a member of the South African National Police Services ("the SAPS"). IPID is established under s 3 of the Independent Police



Investigative Directorate Act, No. 1 of 2011, which came into operation on 1 April 2012.<sup>1</sup>

16 I am the Second Applicant and the **EXECUTIVE DIRECTOR OF IPID**, appointed in terms of s 6 of the IPID Act. I have held this position since March 2014. The responsibilities of the Executive Director of IPID are set out *inter alia* in s 7 of the IPID Act. These entail the strategic and financial management of the Directorate, appointments and oversight of staff, and the control and direction of investigations conducted by the Directorate's investigators.

17 The First Respondent is the **MINISTER OF POLICE**, cited in his official capacity. The First Respondent's office is located at Wachthuis, Pretoria, and these papers will be served at the Minister's office and on the State Attorney at SALU Building, 316 Thabo Sehume Street, Pretoria. The First Respondent is the official whose intended actions and powers in respect of IPID are the subject of this application.

18 The Second Respondent is the **MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION**, cited in his official capacity as the member of the National Executive responsible for the administration of the Public Service Act, 1994 and the delegated laws promulgated thereunder, including the Senior Management Service Handbook, 2003 ("SMS Handbook"). No relief is sought against the Second Respondent. The Second Respondent is cited only for such interest as he may have in the

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<sup>1</sup> GN 3 in GG 35081 of 10 February 2012.

MP

constitutional challenge to the Public Service Act and the SMS Handbook under Part B of this application. The Second Respondent's office is located at 13<sup>th</sup> Floor, 120 Plein Street, Cape Town, or 116 Proes Street, Pretoria, and these papers will be served on the State Attorney at SALU Building, 316 Thabo Sehume Street, Pretoria.

#### THE FACTUAL BACKGROUND

19 On Wednesday, 11 March 2015, I was informed in a notice that the Minister of Police intended to place me on precautionary suspension. I attach the suspension notice as annexure RM1. The suspension notice did not specify the legal basis for the proposed suspension, but made various allegations of "serious misconduct" on my part as Head of IPID. I address these allegations of misconduct below, all of which are firmly denied.

20 The suspension notice advised me that any written representations as to why I should not be placed on suspension were to reach the Minister's office by no later than close of business on Thursday, 12 March 2015. As a matter of caution, earlier this afternoon, my attorneys delivered written representations to the Minister in reply to the notice. I attach a copy thereof as annexure RM2. However, in view of the facts contained in this affidavit, it is clear that the Minister has prejudged the issue and that there is no realistic possibility of my representations being successful before him. It is thus inevitable that, absent the interdict



sought in these proceedings the Minister will imminently take a decision to suspend me.

21 Accordingly and given the urgency of the matter, I was advised by my legal representatives to launch the present application.

22 The Minister's allegations of misconduct on my part (detailed in the suspension notice) concern my role as Executive Director of IPID in the referral of the IPID Investigation Report into the illegal rendition of Zimbabwean nationals.

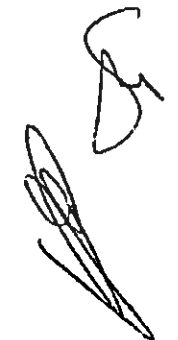
23 The Investigation Report, dated 18 March 2014, was signed off by me on 9 April 2014.

24 The Investigation Report is of a highly political and sensitive nature. It addresses the alleged involvement of the Head of the Directorate for Priority Crime Investigation ("DPCI", otherwise known as "the Hawks"), Lieutenant-General Dramat, as well as Major-General Sibiya of the DPCI, in the unlawful rendition.

24.1 The preliminary draft of the report (of 22 January 2014) suggested that Dramat and Sibiya were involved in the unlawful rendition, and recommended that they be criminally charged with kidnapping and defeating the ends of justice.



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24.2 The provisional findings and recommendations were found to be unsustainable on the evidence and were, accordingly, not included in the final Investigation Report (of 18 March 2014).

24.3 I attach copies of these reports as annexures RM3 and RM4.

25 By now it is a matter of public record that the Minister (together with other senior members of the SAPS and new acting appointees to the DPCI), has zealously pursued the suspension of both Dramat and Sibiya from the DPCI since December 2014. Of serious concern is that these actions followed the DPCI becoming seized (under Dramat's direction) with high profile investigations. I attach, in this regard, as annexures RM5 to RM7,

25.1 A founding affidavit (without annexures) filed by the Helen Suzman Foundation ("HSF") in the Constitutional Court on 25 January 2015, which details the steps taken to suspend Dramat at paragraphs 18 to 29 and Sibiya at paragraphs 40 to 42;

25.2 The High Court judgment of Prinsloo J of 22 January 2015, which found *inter alia*, that the Minister's suspension of Dramat was unlawful and unconstitutional. The judgment details the facts surrounding Dramat's suspension, and includes a summary (at paragraph 11) of Dramat's written representations in response to the Minister's decision to suspend him (dated 24 December 2014). These representations indicate that Dramat perceives his suspension to be a response to the independent discharge by him

MP.

of his duties to investigate certain high profile cases, and an effort by the Minister to obstruct these investigations; and

25.3 A collection of media articles describing the nature of the DPCI's high-profile investigations, initiated under Dramat's leadership.

26 The Minister's accusations that I have acted improperly – *inter alia* by issuing the Investigative Report that ultimately cleared Dramat and Sibiya of involvement in the unlawful rendition; by informing Dramat and Sibiya's legal representatives accordingly; and by seeking to explain the findings in the Investigative Report to the Parliamentary Portfolio Committee on Police – must be viewed in the context of the Minister's evident agenda to have Dramat and Sibiya removed from the DPCI.

27 The Minister's intention to suspend me is a clear stratagem to undermine or suppress the IPID Investigation Report which does not implicate Dramat and Sibiya, and which undermines the draft and leaked report on which the Minister has relied to justify his suspension of them. This is a blatant abuse of power that fundamentally threatens the independence of IPID.

28 That the Minister is intent on undermining or suppressing the IPID Investigation Report, for no legitimate reason, is further evidenced by:

28.1 The Minister's persistent reliance on the findings and recommendations contained in the preliminary draft of the IPID Investigation Report to publically justify (including before



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Parliament) and pursue his suspension of Dramat as the Head of the DPCI. Notwithstanding having complete knowledge of the existence of the preliminary report; the investigative process which lead to the final report, as well as the contents of the final report, (including its recommendations), the Minister has insisted on placing reliance solely on the preliminary draft of the report. In this regard,

28.1.1 I attach as annexure RM8, a copy of a letter sent by the Minister to the Parliamentary Portfolio Committee on Police dated 29 January 2015, and refer to paragraph 5 thereof.

28.1.2 I also refer to what is stated at paragraph 52 below, where I explain why it is certain that, by this stage, the Minister clearly had knowledge of the final IPID Investigation report.

28.2 The Minister's initiation of his own investigation (to be conducted by Werksmans Attorneys) into the unlawful rendition of the Zimbabwean nationals. I attach hereto, as annexure RM9, a copy of the Appointment Letter and Terms of Reference for the investigation dated 23 February 2015.

29 Against this background, I turn to address the grounds upon which the Minister's decision to initiate suspension proceedings against me is sought to be reviewed.

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## THE GROUNDS OF REVIEW

30 The Minister's decision to initiate a process to suspend me as Executive Director of IPID is unlawful and unconstitutional on three grounds:

30.1 First, the Minister does not have any lawful power to suspend the Executive Director of IPID – i.e., a power to suspend that does not contravene the independence of IPID enshrined under section 206(6) of the Constitution. Alternatively, even if the Minister has the power to suspend the Executive Director, the Minister has exercised this power unlawfully by creating a reasonable perception that IPID's independence is under threat.

30.2 Second, the Minister's decision is vitiated by an ulterior purpose or improper motive; and

30.3 Third, the Minister's decision is irrational and unreasonable.

31 I address each in turn.

### **The Minister has no power to suspend the Head of IPID**

32 The independence of IPID is expressly required and protected under section 206(6) of the Constitution. This provides:

*"(6) On receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police service in the province."*

33 The IPID Act gave effect to the provisions of section 206(6) of the Constitution, by establishing and assigning functions to an independent Directorate at a national and provincial level. Under the IPID Act –

33.1 IPID is independently financed from money appropriated by Parliament (s 3(3));

33.2 The independence and impartiality of IPID is expressly protected under s 4 of the IPID Act, which provides that:

*"4(1) The Directorate functions independently from the South African Police Service.*

*(2) Each organ of state must assist the Directorate to maintain its impartiality and to perform its functions effectively."*

33.3 The objects of the IPID Act, set out in s 2, further emphasise the importance of the independence of the Directorate. Section 2 provides that the objects of the Act are, *inter alia* –

*"(b) to ensure independent oversight of the South African Police Service and Municipal Police Services;*

*...*

*(d) to provide for independent and impartial investigation of identified criminal offences allegedly committed by members of the South African Police Service and Municipal Police Services;*

*...*

*(g) to enhance accountability and transparency by the South African Police Service and Municipal Police Services in accordance with the principles of the Constitution."*

*MP*

*[Signature]*

33.4 There are important safeguards in the manner in which the Executive Director of IPID is appointed under s 6, and in the provision for reporting to Parliament under s 7(12), which are plainly designed to prevent undue political influence in the office of the Executive Director.

34 The Constitutional Court has found that a fundamental aspect of the institutional independence (or "structural and operational autonomy") of an agency is the security of tenure of its members, and especially its National Head. Security of tenure requires protection against termination of employment or suspension at the discretion and behest of the Executive.

35 In *Glenister v President of the Republic of South Africa* 2011 (3) SA 347 (CC) ("*Glenister II*"), Moseneke DCJ and Cameron J (writing for the majority of the Constitutional Court) found that, under the SAPS Act, the DPCI lacked the independence required of an independent anti-corruption unit. The majority noted (at para 213) that the lack of independence of the DPCI "*was reflected [...] most signally in the absence of secure tenure protecting the employment of the members of the entity and in the provisions for direct political oversight of the entity's functioning.*"

36 The majority explained that what is required is "*insulation from a degree of management by political actors that threatens imminently to stifle the*

*Independent functioning and operations of the unit*" (at para 216). The importance of the security of tenure in ensuring the independent functioning of the unit was underscored, as the majority noted that –

*"... the lack of specially entrenched employment security is not calculated to instil confidence in the members of the DPCI that they can carry out their investigations vigorously and fearlessly. In our view, adequate independence requires special measures entrenching their employment security to enable them to carry out their duties vigorously" (at para 222).*

37 In the context of IPID, it is especially important that the Minister of Police does not have a broad power to suspend the Executive Director. Given that IPID's function is to investigate complaints of misconduct by members of the SAPS and to maintain effective oversight over the SAPS, it is essential that IPID remains strictly independent of the SAPS. This must include the Minister of Police, who is politically responsible for the SAPS, and whose executive and political interests are thus bound to the fate of the SAPS.

38 In *Helen Suzman Foundation v President of the RSA; Glenister v President of the RSA* 2015 (2) SA 1 (CC), the Constitutional Court declared that the power to suspend and remove the National Head of the DPCI from office, vested exclusively in the Minister in terms of section 17DA(1) and (2), must be done away with (see paragraph 110). The Constitutional Court held that an unrestrained power to suspend, without objective and verifiable criteria, undermines the requirement of independence and is not constitutionally permissible (see paragraph 85).

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39 The Constitutional Court's findings in *Helen Suzman Foundation* follows its approach in *Van Rooyen v The State* 2002 (5) SA 246 (CC), where the Court considered the requirements for the lawful suspension of magistrates. The Court found that the legislative scheme for the suspension of magistrates pending investigation sufficiently guarded against discretionary or arbitrary suspension by the executive, and was constitutional. In reaching this conclusion, the Court emphasised the following aspects of the scheme: (i) the decision to investigate allegations was to be taken by the Magistrates Commission, which enjoys a degree of institutional independence from the executive; and (ii) that "*the Commission would have to have reliable evidence before it to warrant such action and it would have to conduct its affairs in a manner consistent with natural justice*" (paragraphs 170 to 175).

40 The Minister has not indicated the source of the power upon which he purports to rely in giving me notice of the proposed suspension. However, I am advised and aver that there is currently no law which empowers the Minister to suspend the Executive Director of IPID while meeting the requirements of a constitutionally acceptable suspension power, as prescribed by the Constitutional Court in *Glenister II*, *Helen Suzman Foundation* and *Van Rooyen*.

41 In the alternative, even if the Minister has a lawful suspension power, the Minister's decision to suspend me, viewed in the context of events preceding this decision, would lead a reasonably informed, reasonable



member of the public to conclude that IPID's independence is under threat.

- 42 In *Glenister II*, the Constitutional Court confirmed that the question whether an institution is sufficiently independent must also consider the public's confidence in the independence of the institution. It stated at para 207 that:

*"This Court has indicated that —the appearance or perception of independence plays an important role in evaluating whether independence in fact exists. This was said in connection with the appointment procedures and security of tenure of magistrates. By applying this criterion we do not mean to impose on Parliament the obligation to create an agency with a measure of independence appropriate to the judiciary. We say merely that public confidence in mechanisms that are designed to secure independence is indispensable. Whether a reasonably informed and reasonable member of the public will have confidence in an entity's autonomy-protecting features is important to determining whether it has the requisite degree of independence. Hence, if Parliament fails to create an institution that appears from the reasonable standpoint of the public to be independent, it has failed to meet one of the objective benchmarks for independence. This is because public confidence that an institution is independent is a component of, or is constitutive of, its independence."*

- 43 It follows, that even if the Minister's suspension power is lawful in the abstract, the manner in which the Minister exercises this power will be unlawful where it gives rise to a reasonable apprehension of an attempt to undermine the independence of IPID. The events preceding the Minister's decision to pursue my suspension would certainly create this reasonable perception of undue political interference.

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- 44 For these reasons, the Minister's initiation of suspension proceedings against me is unconstitutional and unlawful. It is reviewable under the principle of legality and under s 6(2)(f)(i) and 6(2)(i) of PAJA.

**The Minister has acted for an ulterior purpose or improper motive and in bad faith**

- 45 As I have explained, the Minister's intention to suspend me is calculated to undermine or suppress the IPID Investigation Report that vindicates Dramat and Sibiya, and upon which the Minister has relied to justify his suspension of them.

- 46 The Minister's decision is not motivated by any legitimate reason, nor by the reasons given in the suspension notice. Rather, the Minister's decision is motivated by his concern to undermine and suppress the IPID Investigation Report for illegitimate political reasons and in bad faith.

- 47 The conduct of the Minister is a blatant abuse of power, which is reviewable under the principle of legality and s 6(2)(e) of PAJA.

**The Minister's decision is irrational and unreasonable**

- 48 The irrationality and unreasonableness of the Minister's decision is evident from the Minister's spurious allegations of misconduct on my

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part, which were detailed as justifications in the suspension notice of 10 March 2015.

49 I deal with each allegation in turn, and explain why not a single one of them provides a rational basis for the decision.

50 The first allegation (in paragraph 5 of the Suspension Notice) is that I breached my statutory responsibility to act with independence and impartiality by informing Dramat and Sibiya, through their legal representatives, in writing, that they had been cleared by the IPID investigation into the illegal rendition of Zimbabwean Nationals. This allegation is devoid of merit.

50.1 IPID's written communications with the legal representatives for Dramat and Sibiya were made in response to requests for information under the Promotion of Access to Information Act, Act 2 of 2000, ("PAIA"), which were received by IPID on behalf of Dramat and Sibiya, respectively. I attach copies of the PAIA requests, as well as IPID's communications with the respective legal representatives, in respect thereof, marked Annexures RM10.1 to RM10.6.

50.2 With regard to the communication with Sibiya's legal representative, IPID's letter dated 9 January 2015 (Annexure RM10.3), which was dispatched at the direction of the Information Officer and myself, responds to Sibiya's PAIA request by denying access to IPID's report on the basis that it could compromise the

ongoing investigations and, furthermore confirms that *"the IPID did not recommend for the suspension neither did the IPID recommend for the prosecution of Major General Sibiya in its report to the NPA, based on the information and the evidence gathered during the investigation conducted by the IPID"*. The content of this communication is entirely consistent with, *inter alia*, my statutory responsibility to act with independence and impartiality. The response is entirely reasonable and factually correct.

50.3 With regards to Dramat, I confirm that IPID has not complied with Dramat's PAIA request in respect of access to the IPID report and recommendations in respect of Diepsloot CAS390/7/2012. In addition to IPID's communication in respect of Dramat's PAIA request, I had also agreed to meet with his legal representative (on 4 January 2015). At the meeting I confirmed that IPID had submitted its report and recommendations to the National Director of Public Prosecutions ("NDPP") and that a decision was pending, that the NDPP had not made a decision on the matter, and that Dramat was not implicated in any offence by IPID's findings or recommendations.

50.4 My communication and interaction with Dramat's legal representatives are entirely in keeping with my statutory responsibility to act with independence and impartiality. It was reasonable of me to provide the aforesaid information to Dramat's

MP

legal representatives. The information provided is factually correct.

51 The Minister's second allegation (at paragraph 6 of the Suspension Notice) is that I acted improperly when I provided the aforesaid information to the legal representatives for Dramat and Sibiya, because I *"knew very well that IPID did not clear Lieutenant General Dramat and Major General Sibiya because [I] had in [my] possession the original report by IPID dated 22 January 2014, which recommended that Lieutenant General Dramat and Major General Sibiya be criminal charged with kidnapping and defending the ends of justice"*. This allegation is completely disingenuous and is revealing of the concerns expressed above in respect of the Minister's motives and bad faith.

51.1 The IPID Investigation Report of 18 March 2014 was signed by myself, Mr Matthews Sesoko (Chief Director: Investigation & Information Management) ("Mr Sesoko") and Mr Innocent Khuba (Provincial Head: ICD Limpopo) ("Mr Khuba") upon conclusion of IPID's investigation. The findings and recommendations therein are based on a thorough scrutiny of all the available evidence.

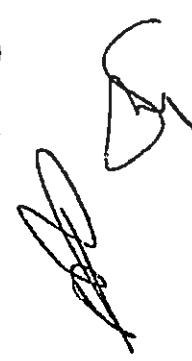
51.2 I want to make it abundantly clear that the final IPID report was the product of a thorough investigation process which included taking into account all the evidence gathered through the IPID investigation and making reasonable recommendations on the basis thereof.

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

51.4 IPID did not conclude its investigation after the preparation of the preliminary report, but persisted in collecting and verifying evidence. It is not unusual for preliminary findings and recommendations arising from an investigation to develop and change, as and when information becomes available, or is either verified or discredited. This is the very nature of an investigation process.

51.5 The preliminary draft of the IPID Investigation Report was also still subject to consideration and review by Sesoko as well as myself. Notably, the preliminary report did not have regard to warning statements subsequently obtained from Dramat and Sibiya, or, to evidence which emerged after the date of the Preliminary Report.

51.6 The IPID investigation was conducted in co-operation with Advocate Anthony Mosing and Advocate Billy Moeletsi, from the offices of the NDPP, both of whom were involved with the IPID investigation into the illegal rendition of Zimbabwean nationals, even before a complaint was lodged with IPID. They remained



involved in the investigation throughout, and were provided with regular preliminary reports by the Investigating Officer, Mr Khuba. Interaction with the NDPP in IPID investigations is not unusual. Even after conclusion of IPID's investigation, the NDPP may request IPID to extend its investigation in relation to certain aspects, or, to investigate new aspects which may have arisen. As a result of such interaction, the NDPP had access to the preliminary report, and was intimately aware of the further investigations that gave rise to IPID's final report.

52 The third allegation (at paragraph 7 of the notice) is that I *"failed to disclose to me [the Minister] that there were 2 IPID reports, the conclusions of which were contradicting each other"*. This allegation is simply incorrect, and is particularly disconcerting as the Minister was fully aware of the existence of and status of both the preliminary draft and the final draft of the IPID Investigation Report.

52.1 In the Information Note, dated 10 March 2014, that I submitted to then Minister of Police, E N Mthethwa, I indicated that we were preparing the final report on the matter and reviewing the totality of the available evidence to ensure that recommendations were appropriate and based on proven facts. I further indicated that the file with the final recommendations would be forwarded to the NDPP shortly. A copy of the information note, dated 10 March 2014, is attached as annexure RM11;

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52.2 On 24 November 2014, the Minister addressed correspondence to me under the heading "*The Zimbabwean Rendition documents*". A copy of the letter is attached marked Annexure RM12, and reads: "*The Executive Director of IPID is hereby requested to provide the Minister of Police with copies of the dockets in colour, exhibits thereto, progress reports and the final report in this matter*" (my emphasis). The Minister was, clearly, aware of the existence of progress reports as well as final reports and requested to be provided with all.

52.3 On 26 November 2014, I complied with the Minister's request by providing him with the case docket that was forwarded to the NDPP, including the final IPID Investigation Report. I was at pains to point out in the information note (attached as RM13) that the investigative conclusions in the report were based on a thorough analysis of all the available evidence, notwithstanding several other "*preliminary reports that were prepared*".

52.4 At no point did I create the impression to the Minister that the findings and recommendations contained in the preliminary draft of the report were the same as the findings and recommendations contained in the final report.

52.5 Notwithstanding having complete knowledge of the existence of the preliminary report; the investigative process which lead to the final report, as well as the contents of the final report, (including its recommendations), the Minister has insisted on placing reliance



solely on the preliminary draft of the report. The Minister (through his spokesperson) confirmed publicly that the decision to suspend Dramat on 22 December 2014 was done *"after receiving a report of the IPID"*. A copy of a media report, dated 24 December 2014 is annexed marked Annexure RM14.

53 The fourth allegation (paragraph 8 of the notice) is that, in the first week of March 2015, I requested the Parliamentary Portfolio Committee on Police (*"the PPCP"*) to convene an urgent meeting to explain to them the existence of the two IPID reports. It is alleged that this request *"was designed to undermine [the Minister's] authority and oversight responsibility"* and further that it put the Minister's own commissioned investigation *"in jeopardy"*.

53.1 It is correct that I requested to appear before the PPCP. Copies of the requests and the responses that I have received from the Chairperson, are attached hereto as Annexures RM15.

53.2 It is extraordinary that the Minister would adopt the position that reporting on the activities of IPID to Parliament would undermine his authority and oversight responsibility. I would have expected that, in the circumstances, the Minister would welcome my willingness to account to Parliament and to clear up any misconceptions and concerns that exist in relation to IPID's conduct.

53.3 The Minister's position in this regard is, however, in keeping with his obstructive, and frankly disingenuous, conduct in this matter.

53.3.1 The Minister has not taken up my invitation, as contained in the Information Note dated 26 November 2014 (annexure RM13) to brief him on IPID's investigation at any stage. I remain willing to provide the Minister with reports on IPID's activities at any time.

53.3.2 The Minister has never requested me to provide an explanation on what he may have perceived as anomalies between IPID's preliminary and final reports.

53.3.3 The Minister has furthermore not requested me to provide any information on any specific aspect relating to the IPID investigation which may have raised concerns with him.

53.4 I emphasise that I have a responsibility under s 7(12) of the IPID Act to report to both the Minister and to Parliament, and I remain available to do so on any aspect relating to my or IPID's activities. Section 7(12) of the IPID Act provides that *"The Executive Director must at any time when requested to do so by the Minister or Parliament, report on the activities of the Directorate to the Minister or Parliament"*.

53.5 The Minister has, by his failure to interact with me, negated my obligation to report to him on IPID's activities. In the

circumstances it was entirely appropriate and reasonable for me to seek to account to Parliament.

53.6 Further, there is simply no reason to believe that my meeting with Parliament to account on the IPID Investigative Report would in any way jeopardise the Minister's authority or responsibilities, or the conduct of his own investigation into IPID activities.

54 The fifth allegation (paragraph 9 of the notice) is that I interfered with the Minister's commissioned investigation by failing to grant Mr Khuba (Provincial Head of IPID, Limpopo) permission to meet with the investigators from Werksmans Attorneys. While it is true that I refused to grant this permission, I did so because I do not accept that the Minister's commissioned investigation to be lawful.

54.1 The TOR directs the Investigator to ascertain "whether there is prima facie evidence of misconduct and criminal liability by Lieutenant General Drama; Major General Sibiya; and any other officers mentioned in the original report". The Minister is essentially directing the Investigator to repeat the IPID investigation which gave rise to its final report. The Werksmans' Investigation is therefore undermining the independence and integrity of IPID and, more so, in the light thereof that the NPA has not yet taken a decision on whether or not to prosecute any of the individuals implicated by IPID's final report. This process is ongoing and the Minister is interfering therewith by instructing

Werksmans to conduct an investigation which falls squarely within the ambit of IPID's responsibilities.

54.2 The Minister's initiation of the Werksmans' Investigation creates an undeniable impression that a report by IPID which does not, for whatever reason, contain findings that find favour with the Minister, or supports a decision that the Minister has already taken or intends taking, or which conflicts with a position that the Minister has adopted publicly, may give rise to a rehashing of IPID's investigation now only at the direction of the Minister.

54.3 The Werksmans' Investigation is accordingly perceived by myself and IPID's officials as a sanction for no legitimate reason and, without doubt, impacts negatively on our ability to perform IPID's functions independently and without fear.

54.4 I point out that The TOR also includes an investigation into the NPA's processes in relation to consideration of IPID's final report. An investigation of ongoing NPA processes falls outside the Minister's powers and is interfering with an ongoing criminal investigation.

55 Furthermore, the Werksmans' investigation has directly interfered with IPID's operations, notably by the Investigator directly engaging IPID's officials in the face of my unequivocal refusal of permission for them to do so. In this regard, I attach hereto a copy of IPID's attorneys letter, dated 12 March 2015, addressed to Werksmans, marked Annexure

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RM17, which records the Investigator's blatant disregard for IPID's refusal of the Investigator's request for permission to interview Mr Khuba, and IPID's request and confirmation that all future communication in relation to the Minister's Investigation be channelled through its attorneys' offices.

56 I reiterate that I remain available to report to the Minister on IPID's activities. I am also willing to engage the Minister to agree on appropriate steps to clarify any questions that the Minister may have. However, as Executive Director of IPID, I cannot stand by idly while the Minister, without my consultation or permission, undermines my leadership of IPID and interferes with its operations and investigations.

57 I have sought legal advice in respect of the Werksmans Investigation. This is in keeping with my responsibility to ensure and promote IPID's independence and impartiality from interference in its investigations and underpinned by the IPID Act and the Constitution.

58 The public's trust in the criminal justice system is being seriously undermined by the recent spate of suspensions of the heads of departments within the security cluster. Recently, the Minister of Police unlawfully suspended Dramat, the Head of the DPCI, and who is presently on extended leave. I am steadfast in my resolve to protect IPID's integrity and independence from political interference. It is critical to preserve the public's trust in the organs of state entrusted with their security. In the present context, it is important for IPID to be seen not to

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buckle under political pressure when, in executing its constitutional mandate, it makes findings and recommendations that are not aligned with the political views of the responsible Minister.

59 The Minister's purported justification in the Suspension Notice for appointing Werksmans to conduct the investigation, and overriding my authority as the Executive Director of IPID, is that I would *"interfere with the investigation given the fact that you were already conflicted because the second IPID report dated 24 March 2014 was also co-signed by you."* This is completely without merit. I am responsible for all the activities of IPID and am not conflicted in reporting on any of IPID's activities (whether I was personally involved therein or whether the activities were conducted under my direction).

60 The sixth allegation (paragraph 10 of the notice) is that, during the week of 15 February 2014, I removed a device from Sibiya's office on 15 February 2014 and that *"the plausible reason for [this] conduct was to tamper with evidence that might be incriminating to Major General Sibiya; [myself] and / or Lieutenant General Dramat".*

61 As is evidenced in the documentation detailed below, these allegations are entirely spurious and unfounded, and are a "red herring". I have not tampered with any evidentiary material.

61.1 I did not visit the provincial offices of the DPCI on 15 February 2014. I was also not the Executive Director of the IPID at that

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date, and was only appointed in the position with effect from March 2014.

61.2 On 10 February 2015, I received a call from Sibiya, who informed me that there were 2 (two) colonels from Crime Intelligence in his office who requested the keys to his office because they wanted to seize a data 6 fax line, allegedly belonging to General Mdluli ("Mdluli"). Sibiya contacted me in this regard, because he was under suspicion that a crime was about to be committed.

61.2.1 Sibiya conducted investigations through the offices of his attorneys and I am in possession of a copy of Sibiya's affidavit, dated 10 March 2015, which is annexed hereto marked RM18.

61.2.2 I also attach hereto a copy of Sibiya's Personal Assistant draft affidavit marked annexure RM19, from which it appears that it was she that alerted Sibiya about the presence and the conduct of the said colonels.

61.3 On 11 February 2015, as a result of the information received from Sibiya, I visited the Provincial Offices of the DPCI. My visit was in terms of Section 29(2) of the IPID Act and I attach a copy of my specific authority in this regard as an annexure marked RM20. I removed the said data line 6 in terms of my powers provided for Section 29(2), and signed for its removal as per the "Acknowledgement of Data Box 6" annexure hereto marked RM21. When removing Data Box 6, I was, accordingly, acting



strictly in accordance with my statutory powers. I admit that I was aware that both Sibiya and Mdluli were on suspension, however, this knowledge did not interfere with the execution of my duties as the head of IPID.

61.4 On 13 February 2015, I was called to the Minister's office in Cape Town. The purpose of the meeting was to discuss Data Box 6, and the circumstances in which it came into my possession. After the Minister reprimanded me over what he referred to as "*the raid*", in front of a third person who, at that stage was unknown to me and who, at my insistence, was subsequently introduced to me as General Ntlemeza. I furnished the Minister with the explanation as set out in the paragraphs above and the Minister accepted same. I also offered to hand over Data Box 6 to General Ntlemeza however, after discussion, it was agreed that it should stay in my possession and that General Ntlemeza and I would liaise with each other in respect thereof if the need arose.

61.5 No basis is provided for the allegation that I tampered with evidence that was potentially incriminating to Sibiya and / or Dramat and / or me. If there is an implied allegation that my confiscation of data line 6 impacted on IPID's final report, this is naturally dismissed by the fact that the IPID's final report had, at that stage, already been in the possession of the NPA (from the time when it was handed over in April 2014).

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61.6 Furthermore, there is no logic in the Minister's allegations. It is obviously farfetched to suggest Sibiya would request me to remove allegedly incriminating evidence. If Sibiya wanted to remove the device before or after his suspension, whether personally or with the assistance of his PA, he had all the time in the world to do so. He obviously did not for the reasons set out above.

62 Finally, I point out that no details of any allegations against me in the media (referred to in paragraph 2 of the Suspension Notice) have been provided and would, in any event, not form a legitimate basis for my suspension.

63 The Minister's decision to initiate suspension proceedings against me is accordingly without any rational or lawful basis whatsoever. It is thus reviewable under the principle of legality and under s 6(2)(f)(ii) and 6(2)(h) of PAJA.

***Declaratory relief in respect of certain legislative provisions***

64 In Part B of the application, I also seek an order declaring the following provisions to be unconstitutional and unlawful to the extent that they purport to authorise the Minister to suspend or remove the Executive Director of IPID, in contravention of s 206(6) of the Constitution:

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64.1 section 6(6) of the Independent Police Investigative Directorate Act, No. 1 of 2011 ("the IPID Act");

64.2 section 17(1) and 17(2) of the Public Service Act, 1994; and

64.3 paragraph 2.7(2) of chapter 7 and paragraph 18 of chapter 8 of the Senior Management Service Handbook, 2003.

65 The unconstitutionality of the Minister's power to suspend me applies with even greater force to the Minister's purported power under these provisions to remove me from office. This is made clear in the abovementioned Constitutional Court judgments matters and will be addressed further in argument.

#### THE INTERIM RELIEF UNDER PART A

66 I am advised that in order to be granted an interim interdict, the applicants must demonstrate that:

66.1 They have at least *prima facie* right to the relief sought in the main application (in this case, the review in Part B);

66.2 The balance of convenience favours the applicants;

66.3 They will suffer irreparable harm if the relief is not granted; and

66.4 They have no alternative remedy other than interim relief.

67 I proceed to deal with each of these requirements in turn.

**A prima facie right**

68 I have set out above the grounds of review upon which Part B of the notice of motion is based. I ask that those paragraphs be read as if incorporated herein in support of the interim relief.

69 Based on what has been said in respect of the review above, I submit that I have established a strong entitlement (let alone a *prima facie* right) to the relief sought in Part B of the notice of motion. Indeed this matter involves the clearest of cases for an interim interdict, particularly given the breaches of the Constitution that would result were the interdict not to be granted.

**Balance of convenience and irreparable harm**

70 The balance of convenience strongly favours granting the interim interdict. Not only will I suffer prejudice if the interim relief is not granted as I will be removed from office for up to 60 days, but there is a real risk that the operations and functioning of IPID will be seriously and irreparably compromised.

71 Should the Minister succeed in his machinations, through my suspension and the suppression of the IPID Investigations Report, this could have very serious repercussions for Dramat and Sibiya, and ultimately, the independent and effective functioning of the DPCI.

Indeed, the independence of both IPID and the DPCI is threatened by the Minister's impugned conduct in this matter.

- 72 On the other hand, the Minister will suffer no prejudice whatsoever should the interim interdict be granted, and the review of the lawfulness of the Minister's decision to initiate a suspension process against me be allowed to take its course.

No alternative remedy

- 73 I respectfully submit that I have no suitable remedy available to me other than an interim interdict. While I have made written representations to the Minister in respect of the proposed suspension, this does not provide me with any security. Given the bad faith conduct of the Minister, I do not have any confidence that my representations will be fairly considered and successful.

- 74 Furthermore, it is not merely me being suspended that would have the deleterious effects set out above. The mere fact that I am required to justify my conduct under threat of suspension and removal by the Minister gives rise to the harm that I have set out in this affidavit. These harms affect not only me, but also the ability of IPID to function effectively as well as the public's faith in IPID as an independent institution. The Minister's threatened conduct constitutes an unconstitutional, political interference in IPID. Protecting the independent functioning of IPID requires a court interdict.

**CONCLUSION**

75 In the light of what has been set out above, I pray for the relief set out in Part A of the Notice of Motion pending finalisation of Part B of the application.

  
**ROBERT MCBRIDE**

THUS DONE SIGNED AND SWORN TO BEFORE ME AT PRETORIA  
THIS THE 12<sup>th</sup> DAY OF MARCH 2015 AT  
THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HAS NO OBJECTION TO SWEARING THE PRESCRIBED OATH AND THAT SAME IS BINDING ON HIS CONSCIENCE.

  
**COMMISSIONER OF OATHS**

**CAPACITY** **SHABNAM HASSIM**  
SAIT Ex officio - TT (SA)  
Commissioner of Oaths  
4 Davenry Street, Lynnwood Manor

**AREA**

"RM 1"

44.

RM 1



MINISTRY OF POLICE  
REPUBLIC OF SOUTH AFRICA

Private Bag X403 PRETORIA 0001, Tel: (012) 393 2800, Fax: (012) 393 2819/20 • Private Bag X9050 CAPE TOWN 8000, Tel: (021) 467 7021, Fax: (021) 467 7033

To: Mr Robert McBride  
Executive Director  
Independent Police Investigative Directorate

Dear Mr McBride

Re: NOTICE OF INTENTION TO PLACE YOU ON PRECAUTIONARY  
SUSPENSION WITH FULL PAY

1. This notice serves to inform you that I intend placing you on precautionary suspension with full pay and benefits for a period not exceeding 60 calendar days.
2. There are serious allegations which have been made against you, some in the media, *prima facie* alluding to possible acts of serious misconduct by yourself as the Head of the Independent Police Investigative Directorate ("IPID").
3. On 8 March 2014, you were appointed as the Executive Director of IPID in terms of section 6 of the Independent Police Investigative Directorate Act 1 of 2011 ("the Act").
4. In terms of the Act, you are required to perform your responsibilities set out in section 7 of the Act with a level of independence and impartiality, and to do so without any fear, favour or prejudice.
5. During or about January 2015, you are alleged to have breached your statutory responsibility to act with independence and impartiality in that you

JP MP



informed Lieutenant-General Dramat and Major-General Sibiya through their legal representatives in writing that they had been cleared by the IPID investigation regarding IPID's investigation into the illegal rendition of ~~Zimbabwean nationals by the officers employed in the Directorate for Priority Crime Investigation ("DPCI")~~.

6. When you did so, you allegedly knew very well that IPID did not clear Lieutenant-General Dramat and Major-General Sibiya because you had in your possession the original report by IPID dated 22 January 2014 which recommended that Lieutenant-General Dramat and Major-General Sibiya be criminally charged with kidnapping and defeating the ends of justice.
7. When I invited you to explain your conduct regarding the aforesaid, you failed to disclose to me that there were two IPID reports the conclusions of which were contradicting each other.
8. When the Sunday Times broke the story about the existence of the two IPID reports in the Sunday Times of 1 March 2015, you addressed a letter to the Parliamentary Portfolio Committee on Police requesting them to convene an urgent Portfolio Committee meeting in order for you to explain to them the existence of the two IPID reports. When you addressed a letter to the Portfolio Committee aforesaid; you knew that I had already commissioned Werksmans Attorneys to conduct an investigation on the existence of the aforesaid two IPID reports, and your conduct was designed to undermine my authority and oversight responsibility as the Minister of Police. Further, that such actions from your side, put the commissioned investigation in jeopardy.
9. You are also alleged to have interfered with the investigation I have commissioned by failing to grant Mr Innocent Khuba permission to meet with the investigators to assist them in shedding light on the existence of the two conflicting IPID reports, both of which were signed by him. You also instructed lawyers to inform the investigators that Mr Khuba will not meet with them. When you conducted yourself in the aforesaid manner, you had the intention to interfere with the investigation given the fact that you were already

 MP

conflicted because the second IPID report dated March 2014 was also co-signed by you.


10. During the week of the 15<sup>th</sup> of February 2014, you visited the Provincial offices of DPCI in Gauteng, and removed from Major-General Sibiya's office a device the description of which is yet unknown from the safe where Major-General Sibiya had kept it under locks. At the time you removed the said device from the safe, you knew that Major-General Sibiya was on suspension and the plausible reason for your conduct was to temper with evidence that might be incriminating to Major-General Sibiya; yourself and/or Lieutenant General Dramat.

11. Because of the seriousness of these allegations, given the most senior position you occupy at IPID, the possible interference with the investigation and the tempering with evidentiary material, I intend placing you on precautionary suspension with full pay for a period not exceeding 60 calendar days, pending an investigation into the above mentioned allegations and possible disciplinary enquiry against you.

12. I therefore give you an opportunity to make written representations as to why I should not place you on suspension aforesaid.

13. Your written representations should reach my office by no later than close of business on Thursday, 12 March 2015.

Yours faithfully

  
Nkosinathi Phiwayinkosi Thamsanqa Nhleko  
Minister of Police

10 MARCH 2015

 MP



ipid

Department:  
Independent Police Investigative Directorate  
REPUBLIC OF SOUTH AFRICA

Private Bag X941, Pretoria, 0001, 114 Madiba Street, City Forum Building, Pretoria  
Tel: (012) 399 0070 Fax: (012) 399 0144

RM 2. "RM 2"

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Honourable Minister NTP Nhleko, MP  
MINISTER OF POLICE  
WACHTHUIS  
Pretoria  
0001

By Hand

12 March 2015

Dear Honourable Minister,

**RE: URGENT APPLICATION TO THE NORTH GAUTENG HIGH COURT**

1. I refer to your "Notice to place me on precautionary suspension with full pay", dated 10 March 2015, which notice I received on 11 March 2015 at approximately 7h30.
2. I have deposed to an affidavit setting out comprehensively the grounds why I should not be suspended and a copy of this affidavit is attached hereto, for your attention.
3. Without detracting from the specificity in the affidavit and for your ease of reference, I summarise the reasons below:
  - 3.1. No particularity of the alleged serious allegations in the media against me is provided. I cannot reasonably be expected to respond to such a vague allegation and, in any event, such allegations cannot properly form the basis for my suspension. I do, however, confirm that I have not committed any wrongdoing;
  - 3.2. I have never breached my responsibility to act with independence and impartiality. As more fully set out in the affidavit, any communications with the legal representatives of Lieutenant General Dramat and Major General Sibiya were reasonable and entirely in keeping with my responsibilities. There is no basis for the allegations that have been made in this regard;
  - 3.3. The Minister was at all relevant times fully aware of the existence of preliminary and final IPID reports. As more fully set out in the affidavit, the Minister has chosen to rely on recommendations contained in a preliminary report. I remain available to address any concerns that the Minister may have in relation to the preliminary and final reports;



**ipid**

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3.4. I have not undermined the Minister's authority on oversight responsibility. As more fully set out in the affidavit, I remain committed to report fully to the Minister and Parliament. The Minister's investigation into IPID (and the NPA) is, however, impeding on IPID (and the NPA's) independence and expertise and I have acted responsibly in this regard by refusing to grant my permission for IPID's officials to be interviewed by the appointed investigators. I remain willing to engage with the Minister in respect of the investigation, and, specifically to ensure that there are sufficient safeguards to protect IPID;

3.5. As more fully set out in the affidavit, there is no factual basis for the allegation that I tampered with evidence. I, at all relevant times, acted in accordance with my statutory mandate.

4. For these reasons, I am firmly of the belief that my suspension is, notwithstanding the aforesaid grounds, a foregone conclusion.
5. I also believe that my suspension would not be in the best interest of IPID, of which I am the head and for which I am responsible.
6. I have, accordingly, instructed IPID's attorneys to launch an urgent application out of the North Gauteng High Court for appropriate relief, including interdicting you from suspending me.
7. I confirm that the application is in the process of being issued and will be served on the State Attorney shortly.

Yours faithfully,

\_\_\_\_\_  
Mr RJ MCBRIDE  
EXECUTIVE DIRECTOR  
INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

DATE: \_\_\_\_\_

*[Handwritten signature]* *MP*

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**ipid**

Department:  
Independent Police Investigative Directorate  
REPUBLIC OF SOUTH AFRICA

Rm3

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

RENDITIONS

[DIEPSLOOT CAS 390/07/2012]

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

## 2. SUMMARY OF ALLEGATIONS

The following allegations were made:

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

## 3. CONSTITUTIONAL AND STATUTORY MANDATE

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

## 4. AVAILABLE EVIDENCE

### 4.1 STATEMENTS OBTAINED FROM INDEPENDENT WITNESSES

The following witnesses were interviewed and statements obtained.

**Shepard Chuma A1:** He will state that on Friday 05/11/2010 at 20h00 he was at 6954 John Malatjie Street Diepsloot together with Nelson, 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

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**RENDITIONS**

[DIEPSLOOT CAS 390/07/2012]

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

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

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

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

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



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

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

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

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

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

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

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

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## RENDITIONS

[DIEPSLOOT CAS 390/07/2012]

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

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

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

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

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

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

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RENDITIONS [DIEPSLOOT CAS 350/07/2012]

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

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

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

**Brightness Nka Ncube A22:** she will state that she is the sister-in-law of the late Johnson Nyoni. On the 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 A23:** He will state that he is the brother of late Johnson Nyoni and on 01 March 2011 he telephonically contacted his brother in law Orbed Ndlovu from Bulawayo in Zimbabwe who informed him that his brother Johnson Nyoni is late and was found at Central Mortuary in Bulawayo. He will further state that he then went to Bulawayo in Zimbabwe and at the mortuary he found the body of his brother. The body of Johnson Nyoni had a bullet wound on the collar (neck) just above the chest and it exited at the back. There was an information note attached to the body stating that Johnson Nyoni was involved in the crossfire at Gwanda in Zimbabwe. He will further state that he attended Johnson Nyoni's funeral which was held at Tsholotsho in Zimbabwe.

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

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

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**RENDITIONS****[DIEPSLOOT CAS 390/07/2012]**

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

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

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

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

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

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

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





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

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

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

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

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

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

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

**Kobela Margret Mohlahlo A39:** She will state that she is an Immigration Officer based at Beit Bridge and she had been a custodian of Stamp 20 since 2010. She had been in control of stamp 20 and when she is not in the office the stamp would be locked in the safe. She is the only person in possession of the key. She will state that on the 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 A51:** He will state that he is a Police Officer in the South African Police Service holding a rank of Lieutenant Colonel stationed at Thohoyandou SAPS as a Commander of Crime Prevention.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 4.5 **STATEMENTS OF TOMS MEMBERS IN GAUTENG AND PRETORIA**

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

Handwritten signatures and initials, including a large stylized signature and the letters 'MP'.



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

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

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

① **Johannes Mpati Moatshi A61:** He will state that in January 2011 he was on duty posted at Diepsloot as a result of xenophobic violence prevalent at the time. At 13h00 on that particular day, he received a call via two ways radio from his commander to go Diepsloot police station. When he arrived with his colleagues he found the commander of Diepsloot Police station who introduced them to Captain Maluleke who was with two males persons and a female. The two male persons and a female were introduced as members of Crime Intelligence. Captain Maluleke informed them that there is a person who has committed serious cases in Zimbabwe and he is very dangerous. Captain Maluleke further said that the suspect was with the informer and had to be arrested. He will further state that they went into Diepsloot where the suspect and the informer were pointed out. After the arrest of the suspect they went to a certain shack where members of Crime Intelligence conducted a search but nothing was found. They were told by Captain Maluleke to transport the suspect to DPCI offices in Silverton. At Silverton Captain Maluleke requested them to book the suspect at Moot Police with the instruction that no visitor is allowed for the suspect. He cannot remember the name of the suspect but he remembers taking photos with the officers from Zimbabwe.

② **Sello John Phaswana A64:** His statement corroborates that of Avhashoni Desmond Takalani in all material aspects.

③ **Tshatoa Jacob Seletela A63:** His statement corroborates that of Avhashoni Desmond Takalani and that of Sello John Phaswana in all material aspects.

④ **Matsobane Silas Mokoatlo A78:** His statement corroborates that of Avhashoni Desmond Takalani and that of Sello John Phaswana as well that of Tshatoa Jacob Seletela.

⑤ **Andries Nxumalo A65:** will state that around 11 or 26 January 2011 he was working in Diepsloot as a result of xenophobic violence at that time. He heard over the radio that they were wanted at Diepsloot Police station. When he arrived at the station he found Captain Maluleke, two male officers and one female who were introduced to him as members of Crime Intelligence. He will further state that Captain Maluleke requested them to assist in the arrest of Zimbabwean National who committed serious crimes in Zimbabwe. Together with his colleagues they went to a section in Diepsloot where the suspect was said to reside. The suspect was arrested and taken to DPCI offices in Silverton; he participated in a photo shoot with members of Zimbabwean Police. After the photo shoot, they took the suspect to Moot Police station for detention.

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was, Captain Maluleke walked towards him and briefed him, informing him that he is investigating a case of murder of a Zimbabwean police officer.

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

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

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

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

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

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

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

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

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


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

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

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

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

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



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

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

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

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

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

*[Handwritten signatures]*



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

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

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

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

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

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

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

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

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

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

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



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

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

**Avhasel Witness Rambuda A72:** He will state that in January 2011 he was working Diepsloot as a Detective. There were three suspects who were arrested after they were involved in the shooting incident with the police. They recovered a firearm which was booked into SAPS 13 and received exhibit number SAPS 13/31/2011. He was involved in the charging of the suspects and they were attending court at Atteridgeville.

After some few days he received a call from Captain Maluleke of the Hawks asking him to go to Ballistic Pretoria and collect the firearm as he had already made arrangement with them. He collected the firearm and handed it Captain Maluleke. Captain Maluleke told him that he has a case he is investigation against one of the suspects. He informed him that the firearm belongs to Zimbabwe. He typed a letter a letter on his computer acknowledging the firearm but he does not remember where he put the letter.

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

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

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

Handwritten signatures and initials, including a large stylized 'A' and 'MP'.



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

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

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

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

## 5. DOCUMENTARY EVIDENCE ACQUIRED FROM VARIOUS POLICE STATIONS

### 5.1.1. EXTRACTS FROM OCCURRENCE BOOKS & SAPS 14 REGISTERS

The investigation at Orlando Police Station uncovered the following:

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

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

**RENDITIONS**

[DIEPSLOOT CAS 390/07/2012]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



**RENDITIONS****[DIEPSLOOT CAS 390/07/2012]****Diepsloot Cas 93/01/2011:**

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

**Wierdabrug Cas 531/12/2010:**

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

**Wierdabrug Cas 220/02/2010:**


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

**Wierdabrug Cas 43/10/2010:**

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

**Wierdabrug Cas 147/10/2010**

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

**Wierdabrug Cas 1022/12/2010:**  
MAP

RENDITIONS

[DIEPSLOOT CAS 390/07/2012]

No docket or copies could be found regarding this case.

-Wierdabrug Cas 310/10/2010:

This is house robbery case linked to Gordon.

**5.2 DOCUMENTARY EVIDENCE ACQUIRED FROM DPCI OFFICES.**

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

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

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

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

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

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

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

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

Handwritten signatures and initials at the bottom of the page, including a large stylized signature and the letters 'MP'.



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

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

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

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

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

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

#### 5.4 DOCUMENTARY EVIDENCE FROM HOME AFFAIRS

Handwritten signature and initials, possibly 'MP'.



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

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

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

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

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

## 5.5 EVIDENCE IN TERMS OF SECTION 205 OF THE CRIMINALPROCEDURE ACT.

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

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



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's statement.

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 shows his interaction with Captain Maluleke in line with his statement.

#### 5.6 STATEMENTS OF SENIOR MEMBERS OF SAPS AND SECRETARIAT

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

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



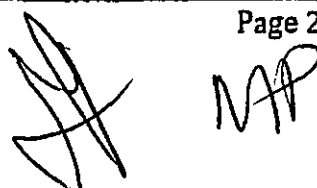
5.7 STATEMENT ON HOW DIEPSLOOT Cas 390/07/2011 WAS INVESTIGATED

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

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

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

On 13 November 2012, a letter requesting an interview with Home Affairs officials and documents regarding the movement of people at Musina Beit Bridge port of entry was e-mailed to Mr. Ndlovu of the Deportation section at Home Affairs Head Office in Pretoria. On 08/02/2013 the permission was granted after he had a meeting with Mr. M Mathews, the Chief Director responsible for deportation and mending of Ports of Entry. Prior to the interview with Home Affairs officials, he visited Orlando Police station on



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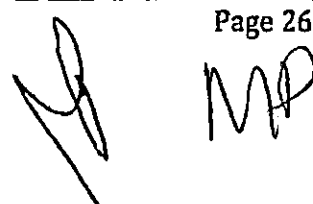
10/01/2013 and interviewed Brigadier Zangwa and other members stationed at Orlando. He received copies of the Occurrence Book and cell registers include a color copy of the Sunday Newspaper regarding the incident.

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

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

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

On 07/03/2013, shortly after the meeting he generated and emailed a letter to Col Basi. On 19/04/2013 he met with Col Basi in front of the Interpol building on Pretorius Street in Pretoria. He handed to him a brown envelope containing following documents, cell phone records of Captain Maluleke, Lt Col Neethling and Major General Sibiya. There were also copies of sworn statements of, Willem Carel Stephenus Vorster, Andree Neethling, Captain Maluleke, Vincent Selotole, Major General Sibiya, Warrant Officer Makoe, Ndanduleni Madilonga and Warrant Officer Rodgers Nthlamu. Attached to the copy of the statement of Warrant Officer Nthlamu were copies of the following documents, Warrant of Detention (BI-1725) for the following individuals, Dumisani Witness Ndeya, Shepard Tshuma, Nelson Ndlovu and Maghawe Sibanda. There were

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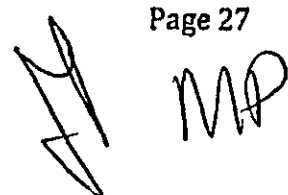
also four Notifications of the Deportation of an Illegal Foreigner (DHA-1689) for the following Individuals, Nelson Ndlovu, Shepherd Chuma, Maghawe Sibanda and Witness Ndeya. The Warrant of Detention and Notification of the Deportation forms attached to Warrant Officer Nhlamu statement appeared to be similar to the one received from Secretariat which were already part of the docket. The Warrants of Detentions and Notifications of Deportation received from Warrant Officer Nhlamu were the one sent to the Forensic Lab for analysis on 10/06/2013 and 21/08/2013. The documents given to him by Col Basi also include search result report from Interpol indicating that Dumisani Witness Ndeya, Nelson Ndlovu, Maghawe Sibanda and Shepard Tshuma were not in the wanted list. However there was no statement of Lt General Dramat in the envelope handed to him. The documents handed to him are filed in the docket as per A41-A50.

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

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

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

On 10/07/2013 he met with Ms. L Verster at Protea-Coin for the interview. She gave information regarding the success reports resulting from the arrest of Witness Ndeya and other Zimbabwean Nationals. She also assisted him by phoning Supply Chain of DPCI and obtained the serial number of Captain Maluleke's laptop which he used during 2010 and 2011. On the same day he generated a letter to Col Mabuyela who was assigned by Brigadier Kadwa to assist him with documents or items needed from the DPCI offices for the purpose of investigation. He hand-delivered the letter to Col Mabuyela on 11/07/2013, requesting the following things, Dell Laptop with serial number CNOJF242486436BL3424 which was assigned to Lt Col Maluleke, approved overtime claims for Lt Col Maluleke for the following period 01/11/2010-31/01/2011, approved trip itineraries for Lt Col Maluleke for the period 01/11/2010-31/01/2011, Telkom call record for Lt Col Maluleke for the period 01/11/2010-31/03/2011, record regarding the disposal and if not yet disposed, the handset used by Lt Col Maluleke, record of successes of operations conducted between 01/11/2010-31/03/2011 and





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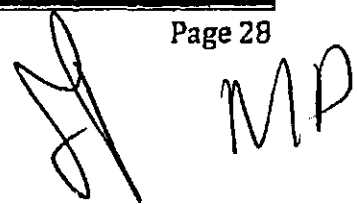
logbooks of vehicles used by Lt Col Maluleke for the period 01/11/2010-28/02/2011. On 12/07/2013 he went to meet with Col Mabuyela and he received success reports which are filed as per A82/1-A83/3.

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

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

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

In October 2013 he approached the Head of DPCI accompanied by Mr. Sesoko who was an Acting Head of investigation for IPID requested his warning statement. He was advised to seek an assistance of a lawyer for the purpose of guiding him before the warning statements is obtained. He agreed and informed them that he will telephonically contact Mr. Khuba regarding the suitable date. He will further state that he received a call from a person who introduced himself to him as Adv. P Seleka representing Lt General Dramat. He requested questions in writing and summary of the allegation which was e-mailed to him. After he received the questions, he was informed via e-mail that Lt General Dramat is represented by a new company and they will continue to liaise with him. He emailed the questions and after two weeks he received a copy of his statement and is file as per A94.

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

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

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

#### 6. ANALYSIS OF EVIDENCE AND FINDINGS.

The following findings were made;

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



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(Col Madilonga's extension) show that General Dramat received a call from 015534 6300 at 20h56 on 04/11/2010. This corroborates the version of Madilonga, Lt Col Radzilani and Brigadier Makushu about the call made in connection with the Zimbabwean police. According to Lt Col Madilonga he was informed that the purpose of the Zimbabwean police to enter into the country was to arrest Zimbabwean Nationals wanted in connection with the murder of Senior Police Officer in Zimbabwe.

- Evaluation of the above findings: In the entire cellphone records of Lt General Dramat requested for the period 20/10/2010 to 28/02/2011, the number 0155346300 only appear once which rules out any form of communication before 04/11/2010 and after the said date. This supports his version that he called Lt General Dramat in connection with the Zimbabwean police.
- o He held a meeting on 05/11/2010 with Zimbabwean police planning the operation. Success report dated 04/02/2011 addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT: MOST WANTED FUGITIVE: WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS. The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI offices about the Nationals who shot and killed one of their senior officers. He appointed Captain Maluleke to be a lead person during the operation.
  - Evaluation of the above findings: The success report signed by Leonie Verster was traced to Lt Col Maluleke's laptop as picked from the retrieved deleted data. The report was amended on 26/01/2011 and 31/01/2011 before it could be emailed to a female officer, Warrant Officer Thabiso Mafatla on 09/02/2011 at 14h32. There is no material difference between the document retrieved from the laptop and that found at the Hawks offices during investigation. This proves that Leonie Verster did not generate success report but only signed the report drafted by Captain Maluleke. The date of the meeting between Zimbabwean Police and General Dramat which took place on 05/11/2010 coincide with the date of the 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 as stated in the Success Report.
- o He committed the government resources into the operation: Apart from other resources used, on 08/11/2010 Captain Maluleke went to Beit Bridge (Limpopo) for Transporting Zimbabwean Nationals and claimed overtime. On 24/11/2010 he went to Beit Bridge and also claimed

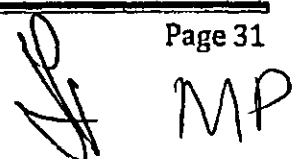
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overtime. On 28/01/2011 he went to Beit Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.

- Evaluation of the above findings: Despite the fact that General Dramat as an Accounting Officer did not sign any claim of Captain Maluleke, delegating responsibility to Major General Sibiya to assist the Zimbabwean Police in tracing wanted suspects invariably commit government resources into an unlawful operation that amount to a criminal offense.
- o He congratulated officers for arresting Johnson Nyoni and advised them to keep it a secret: According to Constable Mkasibe and Mgwenya, shortly after the photos were taken, they saw General Dramat of the Hawks walking towards them from house number 1. General Dramat addressed them and thanked them for arresting the suspect. He warned them not tell anyone about the operation they had just done.
  - Evaluation of the above findings: Words of appreciation from General Dramat show both interest in the arrest of the Zimbabwean Nationals and his knowledge of the unlawfulness of the operation. If the operation was lawful he would not have warned them not to tell anyone about it.
- o He received communication regarding successes and photos of the operation through his Personal Assistance Phumla: According to the information retrieved from the seized laptop, Captain Maluleke sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails where sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence.
- o He was kept informed of the developments in the operations that led to the arrest of wanted Zimbabwean Nationals: The cellphone records of General Sibiya shows 30 SMS sent to General Dramat at various milestones of the operation. He also received an SMS from Captain Maluleke shortly after the arrest of Zimbabwean Nationals. He never responded to any of the SMS which may suggest that they were only informing him of the progress.
- o Report to parliament in response to the allegation: A copy of the letter sent by Zimbabwean authority to Col Ntentei 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



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General Dramat on 2013/03/07 confirmed that General Sibiya was appointed to be the Head of TOMS which he created to trace wanted suspects. The telephone records of both Captain Maluleke and Major General Sibiya show interaction between them at various milestones of the operation. Following suggest the involvement of General Sibiya;

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

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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.

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

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Gordon Dube was handed to Zimbabwean police and was sentenced to life imprisonment. He also acknowledges in a letter retrieved from the laptop that he handed back the firearm permanently to Zimbabwean authority.

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

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

## RECOMMENDATION

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

- Kidnapping
- Defeating the ends of justice,

## RENDITIONS

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- Assault and theft (only applicable to Captain M L Maluleke, Warrant Office Makoe, Constable P M Radebe and Captain S E Nkosi)

signed \_\_\_\_\_

Mr. HI KHUBA  
ACTING PROVINCIAL HEAD  
IPID: LIMPOPO



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ipid

Department

Independent Police Investigative Directorate  
REPUBLIC OF SOUTH AFRICA

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# RECOMMENDATIONS TO NDPP

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## Case Investigative Report

## COMPLAINT IDENTIFICATION

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

1. BACKGROUND

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

## 2. SUMMARY OF ALLEGATIONS

The following allegations were made:

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

## 3. CONSTITUTIONAL AND STATUTORY MANDATE

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

## 4. AVAILABLE EVIDENCE

### 4.1 STATEMENTS OBTAINED FROM INDEPENDENT WITNESSES

The following witnesses were interviewed and statements obtained.

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

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

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

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

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

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

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

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

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

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

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

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

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

*[Handwritten signature]*  
*NAP*

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

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

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

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

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

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

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

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

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

**Brightness Nka Ncube A22:** she will state that she is the sister-in-law of the late Johnson Nyoni. On the 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 Bhokisisa Nyoni A23:** He will state that he is the brother of late Johnson Nyoni and on 01 March 2011 he telephonically contacted his brother in law Orbed Ndlovu from Bulawayo in Zimbabwe who informed him that his brother Johnson Nyoni is late and was found at Central Mortuary in Bulawayo. He will further state that he then went to Bulawayo in Zimbabwe and at the mortuary he found the body of his brother. The body of Johnson Nyoni had a bullet wound on the collar (neck) just above the chest and it exited at the back. There was an information note attached to the body stating that Johnson Nyoni was involved in the crossfire at Gwanda in Zimbabwe. He will further state that he attended Johnson Nyoni's funeral which was held at Tsholotsho in Zimbabwe.

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

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

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

Handwritten signature and initials, possibly 'MP'.

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

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

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



#### 4.3 STATEMENTS OF HOME AFFAIRS OFFICIALS

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

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

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

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



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

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

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

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

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

**Kobela Margret Mofahlo A39:** She will state that she is an Immigration Officer based at Beit Bridge and she had been a custodian of Stamp 20 since 2010. She had been in control of stamp 20 and when she is not in the office the stamp would be locked in the safe. She is the only person in possession of the key. She will state that on the 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 A51:** He will state that he is a Police Officer in the South African Police Service holding a rank of Lieutenant Colonel stationed at Thohoyandou SAPS as a Commander of Crime Prevention.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Handwritten signatures and initials at the bottom of the page. On the left, there is a stylized signature that appears to be 'J'. To its right, there are the initials 'MP'.



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

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

#### 4.5 STATEMENTS OF TOMS MEMBERS IN GAUTENG AND PRETORIA

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

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

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

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

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

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

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

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

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

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

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

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





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

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

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

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




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

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

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

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

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

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

AP

MAP



*[Handwritten signature]*

*MP*

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

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

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

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

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

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

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

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

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

In January 2011 they received information from CIAC at Wierdeburch regarding the wanted suspect John Nyoní. 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 Nyoní, they all proceeded to the Hawks offices where they gathered together for a photo shoot. Captain Maluleke exchanged the taking of photos with the Zimbabwean police. The photo of the suspect was also taken and the exhibit which is a firearm was also photographed. After the photo shoot she went to the shop, but when she came back she was told that General Dramat was with Colonel McIntosh and he had just addressed the people in her absence. She felt that she missed out on the speech of General Dramat but her colleagues told her that he was just congratulating them for a job well done.

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

Emmanuel Dinizulu Mkasibe A68: His statement corroborates that of Plantinah 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. After he said that he left and Captain Maluleke told us that he was organizing a celebration braai. While they were busy enjoying themselves, a lady working at the Hawks offices with Captain Maluleke came and joined them. She wanted the meat to take home because there was too much meat. She was requested to download the photos from the camera by Captain Maluleke.

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

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

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

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

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



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

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

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

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

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

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

##### 5. DOCUMENTARY EVIDENCE ACQUIRED FROM VARIOUS POLICE STATIONS

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### 5.1.1. EXTRACTS FROM OCCURRENCE BOOKS & SAPS 14 REGISTERS

#### The investigation at Orlando Police Station uncovered the following:

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

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

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

#### The Investigation at Alexandra Police Station uncovered the following;

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

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

#### The Investigation at Silverton Police Station uncovered the following;

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

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

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

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

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

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



The investigation at Wierdabrug Police Station uncovered the following;

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

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

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

Diepsloot Cas 93/01/2011:

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

Wierdabrug Cas 531/12/2010:

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

Wierdabrug Cas 220/02/2010:

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

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Wierdabrug Cas 43/10/2010:

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

Wierdabrug Cas 147/10/2010

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

Wierdabrug Cas 1022/12/2010:

No docket or copies could be found regarding this case.

Wierdabrug Cas 310/10/2010:

This is house robbery case linked to Gordon.

## 5.2 DOCUMENTARY EVIDENCE ACQUIRED FROM DPCI OFFICES.

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

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

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

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

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

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

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

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

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

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

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

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

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





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

#### 5.4 DOCUMENTARY EVIDENCE FROM HOME AFFAIRS

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

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

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

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

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

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

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

*[Handwritten signatures]*



5.5 EVIDENCE IN TERMS OF SECTION 205 OF THE CRIMINAL PROCEDURE ACT.**CELLPHONE RECORD OF MAJOR GENERAL SIBIYA (0725953168) AND (0724798484)**

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

**CELLPHONE RECORD OF LT GENERAL DRAMAT (0825515311)**

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

**CELLPHONE RECORD OF MAJOR GENERAL HLATSWAYO (0828051210)**

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

**CELLPHONE RECORD OF LT GENERAL LEBEYA (0825751899)**

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

**CELLPHONE RECORD OF CAPTAIN MALULEKE (082 7729518)**

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



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

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

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

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

**5.6 STATEMENTS OF SENIOR MEMBERS OF SAPS AND SECRETARIAT**

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

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

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

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

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

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

**Warning statement of Lt Col Mahlangu Maluleke A88:** He exercised his right to remain silent.

5.7

#### **STATEMENT ON HOW DIEPSLOOT Cas 390/07/2011 WAS INVESTIGATED**

**Innocent Humbulani Khuba A102:** He will state that he is a member of Independent Police Investigative Directorate base in Limpopo. On 23 October 2012 he received a case docket from Mr. Sesoko and appointment letter to conduct investigation in all cases of alleged assault against Major General Sibiya. The docket received is Diepsloot Cas 390/07/2012. He also received a copy of the letter which was sent to Mr Sesoko by Major General Sibiya complaining about the conduct of North West Task Team which was tasked to investigate cases against him including Diepsloot Cas 390/07/2012. He was informed by Mr Sesoko who was the National head of IPID of investigation that the reason he was appointed to be the new Task Team Leader was that Major General Sibiya complained against the North West Task Team. He was advised to assemble a team that would assist me in the investigation of these cases. The team assembled comprised of the following individuals, Mr Kenneth Ratshitali, Mr. L Maphetho, Mr N Mulaudzi and Mr T Mashaphu who are all investigators from Limpopo Provincial office. They worked under his guidance and took instructions directly from him as the team leader.

Upon his perusal of Diepsloot Cas 390/07/2012 and other accompanying documents, he discovered that the Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by Lt General Dramat from Civilian Secretariat. The case was reported as result of parliamentary




question by Cope Member of Parliament and an article by Sunday Times. The docket had following statements obtained by members of South African Police Services, the statement of Shepard Chuma, Maqhawe Sibanda, Nelson Ndlovu, Bongani Henry Yende, Petros Jawuke, Desmond Campbell, Alfred Ndobe, Andrew Mark Sampson, Reason Mhlawumbe Sibanda, Rachael Ncube, Brightness Nka Ncube, Madala Bhekisisa Nyoni and Sibongile Mpofu. There were also copies of Occurrence Book and cell Registers from Orlando police station regarding the detention and booking out of the following individuals, Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma. There were also four Detention Warrants, four Deportations Notifications and a copy of Witness Ndeya's death certificate.

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

On 13 November 2012, a letter requesting an interview with Home Affairs officials and documents regarding the movement of people at Musina Beit Bridge port of entry was e-mailed to Mr. Ndlovu of the Deportation section at Home Affairs Head Office in Pretoria. On 08/02/2013 the permission was granted after he had a meeting with Mr. M Mathews, the Chief Director responsible for deportation and mending of Ports of Entry. Prior to the interview with Home Affairs officials, he visited Orlando Police station on 10/01/2013 and interviewed Brigadier Zangwa and other members stationed at Orlando. He received copies of the Occurrence Book and cell registers include a color copy of the Sunday Newspaper regarding the incident.

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

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

During the investigation of the case he visited the office of Lt General Dramat on 07/03/2013 and a meeting was held between Lt General Dramat and him. He will further state that at that stage the investigation had not uncovered any evidence relating to the involvement of Lt General Dramat or any other senior officer of DPCI. The meeting was held at Lt General Dramat's office which is located at Silverton.






During the meeting, Lt General Dramat was informed about the allegation of kidnapping and assault leveled against members of DCPCI most especially Captain Maluleke who is now a Lt Colonel. He said that he had sanctioned internal investigation in the matter and the outcome of the investigation cleared Lt Colonel Maluleke of any wrong doing. When I asked him whether they were any Zimbabwean police who visited the DPCI offices, he said that there were no Zimbabwean police who came into the country regarding the alleged matter and that all Zimbabwean Nationals were deported through Home Affairs for being illegal immigrants. Lt General Dramat was requested to provide statement with regard to the formation of TOMS, his knowledge about the DZP, source documents that informed the internal investigation, his report to parliament and knowledge about the involvement of Zimbabwean police in the operation of TOMS. He informed me that the request should be forwarded to Col Basi and he would hand all the necessary documents including his sworn statement to him.

On 07/03/2013, shortly after the meeting he generated and emailed a letter to Col Basi. On 19/04/2013 he met with Col Basi in front of the Interpol building on Pretorius Street in Pretoria. He handed to him a brown envelope containing following documents, cell phone records of Captain Maluleke, Lt Col Neethling and Major General Sibiya. There were also copies of sworn statements of, Willem Carel Stephenus Vorsler, Andree Neethling, Captain Maluleke, Vincent Selotole, Major General Sibiya, Warrant Officer Makoe, Ndanduleni Madilonga and Warrant Officer Rodgers Nthlamu. Attached to the copy of the statement of Warrant Officer Nthlamu were copies of the following documents, Warrant of Detention (BI-1725) for the following individuals, Dumisani Witness Ndeya, Shepard Tshuma, Nelson Ndlovu and Maqhawe Sibanda. There were also four Notifications of the Deportation of an Illegal Foreigner (DHA-1689) for the following individuals, Nelson Ndlovu, Shepherd Chuma, Maqhawe Sibanda and Witness Ndeya. The Warrant of Detention and Notification of the Deportation forms attached to Warrant Officer Nthlamu statement appeared to be similar to the one received from Secretariat which were already part of the docket. The Warrants of Detentions and Notifications of Deportation received from Warrant Officer Nthlamu were the one sent to the Forensic Lab for analysis on 10/06/2013 and 21/08/2013. The documents given to him by Col Basi also include search result report from Interpol indicating that Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma were not in the wanted list. However there was no statement of Lt General Dramat in the envelope handed to him. The documents handed to him are filed in the docket as per A41-A50.

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




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

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

On 10/07/2013 he met with Ms. L Verster at Protea-Coin for the interview. She gave information regarding the success reports resulting from the arrest of Witness Ndeya and other Zimbabwean Nationals. She also assisted him by phoning Supply Chain of DPCI and obtained the serial number of Captain Maluleke's laptop which he used during 2010 and 2011. On the same day he generated a letter to Col Mabuyela who was assigned by Brigadier Kadwa to assist him with documents or items needed from the DPCI offices for the purpose of investigation. He hand-delivered the letter to Col Mabuyela on 11/07/2013, requesting the following things, Dell Laptop with serial number CNOJF242486436BL3424 which was assigned to Lt Col Maluleke, approved overtime claims for Lt Col Maluleke for the following period 01/11/2010-31/01/2011, approved trip itineraries for Lt Col Maluleke for the period 01/11/2010-31/01/2011, Telkom call record for Lt Col Maluleke for the period 01/11/2010-31/03/2011, record regarding the disposal and if not yet disposed, the handset used by Lt Col Maluleke, record of successes of operations conducted between 01/11/2010-31/03/2011 and logbooks of vehicles used by Lt Col Maluleke for the period 01/11/2010-28/02/2011. On 12/07/2013 he went to meet with Col Mabuyela and he received success reports which are filed as per A82/1-A83/3.

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

He also discovered that Gordon Dube was facing number of charges in South Africa including murder. Statements of Isaac Dlamini and Avhashoni Rambau were obtained





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

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

In October 2013 he approached the Head of DPCI accompanied by Mr. Sesoko who was an Acting Head of investigation for IPID requested his warning statement. He was advised to seek an assistance of a lawyer for the purpose of guiding him before the warning statements is obtained. He agreed and informed them that he will telephonically contact Mr. Khuba regarding the suitable date. He will further state that he received a call from a person who introduced himself to him as Adv. P Seleka representing Lt General Dramat. He requested questions in writing and summary of the allegation which was e-mailed to him. After he received the questions, he was informed via e-mail that Lt General Dramat is represented by a new company and they will continue to liaise with him. He emailed the questions and after two weeks he received a copy of his statement and is file as per A94.

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

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

On 02 December 2013 he requested Principal Investigator Mr Mdunge based at East London IPID office to obtain a statement of Bongani Moyo who is serving his sentence at Kokstad Correctional Services A98. On 21/12/2013 he requested Mandla Mahlangu who is a Principal Investigator based in Gauteng IPID office to obtain a statement of a former acting National Commissioner Lt General Mkhwanazi A99. On 17/02/2014 he obtained a statement of the Secretary of Police Ms J Irish-Qhobosheane and is filed as



per A100 with the attachments of her internal inquiry. I also obtained the results of Lt Col Madilonga's statement analysis from Precision Forensics.

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

## 6. ANALYSIS OF EVIDENCE AND FINDINGS.

The operation carried out by TOMS to arrest Zimbabwean foreign nationals in Diepsloot in connection with the murder of Zimbabwean police Colonel was led by Captain M L Maluleke also known as Cowboy.

Captain Maluleke was appointed as the head of cross border desk at the DPCI office to assist in the coordination and apprehending of cross border crimes fugitives. In this responsibility he mends the desk alone thereby forging very strong ties with the law enforcement agencies of the neighboring countries such as Zimbabwe and Mozambique. His unique role and the fact that he was based at DPCI head office gave him the respect that even officers at the ranks of colonels and captains carried out his request without questions. This is corroborated by Lt Colonel Neethling who stated that he was requested by Captain Maluleke to assist in both tracing of the Zimbabwean Nationals and providing escort for their transportation to Beit Bridge border. He further stated that he felt obligated to assist because Captain Maluleke was based at DPCI head office and responsible for Cross border desk. During the interview with Ms. Leonie Verster who was the direct commander of Captain Maluleke, she stated that Captain Maluleke carried out his responsibility on cross border desk without supervision from her and she did not know much of what was happening. Captain Boonsra who worked under the command of Lt Col Neethling also stated that the operation which led to the arrest of Zimbabwean Nationals was led by Captain Maluleke. He inquired about the case number which the Zimbabwean nationals were sought for and a Bulawayo case number was given to him. Captain Nkosi corroborates many of Gauteng TOMS members that his participation in the operation was as a result of Captain Maluleke's request.

However the important question to ask is whether a crime was committed in the arrest and deportation of Zimbabwean national. The documents sourced from Interpol clearly outline the procedures which are to be followed by any law enforcement agency of any country if they want suspect/s who are in another country. During the interview with Warrant Officer Kgomo of Interpol coupled with the search done on Interpol database, it was established that procedures were not followed since the Zimbabwean Nationals arrested were not on the list of wanted fugitives and no warrants were issued in their names. The following evidences were found and can be analyzed as follows,

- The arrest of Dumisani Witness Ndeya, Nelson Ndlovu, Maghawe Sibanda and Shepard Tshuma on 05/11/2010.

The operation that led to the arrest of Dumisani Witness Ndeya, Nelson Ndlovu, Maghawe Sibanda and Shepard Tshuma was led by Captain Maluleke with a backup of the Gauteng TOMS members and Crime Intelligence. None of the participants in the operation ever stated that a request was made by any senior official of the DPCI requesting them to assist Captain Maluleke. The statements of members of Crime Intelligence who participated in this operation corroborate each other in that the group firstly met at Fourways Shopping Centre. The TOMS AVL

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also confirms, backed by the cellphone records of Captain Maluleke and Warrant Officer Makoe. However the claims made by Bongani Henry Yende (A4), Petros Jawuke (A5) and Desmond Campbell (A6) that Major General Sibiya was at the planning venue (Fourways Shopping Complex) could not be substantiated. The cellphone record of Major General Sibiya were analyzed by an expert and indicated that at the time of the alleged planning, Major General Sibiya was in Pretoria. None of the witnesses who claim that Major General Sibiya was at Fourways ever saw him in person but allude that they were informed by Warrant Officer Makoe that Major General Sibiya was in the blue BMW. This information highlights the depicting false picture that can be created by hearsay evidence. It is immaterial of how many people heard Warrant Officer Makoe saying that Major General Sibiya was in a blue BMW at Fourways Shopping Center but the evidence from the analysis of his cellphone records proves otherwise.

After planning at Fourways shopping Centre, Captain Maluleke went Diepsloot where two Zimbabwean Nationals were arrested. Other members who assisted Captain Maluleke in the arrest of Zimbabwean Nationals cannot be charged of any crime of kidnapping because they were rendering assistance to a normal police operation without any prior knowledge whether Captain Maluleke followed the procedures required in the arrest of a fugitive wanted by the law enforcement agency of another country. It also need to be proven that Captain Maluleke new that the Zimbabwean Nationals were wanted by the Zimbabwean police and deliberately arrested or requested assistance in their arrest without following the correct procedures as required in terms of the law.

Shepard Tshuma (1) stated that one of the officer known as 'Leburu' took his wallet which was in his back pocket and removed R300-00. Constable Radebe was identified by other members of Crime Intelligence as "Leburu" and together with Warrant Officer Makoe carried out assaults on Zimbabwean Nationals while they were lying down. There was nothing wrong for Constable Radebe known as 'Leburu' and Warrant Officer Makoe to provide assistance to a police operation but stealing money and carryout assault on anyone constitute both theft and assault. However it is important that the version of the victim be corroborated in order to sustain a prima facie case against Warrant Office Makoe and Constable Radebe. From the available evidence it is clear that there is corroboration that Zimbabwean nationals were assaulted, but there is no medical evidence to prove such. It is also noteworthy that members of the DPCI contradict members of Crime Intelligence who corroborates the victims. If the assault did take place, it could also have been witnessed by members of DPCI. If the members of Crime Intelligence witnessed the assault why did they not stop it, or even immediately report what they witnessed. Because they had legal duty to act, the credibility of their version becomes questionable.

There is also insufficient evidence to prove that Constable Radebe took money from Shepard Tshuma. In addition Maqhawe Sibanda (A2) claim that the police took his R500-00 but the identity of the officer who took the money is unknown.

Shepherd Tshuma (A1) stated that at the time of their arrest, Major General Sibiya alighted from the black BMW and came to where they were lying. This version is disapproved by the cellphone records of Major General Sibiya which shows that at the time of the arrest he was not at the scene. It is also inconsistent with the evidence provided by Petros Jawuke (A5) and Desmond Campbell (A6) who stated that they heard that General Sibiya was in a blue BMW and did not see him in person. Captain Boonstra and Lt Col Neethling corroborate each other in that

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while they were aware of the presence of Zimbabwean police at the scene, Major General Sibilya was not at the scene. After the four Zimbabwean Nationals were arrested, they were taken to Orlando police station where they were detained. With specific reference to OB 276 to 279 (A8), entries made from 04h10 of 06/11/2010 to 12h00 of the 08/11/2010 confirm that Captain M L Maluleke of the DPCI with force number 0622729518 arrested Dumisani Witness Ndeya, Nelson Ndlovu, Maghabane Sibanda and Shepard Chuma. Again with specific reference to OB 429 (A9), entry made at 11h00 of 08/11/2010 confirm that that Captain M L Maluleke of the DPCI with cell number 0827729518 booked out Dumisani Witness Ndeya, Nelson Ndlovu, Maghabane Sibanda and Shepard Chuma to Beit Bridge. The telephone records of Captain Maluleke also show his movement from Orlando Police station until Beit Bridge in Musina. The statement of Lt Col Ndanduleni Madilonga and his cellphone records confirms that he received a call from Captain Maluleke when he was approaching Musina on 08/11/2010. According to Lt Colonel Madilonga (A51) he assisted Captain Maluleke to cross the border and the two Zimbabwean Nationals who were in the vehicles were handed to the Zimbabwean police.

The documents used in the deportation of the Zimbabwean Nationals were part of the internal investigation conducted by Warrant Officer Nthlamu (A80). In his statement he outlined the documents received from Captain Maluleke as four warrants of detentions and four notices of deportations. The documents which the Captain Maluleke claimed to be valid Home Affairs documents used in the deportation of the four Zimbabweans appear to have been forged as they have employee number that does not exist in the Home Affairs Department. The Warrant of Detention of Illegal Foreigner (BI-1725) document was produced by Captain Maluleke as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu and Maghawe Sibanda were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the documents does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.

Potiswa Skosana (A31) an Immigration Officer stated that BI-1725 used was discontinued in 2008 and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on four documents according to the handwriting expert, shows that whosoever completed the documents used an old form already completed and deleted affiliated information to put the new information of the four foreign nationals. The Notification of the Deportation of an Illegal Foreigner (DHA-1689) documents were produced by Captain Maluleke as proof that Witness Ndeya, Nelson Ndlovu, Shepard Chuma and Maghawe Sibanda were deported through Beit Bridge border. According to Peter Eiberg (A37) the forms were wrongly stamped and do not have fingerprints of the deportees as required.

The stamp number 20 belonging to Beit Bridge was used and such stamp is not for deportation purpose. According to Immigration Officer Kobelo Margret Mohlahlo (A39) the stamp is individualized and belong her and on 08/11/2010 she was off duty and the stamp was locked in the safe. This is confirmed by the duty roster which clearly shows that on the 7th and 8th of November 2010 Immigration Officer Kobelo Margret Mohlahlo was off duty. The stamp could have been easily duplicated.

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

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the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police. Protocol dictates that a letter to such a senior person in the Home Affairs department could not have been signed off by an officer at a rank of Captain but could have needed the head of the DPCI. However the letter retrieved clearly shows that Captain Maluleke was the author and he also wrote his name as an approving authority of the request. In addition when the renditions issue hit the media at the end 2011, acting National Commissioner of the South African Police Services Lt General Mkhwanazi (A99) called the head of DPCI Lt General Dramat to explain what happened. Lt General Dramat attended the meeting with Captain Maluleke and for the entire duration of the meeting, Captain Maluleke explained why he arrested Zimbabwean Nationals. If Lt General Dramat had full knowledge of the purpose of the arrest, he could have provided explanation or justification during the meeting thereby convincing the acting National Commissioner that the operation was both lawful and necessary. It is in the same breath that Captain Maluleke provided a report to Lt General Dramat which was used as a basis to respond to a parliamentary question.

- The arrest of Prichard Chuma on 23/11/2010

On 23/11/2010 an operation led by Captain Maluleke was carried out at Diepsloot and Soweto in search of Prichard Chuma who was wanted in connection with a murder of Zimbabwean police Colonel. The investigation did not gather much in relation to the arrest of Prichard Chuma. However the statement of Lt Col Neethling, Captain Nkosi and Warrant Officer Selepe are at the center of the arrest and deportation of Prichard Chuma. In this operation Desmond Campbell (A6) and Petros Jawuke claim that Major General Sibiya was involved. Desmond Campbell stated that he saw a person seated in a BMW whom Warrant Officer Makoe referred as Major General Sibiya. It is clear that members of Crime Intelligence had been trying hard to pull Major General Sibiya into the operation. This can be deduced from the following quotations in their statements, "I saw a figure in a BMW and Warrant Officer Makoe referred to him as General Sibiya" and "I heard that General Sibiya was in a blue BMW". These remarks justify the drawing of an inference that members of crime intelligence tried hard to implicate Major General Sibiya, most especially because his cellphone records provide concrete alibi that he was not at the crime scene.

The involvement of Captain Maluleke in the arrest and transportation of Prichard Chuma provide for a prima facie case of kidnapping. With specific reference to an OB entry dated 22/11/10 (A57/1) made on 22/11/2010 Captain Nkosi booked in Prichard Chuma at Alexandra Police Station. However Nkosi wrote the name and contact numbers of Captain Maluleke as the person who is the Investigating Officer of the case. In his statement he stated that he was personally requested by Captain Maluleke to detain Prichard Chuma at Alexandra Police station.

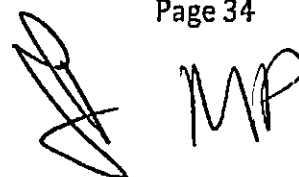
With specific reference to OB entry dated 23/11/2010 (A57/2)) Warrant Officer Selepe booked out Prichard Chuma from Alexandra Police station for a Bulawayo case. He confirmed in his statement that he was requested by Lt Col Neethling to assist Captain Maluleke. Lt Col Neethling corroborates Warrant Selepe in that he was requested by Captain Maluleke to provide assistance and requested one of his members. Warrant Officer Selepe stated that he transported Prichard Chuma with Captain Maluleke on 24/11/2010 to Beit Bridge. The version of Warrant Officer Selepe is corroborated by cellphone records and itineraries of Captain Maluleke.



• The arrest of Gordon Dube and Johnson Nyoni on 11/01/2011 and 26/01/2011.

The arrest of Gordon Dube and John Nyoni started when Constable Rikotso (A67) went to Wierdabrug police station at the CIAC office which is responsible for profiling and identification of crime hot spots. When he arrived, he found Constable Sombhane who gave him a list of wanted suspects and on top of the list was Gordon Dube who was wanted in connection with murder in Zimbabwe and robberies in South Africa. At that time the name of Captain Maluleke had not yet surfaced and members of Crime Intelligence were just carrying out the daily duties. Constable Rikotso is corroborated by Constable Sombhane and Constable Plantinah Mokgobu who stated that the information about the wanted Zimbabwean National initially surfaced when they visited CIAC office at Wierdabrug.

Gordon Dube was arrested on 11/01/2011 and was found in possession of an unlicensed firearm. Constable Rikotso later saw the same firearm with Captain Maluleke at the Hawks offices after it was returned from ballistics. It is also clear that the suspect Gordon Dube was facing many charges in South Africa including murder and robbery. Most of the cases against Gordon Dube were investigated by Constable Meyer except Diepsloot Cas 93/01/2011 which was investigated by Warrant Officer Dlamini. According to Constable Meyer the following cases were against Gordon Dube, Wierdabrug Cas 531/12/2010, Wierdabrug Cas 220/02/2010, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 1022/12/2010, Wierdabrug Cas 310/10/2010 and Diepsloot 93/01/2011. He was informed by Captain Maluleke from the Hawks that suspect Alfred Gordon Dube was also wanted in Zimbabwe. According to Constable Meyer, Captain Maluleke informed him that Gordon Dube was also wanted for murder as per Bulawayo CR 438/09/2010. He stated that he booked out suspect Gordon Dube and handed him to Captain Maluleke. Captain Maluleke informed him that suspect Gordon Dube will be handed over to the Zimbabwean government through Immigration channels. The request that Captain Maluleke made to Constable Meyer, Detective Constable Rambuda, Warrant Officer Dlamini in connection with the Gordon Dube demonstrate the extent to which he was ready to go in order to handover the suspect to the Zimbabwean police. The suspect was awaiting trial prisoner who was connected in five cases including murder. Statements of Constable Rambuda and Constable Meyer provide valuable evidence that Captain Maluleke took Gordon Dube to Zimbabwe even though he was facing serious charges (five cases including murder) in South Africa. Statements provided to Constable Meyer by Captain Maluleke states that Gordon Dube was handed to Zimbabwean police and was sentenced to life imprisonment. He also acknowledges in a letter retrieved from the laptop that he handed back the firearm to Zimbabwean Police. In January 2011 members of Crime Intelligence received information from CIAC at 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 murdered a police officer in Zimbabwe. The request to arrest John Nyoni was after a successful operation that led to the arrest of Gordon Dube. According to members of TRT, they received a call via two ways radio from the commander to go to Diepsloot police station. When they arrived they found the Station Commander of Diepsloot Police station who introduced them to Captain

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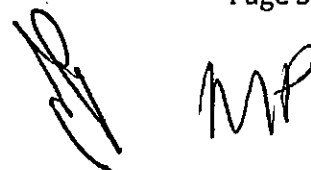
Maluleke. Captain Maluleke was with two male persons and a female who were introduced as members of Crime Intelligence. Captain Maluleke informed them that there was a person who committed serious cases in Zimbabwe and he is very dangerous. After the arrest of Johnson Nyoni, he was taken to DPCI head office in Silverton. At the DPCI offices photos were taken and members of TRT and Crime Intelligence corroborate each other in that regard. However Constable Mkasibe stated that Lt General Dramat came to house number 3 from house number 1 and addressed them. There were six members of TRT and none of them ever mentioned the incident. If it is true that he addressed them, other people could have had a recollection of the incident more so because Lt General Dramat is the head of the DPCI. According to Constable Mkasibe and Constable Mugwenya, Lt General Dramat was with Colonel Polelo when he addressed them but Colonel Polelo cannot remember such event. It is clear that the version Mugwenya and Mkasibe are not corroborated and therefore do not provide basis for a prima facie case against Lt General Dramat.

However there is corroboration in that Captain Maluleke was the driver of the operation that led to the arrest of Johnson Nyoni. He met with members of Crime Intelligence and tasked them to look for Johnson Nyoni after they successfully traced and arrested Gordon Dube. The OB book at Mool Police station clearly shows that John Nyoni was booked in by a member of TRT and booked out by Captain Maluleke.

The Zimbabwean Nationals were arrested and detained during DZP period which gave the Zimbabwean grace period of 90 days to apply for valid documents. During the DZP which is Dispensation for Zimbabwean Projects, all Zimbabweans were given 90 days to stay in the country in order to apply for legal documents and surrender illegally obtained South African ID's without consequence. The project according to Home Affairs started on 20 September 2010 and ended in 31 December 2010 with extension which ultimately ended in July 2011. The letter retrieved from Captain Maluleke's laptop addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police (dated 08/11/2010) was generated on 08 November 2010 shortly before he booked out the Zimbabwean Nationals out of Orlando Police station. It is doubtful that the permission was acquired given the time at which the Zimbabwean Nationals were booked out. In addition, he cited the DZP as a challenge in the deportation of Zimbabwean Nationals and he wanted assistance from Home Affairs. This does not only show that he was aware of the Dispensation for Zimbabwean Projects which gave Zimbabwean nationals a grace period, but also that there was ulterior motive way above deportation on the basis of being illegal immigrants.



The e-mails retrieved from Captain Maluleke's laptop also show communication with Zimbabwean police where he asked them about the trip going back home and that he would continue to trace remaining suspects. He also exchanged photographs with them of the suspects and the team involved in the operation.

The overtime claim of Captain Maluleke corresponds with the dates on SAP 10's from various stations regarding the booking out of the Zimbabwean nationals. On 08/11/2010 he transported Zimbabwean Nationals to Beit Bridge. The Itinerary shows that on 08/11/2010 he went to Beit Bridge and came back on 10/11/2010 and claimed a total of R1845-00. On 24/11/2010 he went to Beit Bridge and came back 26/11/2010 and claimed a total of R1845-00. On 28/01/2011 he went to Beit Bridge and claimed a total of R552-00. The records also correspond with his cellphone movement as depicted by towers recordings.

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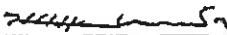
## 7. FINDINGS

- The IPID investigation established that Captain Maluleke led the operation that resulted in the arrest of Zimbabwean nationals wanted in connection with the murder of a Zimbabwean senior police officer. The evidence gathered clearly shows that the Zimbabweans Nationals were not wanted in connection with ATM bombing as initially claimed and they were not deported for being illegal immigrants.
- There is overwhelming evidence that Captain Maluleke was not only the lead person but also used his position of being the only member of the "Cross Border Desk" to acquire cooperation in an operation he knew that it did not follow the legal procedure.
- It was found that the claim made by Shepard Tshuma that Constable Radebe took his R300-00 could not be corroborated. Maqhawe Sibanda (A2) also made a claim that the police took his R500-00 but the identity of the officer who took the money is unknown.
- There are contradictions with regard to assault by Captain Maluleke, Captain Nkosi, Warrant Officer Makoe and Constable Radebe.
- It was also found that the senior members of DPCI could not have known that Captain Maluleke did not follow procedures as it is the duty of the officer in question to comply with the legal Imperatives of the particular operation. He generated a letter to the Director General of Home Affairs and still put his name as an approving authority thereby confirming that he did not want his seniors to either know or become aware of his activities.
- The success report that claim that Lt General Dramat had a meeting with the Zimbabwean police lacks detail about the meeting itself. There is no indication of what was discussed and who was part of the meeting. It is on that basis that a prima facie case cannot be premised on speculation, but need corroborated facts.
- The evidence that suggest that Major General Sibiya was at the scene during the arrest of Zimbabwean nationals is contradicted by cell phone evidence that suggest he was nowhere near the scene. It is clear that members of Crime Intelligence had been trying hard to pull Major General Sibiya into the operation. This can be deduced from the following quotations in their statements, "I saw a figure in a BMW and Warrant Officer Makoe referred to him as General Sibiya" and "I heard that General Sibiya was in a blue BMW". The cellphone record of Major General Sibiya was acquired and analyzed by an expert, it was discovered that at the time the witnesses claim that he was at Fourways Shopping Centre, he was in Pretoria.
- There is no evidence for the involvement of Former General Mzwandile Petros. However he addressed a letter dated 31/05/2011 to Provincial Head of Crime Intelligence in Gauteng appreciating the good work that members of Crime Intelligence have done when they arrested Zimbabwean nationals involved in the murder of Senior Police Officer in Zimbabwe. The letter was as a result of a request made by Former General Toka of Crime Intelligence requesting General Mzwandile Petros to appreciate members of Crime Intelligence.
- There is also no evidence that suggest that Lt General Dramat, Lt General Toka, Lt General Lebeya and Major General Hlatshwayo were involved.



**8. RECOMMENDATION**

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

  
Mr. HI KHUBA  
ACTING PROVINCIAL HEAD  
IPID: LIMPOPO

Recommended/~~not recommended~~

  
Mr. M SESOKO  
ACTING CHIEF DIRECTOR- INVESTIGATIONS AND INFORMATION MANAGEMENT  
IPID: NATIONAL OFFICE  
DATE: 18/03/2014

Approved/~~Disapproved~~

  
MR. RJ MCBRIDE  
EXECUTIVE DIRECTOR: IPID  
DATE: 09/04/2014

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case no:

In the matter between:

THE HELEN SUZMAN FOUNDATION

Applicant

and

MINISTER OF POLICE

First Respondent

LIEUTENANT GENERAL ANWA DRAMAT

Second Respondent

MAJOR-GENERAL BERNING NTLEMEZA

Third Respondent

NATIONAL COMMISSIONER OF THE SOUTH  
AFRICAN POLICE SERVICE

Fourth Respondent

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FOUNDING AFFIDAVIT

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I, the undersigned

FRANCIS ANTONIE

do hereby make oath and say that:

INTRODUCTION

1. I am an adult male director of the Helen Suzman Foundation ("HSF") situated at 2 Sherborne Road, Parktown, Johannesburg.
2. The facts contained in this affidavit fall within my personal knowledge, unless it appears otherwise from the context, and are both true and correct.

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*MP*  
*[Signature]*

3. All legal submissions are made on the advice of HSF's legal representatives.
4. I am duly authorised to depose to this affidavit on behalf of HSF.

#### NATURE OF THIS APPLICATION

5. This is an urgent application in terms of Rules 11, 12 and 18 of the Rules of this Court:

- 5.1 to grant the applicant direct access to this Court so that this matter may be urgently and finally settled;

- 5.2 to review and set aside the decisions of the Minister of Police, the Honourable Mr Nkosinathi Nhleko, ("the Minister"), in December 2014:

- 5.2.1 to suspend Lieutenant General Anwa Dramat, the National Head of the Directorate for Priority Crime Investigation ("DPCI") ("the National Head" or "Lt Gen Dramat") ("the suspension decision"); and

- 5.2.2 to appoint Major-General Berning Ntlemeza as the Acting National Head of the DPCI ("the Acting National Head" or "Maj-Gen Ntlemeza") ("the appointment decision"); and


- 5.3 to declare that the Minister cannot suspend the National Head other than by way of the mechanism provided in sections 17DA(3) and (4) (read with section 17DA(5)).

6. The Minister's decisions are clearly unlawful. The Minister does not have the power to suspend the National Head in the manner in which he has purported to do. This is particularly so taking account of the recent Constitutional Court decision in *Helen Suzman Foundation v President of the*



*Republic of South Africa and Others; Glenister v President of the Republic of South Africa and others* (CCT 07/14, CCT 09/14) [2014] ZACC 32 (27 November 2014) ("the 2014 Judgment") which, *inter alia*, declared section 17DA(2) of the South African Police Service Act, 1995 (as amended) ("the SAPS Act") unconstitutional and deleted same from that Act as from the date of the order handed down on 27 November 2014. The power of the Minister to suspend the National Head is thus now limited under the SAPS Act to suspension in accordance with section 17DA(5), the requirements of which have clearly not been met in this instance as will be discussed below. This was confirmed by the judgment of the Honourable Mr Justice Prinsloo in the High Court of South Africa, Gauteng Division, Pretoria on 23 January 2015 ("the High Court Judgment"), annexed marked "FA1", in which the same relief as sought in this application was granted. The High Court Judgment was delivered pursuant to an urgent application instituted by HSF on 9 January 2015 ("the High Court application").

7. The High Court Judgment is comprehensive and provides no room for doubt as to the legal position. The Minister and the third respondent have, however, sought leave to appeal against the High Court Judgment to the Supreme Court of Appeal. The leave to appeal application dated 23 January 2015 is annexed marked "FA2". Even if the leave to appeal application is dismissed within a matter of a week or two, the Minister may still approach the Supreme Court of Appeal with a petition for special leave to appeal, which could take months to resolve. If leave is granted at any time on any point, this would delay matters by many months. Even if leave is refused or any appeal is dismissed, the Minister would then no doubt attempt to approach the Constitutional Court. The delay in having the matter finally





adjudicated through the ordinary appeal process is highly prejudicial to the institution and the work of the DPCI and may cause irreparable harm not only to the DPCI itself, but the public's confidence in it. This would be an intolerable state of affairs for our constitutional democracy, particularly having regard to the centrality of the DPCI's mandate in fighting corruption and organised crime at the highest levels.

8. The need for legal certainty in the particular circumstances of this case cannot be overstated. This Court took the extraordinary step in the 2014 Judgment to sever unlawful legislative provisions (provisions upon which the first respondent nevertheless relied when he unlawfully suspended Lt Gen Dramat) in view of the *"need and urgency to put an end to the uncertainty surrounding the DPCI"* (para [108]). The Minister's unlawful conduct has now precipitated the need for reassertion of that certainty which is invaluable to the protection of the rule of law and to avoid further political interference and infractions on the DPCI's independence. For these reasons and other grounds set forth in this application, it is imperative that this Court finally resolves the dispute in this matter without any further delay.

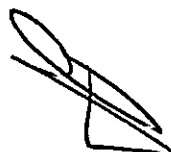
#### THE PARTIES

9. The Applicant in this application is HSF. HSF was established in 1993, and is a non-governmental organisation that's objectives are *"to defend the values that underpin our liberal constitutional democracy and to promote respect for human rights"*.
10. HSF approaches this Court, firstly, in its own interest. It is an organisation that is primarily concerned with the principles of democracy and constitutionalism, as well as the rule of law. These are all implicated by the



unlawful decisions of the Minister to suspend Lt Gen Dramat and to appoint Maj Gen Ntlemeza. The Minister has acted unlawfully and, moreover, has failed in his constitutional duty to protect the independence of the DPCI and uphold the rule of law in South Africa.

11. HSF also approaches this Court in the public interest. All South Africans have an interest in the rule of law, the requirements for a properly functioning constitutional democracy, and, in particular, the urgent steps necessary to root out corruption in our nascent democracy. This Court has held in *Glenister v the President of the Republic of South Africa and Others* 2011 (3) SA 347 (CC) at para [166] ("*Glenister*") that *"corruption threatens to fell at the knees virtually everything we hold dear and precious in our hard-won constitutional order. It blatantly undermines the democratic ethos, the institutions of democracy, the rule of law and the foundational values of our nascent constitutional project. It fuels maladministration and public fraudulence and imperils the capacity of the state to fulfill its obligations to respect, protect, promote and fulfill all the rights enshrined in the Bill of Rights. When corruption and organised crime flourish, sustainable development and economic growth are stunted. And in turn, the stability and security of society is put at risk."*
12. This Court has held in the 2014 Judgment that *"[o]ur ability as a nation to eradicate corruption depends on the institutional capacities of the machinery created to that end"* (para [106]) and that the *"agency dedicated to the containment and eventual eradication of the scourge of corruption"* (para [2]) is the DPCI, which thus requires substantial constitutional protections to ensure its functional and operational independence.

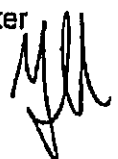


13. The above cases emphasise that adequate independence of the DPCI is critical to its constitutional project. It is imperative that the DPCI is not subject to or seen to be subject to undue executive interference, especially following the High Court Judgment which confirmed that there was indeed unlawful action by the executive in this matter.
14. The First Respondent is the Minister, acting in his official capacity. The First Respondent's office is located at the Department of Police at 231 Pretorius Street, 756-7th floor Wachthuis Building, Pretoria, and these papers will be served on the State Attorney at 10<sup>th</sup> Floor, North State Building, Corner of Market and Kruis Streets, 95 Market Street, Johannesburg. The First Respondent is cited in his official capacity as the member of the National Executive responsible for the administration of the SAPS Act and as the official who took the suspension and appointment decisions.
15. The Second Respondent is Lieutenant General Anwa Dramat, both in his private capacity and in his official capacity as the National Head of the DPCI. These papers will be served on Lt Gen Dramat's attorneys, Riley Incorporated located at 212 Rosmead Avenue, Wynberg 7800.
16. The Third Respondent is Major-General Berning Ntlemeza both in his personal capacity and in his official capacity as the Acting National Head of the DPCI. The Third Respondent's office is located at 1 Promat Building, Creswell Street, Silverton, Pretoria.
17. The Fourth Respondent is the National Commissioner of the South African Police Service acting in her official capacity. The Fourth Respondent's office is located at Wachthuis, 229 Pretorius Street, 7<sup>th</sup> Floor, Pretoria.



**FACTUAL BACKGROUND**

18. On 10 December 2014, Lt Gen Dramat was informed in a notice from the Minister that the latter contemplated Lt Gen Dramat's suspension ("notice of suspension"). Importantly, the notice of suspension invoked sections 17DA(2)(a)(i) and (iv) of the SAPS Act as the sole basis of the proposed suspension. The notice gave Lt Gen Dramat five days to furnish reasons as to why the Minister should not provisionally suspend him pending an internal investigation. This notice is attached marked "FA3".
19. Lt Gen Dramat's attorneys, Riley Incorporated, replied to the Minister by way of a letter dated 12 December 2014 ("the 12 December 2014 letter") attached marked "FA4", stating that it was clear from the notice of suspension that the Minister was exercising powers in terms of section 17DA(2)(a)(i) and (iv) of the SAPS Act and that, as a result of the 2014 Judgment, the reference to "(2)" in section 17DA(1) and the whole of section 17DA(2) were deleted from the SAPS Act. The 12 December 2014 letter stressed that any threatened suspension on the basis of those sections was unlawful.
20. The letter concluded by informing the Minister that he did not in the circumstances have the power to suspend the Head of the DPCI. The letter also refuted the factual allegations against Lt Gen Dramat.
21. On 23 December 2014, the Minister nevertheless decided to place Lt Gen Dramat on a precautionary suspension for 60 days during which an enquiry (of an unknown scope) would apparently be conducted. The purported suspension was effected by way of a letter from the Minister to Lt Gen Dramat dated 23 December 2014 and attached marked "FA5". The Minister



stated that he had considered the representations contained in the 12 December 2014 letter as well as those contained in both of Lt Gen Dramat's sworn statements.

22. The Minister further stated that he had considered the objection to his authority to suspend Lt Gen Dramat based on the decision in the 2014 Judgment and particularly the deletion of section 17DA(2). He asserted that the deletion of this section did not preclude him from suspending the National Head as he *"found nothing in the judgment which precludes [him] from exercising [his] powers as [Lt Gen Dramat's] employer to place [him] on precautionary suspension."*

23. The Minister now acknowledged that subsection 17DA(2) (on which the 10 December 2014 letter was premised) has indeed been struck down and could not be used as a basis for the suspension. He also readily admitted that he has not sought to suspend Lt Gen Dramat under sections 17DA(4) and (5) of the SAPS Act. As no proceedings of a committee of the National Assembly had commenced as at 23 December 2014 or to date, sections 17DA(4) and (5) were indeed applicable. The Minister instead averred that in the absence of section 17DA(2), the applicable provisions available in law are to be found in the Public Service Act, 1994 ("Public Service Act"), the Public Service Regulations and the Senior Management Services Handbook ("SMS Handbook") ("alternative provisions"). He asserted that these alternative provisions empowered him to place the National Head on precautionary suspension and grounded the suspension decision.

24. As will be discussed more fully below, this understanding of the Minister's powers to suspend the National Head is clearly incorrect. Section 17DA(1) makes it plain that "[t]he National Head of the Directorate shall not be





*suspended or removed from office except in accordance with the provisions of subsections (3) and (4)."* It is clear that the provisions of this section were designed, in accordance with the objects of Chapter 6A of the Act and the constitutional imperative of structural and operational independence, to protect the DPCI from undue political interference by limiting the circumstances in which the Minister could suspend the National Head.

25. The Minister is thus clearly bound by the provisions of these sections when it comes to the suspension of the National Head and it is not open to him to suspend under the alternative provisions as he has purported to do here.
26. Lt Gen Dramat responded to the Minister by way of a letter dated 24 December 2014 ("the 24 December 2014 letter"), which pointed out the unlawfulness of the suspension decision and set forth numerous facts which aggravated the illegality, annexed marked "FA6".
27. On 30 December 2014, the HSF's legal representatives wrote to the Minister requesting reasons for, and various information pertaining to, the suspension and basis for the suspension and appointment decisions ("the 30 December 2014 letter"). We attach this letter hereto marked "FA7".
28. The Minister has not replied to the 30 December 2014 letter as at the date of deposing to this affidavit.
29. It is clear from the reasons given by the Minister that he was purportedly acting under the alternative provisions when taking the suspension decision. Yet, it is clear from section 17DA(1) that no suspension may take place other than by way of sections 17DA(3) and (4). That is really the end of the matter.

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**URGENCY**

30. The HSF approaches this Honourable Court on an urgent basis.
31. It is clear that the appointment of a new Acting National Head in circumstances where the suspension of Lt Gen Dramat was unlawful (and plainly inconsistent with the pronouncements of this Court in the 2014 Judgment) must urgently be overturned, Lt Gen Dramat must be restored to his position and the declaratory relief to prevent further unlawful Ministerial interference should be finally decided without delay.
32. The Minister himself recognises the urgency associated with the need for certainty in respect of the relief sought in this application. The Minister acknowledged the extreme urgency of this case in the High Court application, as did the Honourable Mr Justice Prinsloo in the High Court Judgment. So much so that the matter was heard just over a week after the launch of the proceedings, at 8am on 19 January 2015, and judgment rendered on 23 January 2015.
33. As recognised by this Court in the 2014 Judgment, the DPCI is an indispensable investigative organ which must be given substantial protections to carry out its mandate. The need to insulate the DPCI from political interference is attributable in part to the fact that at the core of its mandate is the requirement to investigate high-level and high-profile corruption and organised crime cases, including those which implicate important political figures.
34. Moreover, any uncertainty in relation to the scope of executive power over the functioning of the DPCI must be removed without delay not only to preserve the operations of the DPCI, but to restore public confidence in the



DPCI as an institution. Members of the DPCI must also not operate under a cloud of potential executive interference: the very threat of interference has the real potential to impede their execution of their constitutional mandate.

35. The importance of the fight against corruption, as emphasised in *Glenister* and the 2014 Judgment, make it imperative that any threat to the efficacy and operation of the DPCI and any opportunity for further political interference in the functioning of the DPCI be addressed as a matter of urgency. The suspension of Lt Gen Dramat in the circumstances and in the manner which it has been effected here by the National Executive (the very organ against whose interference the Courts have cautioned), must be addressed without delay. This matter is not about a defence of Lt Gen Dramat specifically. This case entails the core constitutional question: do we live in a society where our government can, by effectively bypassing the requirements laid down by law for the lawful suspension of the National Head of the DPCI, control who is to lead one of South Africa's most important crime-fighting units? If the answer is no – and it must be no – then the protection of the rule of law requires prompt and clear action from the Court.

36. The urgency in this matter cannot be overstated. The DPCI is an indispensable investigative organ, whose reach extends to the highest offices in South Africa, which must be given substantial protections to carry out its mandate to combat corruption and organised crime.

37. The National Head occupies the central role in the corruption and organised crime scheme of the DPCI and his protection from political interference is thus paramount. Under the SAPS Act, it is the National Head who, *inter alia*:



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- 37.1 manages and directs the DPCI, including its members and the conduct of investigations under the DPCI's auspices (sections 17C(2)(a) and (3) of the SAPS Act);
- 37.2 is in control of the DPCI's funds and expenditure (section 17H(6) of the SAPS Act);
- 37.3 appoints the staff of the DPCI (sections 17C(2)(b) and 17DB(b) of the SAPS Act);
- 37.4 determines the number and grading of posts in the DPCI (section 17DB(a) of the SAPS Act);
- 37.5 has a veto power on the transfer or dismissal of any Deputy National Head, Provincial Head or administrative staff of the DPCI (section 17CA(20) of the SAPS Act) - any disciplinary steps against members of the DPCI are, in any event, to be finalised under the auspices of the National Head within the DPCI's structures (section 17CA(19) of the SAPS Act);
- 37.6 determines which national priority offences (and other crimes) are to be addressed by the DPCI (section 17D(1)(a) of the SAPS Act, after its amendment by the 2014 Judgment, as well as section 17D(2) of the SAPS Act);
- 37.7 determines under whose mandate (the DPCI or other parts of the SAPS) a particular crime falls and designates who is to investigate that crime (sections 16(3) and (4)(c) of the SAPS Act); and
- 37.8 heads the Operational Committee established under section 17J of the SAPS Act.

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38. It is clear that the National Head is at the very heart of the DPCI's ability to function effectively to fulfil its constitutional mandate. The National Head of the DPCI makes dozens of critical operational, institutional and financial decisions which may have a substantial bearing on on-going sensitive and high profile investigations and pending cases, the rights and expectations of members of the public, and the very structure and operational integrity of the DPCI, which would be difficult or impossible to reverse. All these critical decisions, about the commencement, conduct and termination of investigations, resource allocation, suspension and discipline of staff, and other work of the DPCI, are now being made by the third respondent in his purported capacity as Acting National Head.
39. It is clear from the available evidence that the third respondent has been anything but placid in his new position, a position to which he is in law not entitled. As I now demonstrate, he has zealously already taken numerous far-reaching decisions immediately following Lt Gen Dramat's suspension. It is clear from these activities that irreparable harm is potentially being caused within and to the DPCI and the public, harm which mounts with every day that passes while the uncertainty around the suspension and appointment decisions continues. This situation is particularly untenable in light of the fact that the DPCI now has potentially two heads: one who in his acting capacity is taking a number of material decisions in the space created by Lt Gen Dramat's unlawful suspension; and another who, as the High Court has already confirmed, would otherwise be the Head of the DPCI but for his unlawful suspension and the efforts now by the Minister to prolong that suspension through the appeal process.

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### The suspension of Major General Sibiya

40. I recently came into possession of a copy of the Notice for Intended Precautionary Suspension issued to Major General Shadrack Sibiya dated 5 January 2015 ("the Suspension Notice"). The Suspension Notice was signed by the third respondent in his capacity as Acting National Head of the DPCI. I attach the Suspension Notice to this affidavit marked "FA8".

41. On 14 January 2015, DPCI spokesperson, Brigadier Hangwani Mulaudzi confirmed in newspaper reports that the Suspension Notice was withdrawn on Tuesday 13 January 2015. A copy of the relevant newspaper report is attached marked "FA9".

42. A new Notice of Intended Precautionary Suspension and signed by the third respondent ("the 14 January notice") was, however, issued and delivered to Maj General Sibiya on 14 January 2015. A copy of the 14 January notice is attached marked "FA10". The 14 January notice clearly demonstrates that the third respondent will not be dissuaded from his attempts to suspend Maj Gen Sibiya. Pursuant to the 14 January notice, Maj Gen Sibiya has now been suspended from office with effect from 20 January 2015, as stated by Brigadier Hangwani Mulaudzi, the spokesperson for the DPCI, as reported by News 24 on 21 January 2015, a copy of which is annexed hereto marked "FA11".

### Other decisions taken by the third respondent

43. Worryingly, there have been numerous newspaper reports detailing the alarming decisions taken by the third respondent in his first month as Acting National Head of the DPCI. In an article published in *Die Beeld* on 13 January 2015, attached marked "FA12", the third respondent is reported to



have "demanded that the DPCI structure be presented to him at a meeting at which changes would be considered" and "transferred" members of the DPCI including Colonel Zama Basi (head of integrity) and Colonel Mike Reddy (head of finances). This is indicative of a disturbing state of affairs: if the third respondent continues to change the structure of the DPCI it may irreparably compromise the DPCI as an institution as well as its work.

44. The article further reported that the third respondent has replaced the former DPCI spokesperson, Captain Paul Ramaloko, with the third respondent's own spokesperson from Limpopo, Brigadier Hangwani Mulaudzi. Brigadier Mulaudzi has been quoted in that article as saying that strict action will be taken against those who taint the third respondent's good name with rumours.
45. The *City Press* reported on 11 January 2015 that twelve senior officers and heads of "forums" which deal, *inter alia*, with corruption cases have been replaced by the third respondent from the time that he was appointed in late December 2014 to 11 January 2015. We attach the *City Press* article marked "FA13". The same article reports that the third respondent travelled to Cape Town in the week of 11 January 2015 to collect the docket in relation to the investigation of the former intelligence boss Richard Mdluli which case was previously being overseen by the second respondent.
46. *Die Beeld* further reported in the 13 January article (attached above as "FA12") that the third respondent was on the verge of making the decision to shut down the Tactical Operations Management Section ("TOMS") of the DPCI at the time the article was going to print. This impending decision caused a massive outcry from the private sector (which works closely with the TOMS). Whilst the decision to shut down the TOMS may not, to date,

  
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have been taken, there is plainly an apprehension of irreparable harm and, in any event, the mere threat of such a drastic decision hamstrings the ability of the TOMS to carry out its mandate.

47. Also, as reported in *Die Beeld* article published on 13 January 2015, is the decision of the third respondent to ban recording devices and cell-phones in all meetings at which he is present and further, to institute disciplinary action against information "leaked" to the press.

48. The National Head's suspension, and the decisions taken by the Acting National Head have an immediate impact on high-profile investigations, which may be difficult or impossible to undo – quite apart from the damage to the reputation, integrity and independence of the DPCI.

49. The Acting National Head is, on a daily basis, taking decisions which inflict substantial and irreparable harm on the DPCI's operations, work and personnel – and even if in due course the Acting National Head were to demonstrate that each of these media reports contains fabrications in every respect, the mere fact of these reports and the growing sense of disquiet that they must be generating within DPCI and beyond, confirms the need for urgent clarity to be provided by this Court in respect of the suspension and appointment decisions. The public interest in such clarity is, with respect, overwhelming.

**Undue influence, disruption of existing cases and dysfunctionality within DPCI**

50. It is thus imperative that the National Head's functioning is not unlawfully compromised or impeded for another day, and the attempts to do so thus far call for urgent reversal. The National Head must be, and must be perceived

*[Handwritten signatures: A, K, YH, MP]*

to be, independent of executive and political influence. If the National Head is unlawfully displaced, then this may disrupt or compromise ongoing investigations, risk disruption and dysfunctionality within the DPCI, and creates a perception among the public and members of the DPCI that the DPCI is vulnerable to executive interference or political influence.

51. The Minister's political interference with the office of the National Head is further illustrated by recent correspondence between the first and second respondent's legal representatives.
52. The correspondence consists in the following. First is a letter which the second respondent's legal representatives sent to the Minister on 16 January 2015, annexed marked "FA14".
53. As is clear from paragraphs 5 and 6 of this letter, the second respondent (in response to a proposal by the Minister to convene a meeting between the first and second respondents on 19 January 2015) states that he does not in any way wish to impede the urgent adjudication of the merits in the main application which, due to a postponement, was being heard on the very day proposed by the Minister. It is also clear from this letter that the State has denied the second respondent funding for the purposes of defending himself in legal fora (including challenging the suspension).
54. On 16 January 2015, the Minister's legal representatives responded to the above letter in which they insisted that the meeting between the first and the second respondents proceed on Monday, 19 January 2015 and that the second respondent should not have any legal representation. It is also clear that the Minister is, under the sword of the suspension, seeking to procure a "*consensus agreement*" with the second respondent to effect the second






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respondent's early retirement, and put in effect permanently what the Minister sought unlawfully to do through the suspension. A copy of the Minister's letter is annexed marked "FA15".

55. On 18 January 2015, the second respondent's legal representatives responded in a fax message sent to the Minister's legal representatives ("the 18 January 2015 letter"). Paragraph 14 of the 18 January 2015 letter states that *"our client will not be forced or intimidated into meeting with the Minister on his own and or without his legal representatives being present."* The 18 January 2015 letter is annexed marked "FA16". It is telling that the second respondent's legal representatives were forced to make the second respondent's position, regarding the proposed meeting, so clear.

56. Moreover, worryingly, as Lt Gen Dramat points out in the 24 December 2014 letter (written in response to the suspension decision), annexed previously as annexure FA6, the suspension decision followed on Lt Gen Dramat calling *"for certain dockets involving very influential people to be brought or alternatively centralised under one investigating arm and this has clearly caused massive resentment towards me"* (para 6). Further, Lt Gen Dramat states that he is *"also aware that in the next two months there will be a drive to remove certain investigations that fell under [his] 'watch', reallocate certain cases and that unfortunately, certain sensitive investigations may even be closed down"* (para 12). He also lists attempts to muzzle him and push him out, as well as the negative impact on the work and morale of the members of the DPCI of the continuation of unlawful executive conduct (paras 13 and 14). It is also clear that the undue executive influence placed on Lt Gen Dramat has taken an enormous personal and professional toll on him.

    
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57. What is apparent from this correspondence is that the Head of the DPCI himself perceives his suspension to be a response to the independent discharge by him of his duties in respect of certain high-profile cases. The objective behind his suspension is furthermore perceived by him to be an effort at interference in respect of and/or removal of certain investigations.
58. On 23 January 2015, the second respondent's legal representatives sent a letter to the Minister, annexed marked "FA17" ("the 23 January 2015 letter"). Paragraph 3 of the 23 January 2015 letter states *"The effect of the judgment is that Lt Gen Dramat will resume his duties on Monday 26 January 2015. We assume that Lt Gen Dramat will be allowed to exercise his duties, functions and responsibilities unhindered and without any interference. Lt Gen Dramat will inevitably be entitled to restore structures, procedures and investigations retrospectively from the date of his purported suspension."*
59. On 24 January 2015, the Minister's legal representatives replied to the 23 January 2015 letter ("the 24 January 2015 letter"), such reply is annexed marked "FA18". Paragraph 3.1 of the 24 January 2015 letter states *"Our client denies your interpretation of the effect of the judgment (by Judge Prinsloo delivered on 23 January 2015), as outlined in paragraph 3 of your [23 January 2015] letter. We in this regard refer you to the order on page 52 of Judge Prinsloo's judgment"*.
60. The Minister's attitude is clear that he does not wish to see the second respondent return to office.
61. In these circumstances, I respectfully submit that the public interest overwhelmingly requires and the interests of justice dictate that the unlawfulness of the suspension and appointment decisions must be finally

    
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resolved as soon as possible. Nothing less than the proper functioning of a constitutionally entrusted office and the public's confidence therein depends on it.

## **DIRECT ACCESS**

62. In light of the above facts and factors, the HSF submits this Court should grant it direct access to seek the relief in the notice of motion and that this Court should hear this matter on an extremely urgent basis. In any event, all other relevant considerations point in favour of granting direct access, as set forth below.

### **Prospects of success**




63. The merits of the HSF's legal challenge are very strong, as is borne out by what is set forth in this affidavit and in the High Court Judgment. The Minister's submissions on the merits are clearly devoid of merit and the attempt at appealing the High Court's decision is transparently an effort to delay the finalisation of this matter.

### **The action is manifestly unconstitutional**

64. As will be discussed below, the Minister's decisions are plainly unlawful and fail to give effect to the 2014 Judgment and undermine the very essence of our constitutional structure.

### **The case deals with crisp, narrow issues that this Court and other courts have considered previously**

65. The crisp legal issue before the Court is whether the Minister is empowered to suspend the National Head without the involvement of Parliament. There are no material disputes of facts which bear on the legal issues and the legal

    
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issues involve the objective consideration of this Court's own reasons and order in the 2014 Judgment.

66. The answer to the central legal questions is plain from the legislation, read in light of the Constitution, and was considered by this Court in the 2014 Judgment. The Court also has the benefit of another court's extensively reasoned views, in the form of the High Court Judgment.

67. The 2014 Judgment struck down section 17DA(2) which provided for the suspension of the National Head by the Minister and all references to that subsection. A unilateral ministerial power of suspension thus did not exist from the time of the 2014 Judgment.

**An impasse that needs to be solved speedily in view of the urgent need for resolution of this matter**

68. This blatantly unlawful suspension, together with the uncertainty created, cannot be allowed to continue. Every day that the suspension continues the DPCI is open to threats that could fundamentally jeopardise future operations and the overall effectiveness of the DPCI and the fight against corruption. Furthermore, decisions are taken each day in the space created by the unlawful suspension of Lt Gen Dramat, and these decisions have consequences within and beyond the DPCI which must be arrested immediately.

69. The urgency involved in having the Minister's decisions overturned is clear in this case and supported by both the 2014 Judgment and the High Court Judgment. It is imperative to make all efforts to save this vital institution and to restore the DPCI to its proper operation, which is critical to our constitutional democracy.



70. The public interest in having these unlawful decisions overturned and the importance to our constitutional democracy of having this matter rectified as soon as possible support this application for direct access to this Honourable Court.

#### THE ABSENCE OF THE POWER TO SUSPEND

Section 17DA(2) has been excised and the alternative provisions are inapplicable to the National Head

71. The Minister's interpretation of the effect of the 2014 Judgment and his reliance on the alternative provisions are incorrect.
72. The SAPS Act not only established the DPCI, but also regulates the appointment, remuneration and conditions of service of members of the DPCI – including the suspension and/or removal of the National Head of the DPCI. The National Head is a "member of the service" for the purposes of the Public Service Act. Section 2(2) makes it clear that, where the employment of a member of the service, ie a member of the DPCI, is governed by other legislation, such other legislation will apply. The fact that suspension and/or removal of the National Head of the DPCI is expressly governed by the SAPS Act, therefore excludes such extensive and invasive powers from being utilised by the Minister through recourse to the Public Service Act or any regulations or guides published thereunder.
73. It is clear from the above that the SMS Handbook would not be applicable to the suspension and/or removal of the Head of the DPCI as this is governed by the SAPS Act. It is noteworthy, however, that paragraph 2.3 of chapter 7 of the SMS Handbook, upon which the Minister relies and in accordance with which he purportedly acted in suspending Lt Gen Dramat, states "*this Code and Procedure applies to the employer and all members. It does not,*

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*however, apply to the employer and members covered by a disciplinary code and procedure contained in legislation or regulations."* The disciplinary procedure in the present case, specifically the suspension and/or removal of the National Head of the DPCI, is covered by the SAPS Act and chapter 7 thus does not apply to Lt Gen Dramat.

74. The SMS Handbook merely confirms that which the SAPS Act makes abundantly clear. Section 17DA(1) of the SAPS Act unambiguously provides that the Head of the DPCI shall not be suspended or removed from office except in accordance with the provisions of subsection (3) and (4). The Minister's reliance on any other legislation to justify his actions is thus plainly misplaced.

75. The untrammelled power to suspend and/or remove by the Minister was partly what grounded the Court's concerns in the 2014 Judgment. Moreover, section 17DA was introduced in 2008 and amended in 2012 and thus constitutes specific, later legislation which supersedes any powers granted under the Public Service Act, together with any regulations thereunder.

76. The constitutional requirement of job security for members of the DPCI was articulated in *Glenister* at para 222, and approved at para 89 of the 2014 Judgment:

*"At the very least the lack of specially entrenched employment security is not calculated to instil confidence in the members of the DPCI that they can carry out their investigations vigorously and fearlessly. In our view, adequate independence requires special measures entrenching their employment security to enable them to carry out their duties vigorously." (Emphasis added)*

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77. Subsections 17DA(3) to (6) deal with the suspension of the National Head by the Minister, flowing from a possible removal process initiated by a Committee of the National Assembly. Thus, although the Minister still has the power to suspend in terms of section 17DA(5)(a), this power of suspension may only be exercised after the start of proceedings of a Committee of the National Assembly for the removal of the person concerned. As the Minister himself tacitly acknowledges and the High Court's judgment confirms, no proceedings by a Committee of the National Assembly have commenced.

78. The Minister therefore did not, at any relevant time, have the power to suspend Lt Gen Dramat under section 17DA(2) and has clearly not done so in accordance with section 17DA(5) of the SAPS Act. Again, it is thus obvious that the suspension is clearly unlawful. The Minister has attempted to bypass the process stipulated in the SAPS Act and which process requires the involvement of Parliament – through proceedings of a Committee of the National Assembly – as a precursor to any suspension decision.

79. The power to suspend set forth in section 17DA(5) is, in substance, precisely the same as the powers of suspension given to the President of the Republic of South Africa in respect of other constitutionally entrenched institutions whose independence is paramount, such as the Public Protector, the Auditor-General, commissioners of the Human Rights Commission, the Independent Electoral Commission and the Commission for Gender Equality (under section 194 of the Constitution).

No competent appointment of the Acting National Head could have been made


80. It is also clear from section 17CA(12) that the Minister may appoint an Acting National Head in very limited circumstances. Obviously, an Acting National Head cannot be appointed if Lt Gen Dramat was not lawfully suspended. In the circumstances, the appointment decision must suffer the same fate as the suspension decision.

#### **The Minister's justification**

81. The absence of the power to suspend means that the suspension decision cannot be upheld, regardless of any factual averments by the Minister. No factual basis has, in any event, been proffered for the suspension decision.
82. The rationale for the suspension and appointment decisions – and the attempt by the Minister to bypass the provisions of the SAPS Act by recourse to the alternative provisions – is all the more concerning having regard to the fact that the Minister has been aware of the allegations against Lt Gen Dramat since at least 2011 (which is the reason that certain questions were posed to Lt Gen Dramat in Parliament, as set forth on page 2 of the suspension notice), the IPID investigation into the allegations was initiated years ago, Lt Gen Dramat has been aware of the IPID investigations since September 2013 (see paragraph 2 of the October 2013 statement) and the Minister was in possession of the IPID report since at the very latest (even on the Minister's version) September 2014 – although I understand that the IPID report was actually already available since March 2014. Yet, it is only in December 2014, many weeks later, on the eve of the annual holidays, that the Minister saw fit to take any of the steps which he has now purported to take. If the allegations and findings were so serious as to require suspension of Lt Gen Dramat in the last moments of 2014, it is unclear why the "investigation" was not launched earlier by the Minister. Most pertinently, it is






unclear why Lt Gen Dramat needed to be suspended now when inquiries and investigations had taken place over many months and years.

83. The Minister himself admits in his answering affidavit in the High Court application (the relevant parts of which are annexed marked "FA19") that the independent investigation into the second respondent's conduct by the IPID has cleared the second respondent in respect of the Zimbabwe renditions. The Minister blandly asserts in paragraph 21 of his answering affidavit that "*I have noted that it has been mentioned in the media and elsewhere that the second respondent had been exonerated by IPID investigation. These assertions are made without facts or appreciation of why such a conclusion was made by IPID.*"

84. The Minister did not take the High Court or the applicant into his confidence to explain precisely what "*facts or appreciation*" would cast a different light on the recommendations of IPID. The Minister has not attached any of the documents on which he relies to ground the suspension in his answering affidavit: the IPID report itself, the witness statements, relevant documentation and "*file*" ("*the referenced documents*"). Despite being required to do so under a notice in terms of rule 35(12) dated 15 January 2015 (annexed marked "FA20"), sent two hours after the applicant received the Answering Affidavit, the Minister has not produced the referenced documents ("*the Rule 35(12) documents*"). Instead, in a reply to the notice, transmitted in the late afternoon on 16 January 2015 (annexed marked "FA21"), the Minister refused to hand over the Rule 35(12) documents on the basis that:

84.1 the applicant's case is a narrow legal one (para 3 of that reply); and



84.2 the documents should be "*kept confidential*".

85. The first reason amounts to an admission that the referenced documents on which the Minister places significant reliance in the Answering Affidavit are irrelevant to the issues in these proceedings. If this is the case, then it is difficult to understand why the Minister referred repeatedly to them in his affidavit. In any event, as our courts have held, once a reference to a document is made in an affidavit, it must be produced, and no enquiry into relevance takes place.

86. Confidentiality is also not a defence to disclosure in terms of Court rules. In any event, even if the information is extremely sensitive, disclosure remains mandatory, but an appropriate confidentiality regime may be put in place.

87. Regardless of the insupportable reasons for failure to disclose, the effect of such failure is clear. Rule 35(12) provides that "[a]ny party failing to comply with such notice shall not, save with the leave of the court, use such document or tape recording in such proceeding". The Minister did not seek such leave from the High Court and his counsel did not attempt to argue orally with reliance on such documentation before Prinsloo J. In the circumstances, there is no evidence whatsoever from the Minister to gainsay the applicant's averment that the independent investigation into the second respondent's conduct by the IPID has cleared the second respondent in respect of the Zimbabwe renditions.

**The constitutional need to limit the scope for undue executive interference**

88. The scope for executive action against members of the unit constitutionally mandated with investigation of corruption (which would include corruption by high-profile officials and members of the executive) must clearly be



interpreted narrowly, as our courts have held, to limit the potential for undue executive interference which could undermine constitutional objectives. Accordingly, any authority in statutory provisions must be interpreted to import less, not more, interference, particularly in areas such as suspension and/or removal, which are obviously prone to abuse. In the present circumstances, moreover, the statutory provisions permit of no ambiguity whatsoever: they expressly and in imperative terms prohibit suspension other than by way of sections 17DA(3) and (4) of the SAPS Act.

#### RELIEF

89. The suspension and appointment decisions thus plainly offend against the SAPS Act, the principle of legality and the Promotion of Administrative Justice Act, 2000. They must be declared unlawful. The only reasonable remedy is to set aside both decisions *ab initio* with immediate effect, and to declare that the Minister lacks any authority to suspend the National Head in the absence of a parliamentary removal process.
90. The High Court Judgment reiterates the fact that it is vital that the National Head's functioning should not be unlawfully compromised or impeded for a moment longer. The *status quo* cannot continue in the light of serious, on-going threats to the very integrity of the DPCI. Public confidence in the DPCI cannot help but wane, when the effects of conduct which has been found to be plainly unlawful continues to wreak havoc on the structures and investigations of the DPCI, while an appeal with no merit works its way through the system. The point of law in this application is of fundamental importance to the rule of law and our constitutional democracy. Its import goes far beyond the facts of this case and this Court, as the ultimate

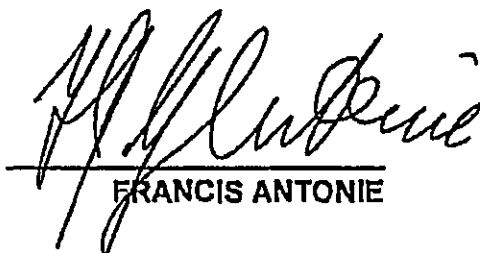


guardian of our Constitution, should, the applicant submits, definitively resolve this matter as expeditiously as possible.

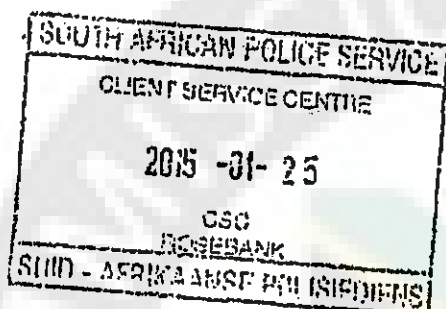
91. The applicant is taking the necessary precaution to oppose the Minister's application for leave to appeal before Prinsloo J, and will seek at the hearing before Prinsloo J for his order to be implemented (in terms of Rule 49 of the Rules of Court) ("the Rule 49 application") pending the outcome of the appeal and/or the direct access application before this Court. It is impossible to know, at this stage, when the Rule 49 application will be heard and how soon thereafter judgment in that application will be handed down. In any event, under section 18 of the Superior Courts Act, 2013, any interim enforcement order is itself automatically appealable and such order is suspended pending the appeal. I point out that the second respondent's suspension was for a period of 60 days and is due to expire in late February. On the Minister's version, however, another suspension may well be imposed thereafter.
92. The applicant furthermore undertakes to keep this Court apprised of any developments in the Rule 49(11) application and the leave to appeal application.

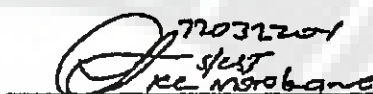
WHEREFORE, the applicant prays that this Court grants the relief sought in its notice of motion.

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FRANCIS ANTONIE

I hereby certify that the deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and sworn before me at ROSEBANK on 25 January 2015, the regulations contained in Government Notice no R1258 of 21 July 1972, as amended, and Government Notice no R1648 of 19 August 1977, as amended, having been complied with.



  
COMMISSIONER OF OATHS  
Full names: KWENA GEORGE MONBANE  
Address: 15 STURGEON AVENUE ROSEBANK  
Capacity: POLICE OFFICER

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

/ES

DELETE WHICHEVER IS NOT APPLICABLE  
 (1) REPORTABLE: YES / NO  
 (2) OF INTEREST TO OTHER JUDGES: YES / NO  
 (3) REVISED ☒  
 DATE 22/1/15 SIGNATURE *[Signature]*

CASE NO: 1054/2015

DATE:

IN THE MATTER BETWEEN

THE HELEN SUZMAN FOUNDATION

APPLICANT

AND

THE MINISTER OF POLICE

1<sup>ST</sup> RESPONDENT

LIEUTENANT GENERAL ANWA DRAMAT

2<sup>ND</sup> RESPONDENT

MAJOR-GENERAL BERNING NTLEMEZA

3<sup>RD</sup> RESPONDENTNATIONAL COMMISSIONER OF THE  
SOUTH AFRICAN POLICE SERVICE4<sup>TH</sup> RESPONDENTJUDGMENTPRINSLOO, J

- [1] The applicant (also, at times, referred to as "HSF") applies for certain declaratory relief flowing from the suspension by the first respondent ("the Minister"), on

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23 December 2014, of the second respondent (without being disrespectful, but for the sake of brevity, I will refer to him as "Dramat") from his position as the National Head of the Directorate for Priority Crime Investigation ("DPCI").

The applicant also applies for ancillary declaratory relief, *inter alia*, flowing from the appointment by the Minister of the third respondent as Acting National Head of the DPCI following the Minister's suspension of Dramat.

[2] Before me, Mr Unterhalter SC, assisted by Mr Du Plessis, appeared for the applicant and Mr Mokhari SC, assisted by Ms Seboko, appeared for the first respondent.

[3] Dramat, although duly cited by the applicant, did not take an active part in the proceedings although he did, through his attorney, file a written notice to abide on 13 January 2015.

Attached to the founding papers, there is also a letter from Dramat's attorney, dated 12 December 2014, written to the Minister in response to the latter's notice of "contemplated provisional suspension" to Dramat dated 9 December 2014. In this letter to the Minister, Dramat's attorney also challenges the lawfulness of the intended suspension of his client.

[4] The third and fourth respondents did not take part in the proceedings.

[5] The matter was enrolled before me as an urgent application on Thursday 15 January 2015. On that occasion the question of urgency was challenged on behalf of the



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Minister, not because the latter felt that the case was not urgent, but because of the technical objection that the case was enrolled for a Thursday instead of a Tuesday, in terms of the existing Practice Directive, and insufficient time was given to the Minister to file his opposing affidavit and heads of argument.

During an adjournment, the question of urgency was resolved, and the Minister was afforded an opportunity to file his opposing papers and heads of argument which were given to me over the week-end of 17 and 18 January. The case was postponed until 19 January, when the merits of the case were argued before me.

Brief notes on the chronological sequence of events

- [6] On 9 December 2014, the Minister wrote a letter to Dramat under the following heading:

"Contemplated Provisional Suspension of the National Head of the Directorate for Priority Crime Investigation Lieutenant General Dramat in terms of section 17DA(2)(a)(i) and (iv) of the South African Police Service Act 68 of 1995, SAPS Act.

Subject: Rendition of Zimbabwean nationals in 2010/2011

This serves to advise your good-self that the Minister of Police is considering placing you on provisional suspension in terms of section 17DA(2)(a)(i) and (iv) of the SAPS Act on the following grounds ..."

For reasons which will appear later, the repeated reference by the Minister to the provisions of section 17DA(2) is of some significance.



[7] The notice of 9 December 2014 (evidently only given to Dramat on 10 December) is a lengthy affair. However, I consider the contents to be, in particular, of importance from the point of view of the Minister, so that it is convenient to quote extracts therefrom:

"The following Zimbabwean nationals were renditioned and/or illegally deported by the Directorate for Priority Crime Investigation in 2010 and 2011 following a joint operation with Zimbabwean police (then follows eight names).

The Zimbabwean nationals ... were allegedly fugitives for a crime of murder and robbery committed in Zimbabwe. They were renditioned from South Africa to Zimbabwe; it is further alleged that two of them were eventually killed by Zimbabwean police. ...

The exchange of criminal suspects between the two law enforcement agencies was allegedly not done in terms of Southern African Development Community's Protocol on Extradition; South Africa's Extradition Act 67 of 1962, as well as national legislation on mutual legal assistance in criminal matters.

According to the Hansard record of parliament of 13th December 2011, your reply dated 25 November 2011, you supposedly responded to a parliamentary question on these acts of renditions, wherein you supposedly misled the Minister and parliament by stating that it was the Department of Home Affairs who deported the Zimbabwean nationals; well-knowing that the Zimbabwean

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nationals were wanted for criminal offences in Zimbabwe and had been illegally deported by Directorate for Priority Crime Investigation (DPCI).

There is suggestive evidence at my disposal that the Zimbabwean nationals were wanted in Zimbabwe in connection with the murder of a police colonel ... Therefore, in such an instance, mutual legal assistance on criminal matters and extradition procedures should have been instituted.

Evidence at my disposal, suggest that you probably sanctioned the entry of Zimbabwean police to South Africa and further sanctioned a joint operation between Directorate for Priority Crime Investigation (DPCI) and Zimbabwean police to trace the fugitives.

Furthermore, there is suggestive evidence that the South African Department of Home Affairs and the Zimbabwean Embassy were not involved in the illegal deportation of the Zimbabwean nationals.

In this regard you are instructed to furnish reasons to the Minister of Police, within the next five (5) days, as to why you should not be provisionally suspended pending internal investigations on the following acts of misconduct;

- (1) undermining the legislative authority of the Minister of Justice and the South African judiciary to make a determination and adjudication on the extradition of the Zimbabwean nationals wanted in Zimbabwe for the murder of a police colonel ...;

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- (2) bringing the international image of the Republic of South Africa into disrepute by contravening the SADC Protocols on Extradition, Mutual and Legal assistance and the United Nations' Convention against the Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, by allegedly being an accomplice or co-perpetrator on torture, murder and renditions of Zimbabwean nationals;
- (3) possibly misleading the Minister and parliament as to the lawfulness of the deportations in question and the departments involved;
- (4) allegedly committing the following criminal law offences:
- (i) kidnapping;
  - (ii) defeating the ends of justice;
  - (iii) forgery, fraud;
- as an accomplice and co-perpetrator;
- (5) allegedly, involving the Directorate for Priority Crime Investigation in illegal renditions activities.

Your co-operation in the spirit of good governance is appreciated.

Kind regards

N P T Nhleko  
Minister of Police

Date: 10/12/2014" (The underlining is presumably that of the Minister.)

- [8] On 12 December 2014 Dramat's attorney wrote a lengthy letter (the contents of which I will not quote, for the sake of brevity) to the Minister in reaction to the 9/10 December notice of Contemplated Provisional Suspension.

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I briefly summarise some of the features of this letter, which, like the 9/10 December notice, is an annexure to the founding affidavit:

The attorney has been acting for Dramat since September 2013 in the matter surrounding the so-called "Zimbabwean rendition". Correspondence had been exchanged between the attorney, the State Attorney, the National Commissioner and IPID (the Independent Police Investigation Directorate to which I will refer as "IPID").

The attorney, correctly in my view, reminded the Minister that section 17DA(2) was found to be invalid and unconstitutional by the Constitutional Court on 27 November 2014 and severed, or deleted from the SAPS Act on that date. The case referred to, which I will revisit later, is *Helen Suzman Foundation v President of the Republic of South Africa and others* (case no CCT 07/14) and *Hugh Glenister v President of the Republic of South Africa and others* (case no CCT 09/14). The attorney pointed out to the Minister that the purpose of this constitutional litigation in *Suzman* and *Glenister* was to ensure that the DPCI is adequately independent and has operational autonomy. The attorney points out to the Minister, correctly, that the main thrust was to forbid improper interference by the Minister and the National Commissioner with the Head and members of the DPCI in the exercise or performance of their powers, duties and functions. (I will refer to the *Suzman* and *Glenister* cases as "the 2014 judgment".)

The attorney also reminded the Minister that he was cited as the second respondent in the Constitutional Court in the aforesaid cases, fully represented by three advocates and that he should be aware of the orders of constitutional invalidity deleting

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section 17DA(2) and the "(2)" in section 17DA(1) from the SAPS Act. The attorney then says the following to the Minister:

"You would therefore be in contempt of the Constitutional Court, should you proceed with the contemplated provisional suspension of Lieutenant General Dramat. Clearly your advisors should from time to time look at the law and recent Constitutional Court judgments against you."

The attorney then reminds the Minister that Dramat dealt with the allegations against him with regard to the so-called Zimbabwean rendition, in a statement of 23 October 2013 which is again attached to the attorney's letter as annexure "A". The attorney also stated that he finds it alarming that it had come to the attention of Dramat that certain witnesses had been told (presumably by IPID officials) that unless they incriminate Dramat, they would be of no value to the investigator. It was also submitted in the aforesaid statement that the DPCI was at the time (and still is according to the attorney) tasked and seized with very sensitive and high profile investigations and that the timing of the then IPID investigation and the current contemplated suspension was seen as a "smear campaign" to derail any investigations or arrests that the DPCI is in the process of conducting. The attorney, correctly, refrained from listing details of the sensitive matters and the high profile individuals.

The attorney then also reminded the Minister that IPID sent an undated letter to Dramat which contained the same allegations as those referred to by the Minister in his Notice of Contemplated Suspension. Dramat was required to answer certain questions regarding the "rendition" of the Zimbabwean nationals which he did in a statement dated 11 November 2013 which is also attached to this letter of the attorney

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as annexure "B". In the statement it was specifically pointed out that Dramat never authorised or sanctioned co-operation or kidnapping of any of the Zimbabwean nationals referred to in the IPID correspondence. It was also pointed out that Dramat unequivocally denied any knowledge of any action whatsoever that he authorised or participated in which was aimed to defeat the due administration of justice. Fraud and theft allegations were equally vague and spurious and denied. The attorney pointed out to the Minister that the Notice of Contemplated Suspension takes the matter far beyond the allegations made by IPID, namely that Dramat undermined the legislative authority of the Minister of Justice and the judiciary and that he is allegedly an accomplice and co-perpetrator on torture, murder and renditions. It was recorded that Dramat was reserving his rights in this regard. It was pointed out that neither IPID, nor the National Commissioner or the NDPP complied with the request of more than a year earlier for concrete evidence in support of these allegations to be furnished to Dramat. At all times, Dramat offered his full co-operation with a *bonafide* investigation. Dramat got information that the authorities were trying to get a warrant for his arrest. It was reiterated by his attorney that Dramat would voluntarily appear before a competent court to answer to any charges. The attorney again recorded that efforts now to press on with the alleged Zimbabwean rendition complaint, more than four years after the event, amounted to nothing other than slanderous, malicious conjecture designed to derail sensitive investigations of the DPCI and/or an attempt to discredit the reputation and integrity of Dramat and the DPCI.

The attorney concludes by reminding the Minister that he does not have the power to suspend the Head of the DPCI and any efforts to continue to do so would be met with an application to this court for urgent relief.

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[9] The Minister did not answer this letter. The statements, "A" and "B", attached to the letter, are broadly summarised in the letter, and the contents will not be repeated.





[10] On 23 December 2014, the Minister wrote to Dramat informing him that he was placing Dramat "on precautionary suspension with full pay and benefits" with immediate effect.

In the letter, which is difficult to read because of the quality thereof, the Minister acknowledges the fact that section 17DA(2) of the South African Police Services Act had been struck down. He argues, that he nevertheless retains the right to suspend Dramat. He argues that he is empowered to do so on a certain reading of the 2014 judgment and that he is also empowered to suspend Dramat in terms of certain provisions of the Public Service Act, 1994 ("the Public Service Act" or "the PSA") which came into operation on 3 June 1994 as well as the Public Service Handbook.

[11] On 24 December 2014, Dramat responded to the suspension notice in a long letter written to the Minister under his own hand.

I find it convenient to quote some of the paragraphs:

- "1. I have for several months reflected very carefully on the issues that have unfolded in front of me. I have consulted my legal representatives and I have been advised of my legal remedies.
2. I respectfully point out that the tactical 'backpedalling' from the initial notice and the current reliance on the Public Service Act and Public

Service Regulations and *SMS Handbook* is a clear indication to me that no matter what steps I take to defend my position, a decision had already been made, from the outset, to remove me from my position.

4. Having seen our country enter into a democratic phase, I felt that I could contribute in a meaningful way and continue to develop the principles which I fought and for which I was imprisoned.
5. My appointment as the Head of the DPCL, I perceived at the time, was based on my credentials, my level of expertise and the fact that I respectfully believe that I have always acted with integrity in the manner in which I deal with people and investigations.
6. No doubtedly you are aware that I have recently called for certain case dockets involving very influential persons to be brought or alternatively centralised under one investigating arm and this has clearly caused massive resentment towards me.
7. I can unequivocally point out that I am not willing to compromise the principles that I have always believed in. I am not willing to be 'agreeable' or 'compliant' in so far as I would then be acting contrary to my own moral principles and, also, contrary to the position in which I was appointed.
- 10.1 The so-called 'Zimbabwean rendition investigation' is a smoke-screen. There are no facts whatsoever that indicate that at any given time I have acted illegally or unlawfully ... Most certainly there has never been any evidence whatsoever that I have, in any way, interfered with any potential witnesses or attempted to jeopardise the investigation against me during the past four years.



- 10.2 I wish to reserve my rights to fully vindicate myself against all those who have sought to tarnish my name and reputation. I do not wish to engage with those involved in this correspondence, in so far as that is reserved for another forum, if necessary.
11. I therefore deny, with respect that the Notice of Precautionary Suspension is legal, valid or regular. In fact it is totally irregular and constitutionally invalid.
12. I am also aware that in the next two months there will be a drive to remove certain investigations that fell under my 'watch', re-allocate certain cases and that unfortunately, certain sensitive investigations may even be closed down. This is something that I have to live with.
14. I note with interest that a two month period has been set to hold an 'enquiry' (sic). I can honestly say that the investigation into the 'Zimbabwean rendition' case, has run for a very lengthy period of time and till to date there has been no evidence whatsoever. It is clear that I am being pushed out.
17. ... After due consideration, with specific reference to the background alluded to above, I am willing to submit a request to vacate office by applying to the National Commissioner to approve my early retirement in terms of section 35 of the Act. Quite clearly there is a pre-condition that the unlawful precautionary suspension be uplifted without me having to approach the court to do so.
18. I therefore require that we should enter into a joint consensus seeking meeting as a matter of urgency to prevent any instability within the



DPCL Under the above circumstances your reply is eagerly anticipated by no later than 5 January 2015."

As far as I could make out no such reply was forthcoming.

[12] On 30 December 2014, the present applicant's attorneys wrote to the Minister as follows:

- "1. We represent the Helen Suzman Foundation ('our client').
2. Our client understands that Lt Gen Dramat has been placed on 'precautionary suspension' by you in your capacity as the Minister of the Police and that the suspension is for a period of sixty days from 23 December 2014. Our client also understands that no other disciplinary processes to remove Lt Gen Dramat have been instituted or followed by you or any other body at this stage.
3. As you will know, as a matter of South African law, it is imperative for the DPCI to be adequately independent from the National Executive. The suspension of the National Head strikes at the very heart of our constitutional democracy.
4. As you will also know, our client is (and has been) concerned to ensure that the rule of law is upheld in all spheres, including the essential fight against corruption and organised crime mandated by the Constitution.
5. You will doubtless agree that, in this context, it is important to ensure that any suspension of the National Head or any office-bearers in the DPCI is constitutionally compliant and lawful. It appears that the suspension was not grounded in law.

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6. To this end, our client requires you to furnish the following information in writing by no later than Wednesday, 7 January 2015, so that it may adequately protect its rights and the public interest:

- 6.1 a copy of any document which evidences or constitutes the purported suspension of Lt Gen Dramat, including any letter of suspension issued to Lt Gen Dramat;
- 6.2 the effective date of the suspension;
- 6.3 the duration of the suspension;
- 6.4 whether any of the facts in paragraph 2 above are incorrect and, if so, which facts and for what reason;
- 6.5 a copy of any documents and information on the basis of which the suspension was decided by you;
- 6.6 a copy of any reports pertaining to Lt Gen Dramat produced by the Independent Police Investigative Directorate;
- 6.7 full reasons for the suspension of the National Head;
- 6.8 details of what empowering provision you have used or invoked for the purposes of the purported suspension of the National Head;
- 6.9 what disciplinary steps have been taken by you or any other institution or body in relation to Lt Gen Dramat that relate in any way to the suspension or the grounds for such suspension;
- 6.10 a copy of any letter purportedly appointing any other person, including Major General Berning Ntsemeza, as Acting National Head of the DPCI.

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7. Should you fail to deliver the above information timeously or should the information not negate our client's concerns about the unlawfulness of the decision to suspend the National Head, our client will have no option but to assume that there was no lawful basis for such decision, to assume that the facts in paragraph 2 are correct and to exercise its legal rights in its and the public's interest on an urgent basis.

Yours faithfully"

- [13] There was no answer to this letter, so that the applicant launched its application on 9 January, two days after the dead-line it imposed expired. I have dealt with the procedural development of the case between 15 January, when it was first enrolled, and Monday 19 January.

What could be added to this chronology, is that when the Minister filed his answering affidavit, the applicant called, in terms of rule 35(12), for the opportunity to take copies of certain documents referred to in the answering affidavit including the "IPID report", certain "witness statements", "other relevant documentation", a "report" and a "file". In an answer, the Minister refused to make these copies available claiming that the applicant was shifting the goal-posts having based its application on whether the Minister had the power to suspend the National Head in the light of the 2014 judgment. The Minister also claimed that, according to IPID, the matter was still under investigation and its report, until the investigation is completed, is confidential. On this basis, the Minister offered no evidence whatsoever to show improper involvement of Dramat in the "Zimbabwean rendition" case. Dramat himself, as the only possible role player, before this court, in the affair, expressly denies any

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involvement, as appears from his two statements, dating back to 2013, furnished to the Minister by his attorney. He repeats his denial of any liability in his 24 December letter to the Minister.

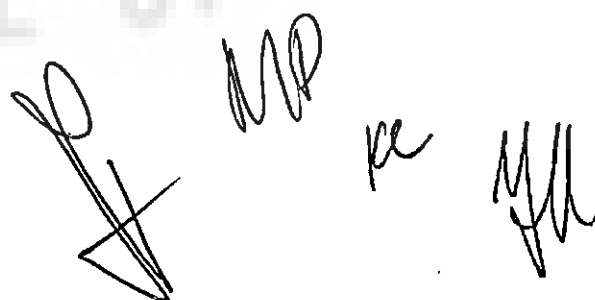
Declaratory relief sought by the applicant

[14] The relevant paragraphs of the notice of motion read as follows:

- "2. declaring that the decision of the Minister of Police, the Honourable Mr Nkosinathi Nhleko ('the Minister'), of 23 December 2014, to suspend Lt Gen Anwa Dramat, the National Head of the Directorate for Priority Crime Investigation ('DPCI') ('the suspension decision') is unlawful and setting aside the suspension decision;
3. declaring that the decision of the Minister to appoint Major-General Berning Ntlemenza as Acting National Head of the DPCI ('the appointment decision') is unlawful and setting aside the appointment decision;
4. declaring that the Minister is not empowered to suspend the National Head of the DPCI other than in accordance with sections 17DA(3) and (4), read with section 17DA(5), of the South African Police Service Act, 1995;"

There is also a prayer for costs against whoever opposes the application.

Section 17DA and other provisions of the South African Police Service Act, 1995 ("the SAPS Act")

The bottom of the page features four handwritten signatures or initials in black ink. From left to right, they appear to be: a stylized 'S' or 'Z' shape, the letters 'MP', the letters 'ke', and a more complex, possibly stylized signature.

[15] The DPCI (also popularly known as "the Hawks") is a creature of the SAPS Act. It is created in terms of section 17 which constitutes Chapter 6A of the SAPS Act. More particularly, it is created by section 17C(1) which provides:

"The Directorate for Priority Crime Investigation is hereby established as a Directorate in the Service."

The "Service" means the South African Police Service established by section 5(1) of the SAPS Act.

Section 17C(2) provides that the Directorate consists of, *inter alia*, the National Head of the Directorate at national level, "who shall manage and direct the Directorate and who shall be appointed by the Minister in concurrence with Cabinet" and subsection (2)(aA) also provides for a Deputy National Head at national level.

[16] I turn to section 17DA which goes under the heading "Removal from office of National Head of Directorate".

Before portions of this section were struck down as unconstitutional by the Constitutional Court in the 2014 judgment, and deleted from the SAPS Act with effect from the date of the order, which was 27 November 2014, it read as follows:

"(1) The National Head of the Directorate shall not be suspended or removed from office except in accordance with the provisions of subsections (2), (3) and (4).

(2) (a) The Minister may provisionally suspend the National Head of

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the Directorate from his or her office, pending an inquiry into his or her fitness to hold such office as the Minister deems fit and, subject to the provisions of this subsection, may thereupon remove him or her from office --

- (i) for misconduct;
  - (ii) on account of continued ill-health;
  - (iii) on account of incapacity to carry out his or her duties of office efficiently; or
  - (iv) on account thereof that he or she is no longer a fit and proper person to hold the office concerned.
- (b) The removal of the National Head of the Directorate, the reasons therefor and the representations of the National Head of the Directorate, if any, shall be communicated in writing to Parliament within fourteen days after such removal if Parliament is then in session or, if Parliament is not then in session, within fourteen days after the commencement of its next ensuing session.
- (c) The National Head of the Directorate provisionally suspended from office shall during the period of such suspension be entitled to such salary, allowance, privilege or benefit to which he or she is otherwise entitled, unless the Minister determines otherwise.
- (d) An inquiry referred to in this subsection --
- (i) shall perform its functions subject to the provisions of the Promotion of Administrative Justice Act, 2000

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(Act 3 of 2000), in particular to ensure procedurally fair administrative action; and

- (ii) shall be led by a judge or retired judge: provided that the Minister shall make the appointment after consultation with the Minister of Justice and Constitutional Development and the Chief Justice.

(e) The National Head of the Directorate shall be informed of any allegations against him or her and shall be granted an opportunity to make submissions to the inquiry upon being informed of such allegations.

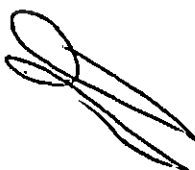

(3) (a) The National Head of the Directorate may be removed from office on the ground of misconduct, incapacity or incompetence on a finding to that effect by a Committee of the National Assembly.

(b) The adoption by the National Assembly of a resolution calling for that person's removal from office.

(4) A resolution of the National Assembly concerning the removal from office of the National Head of the Directorate shall be adopted with the supporting vote of at least two-thirds of the members of the National Assembly.

(5) The Minister –

(a) may suspend the National Head of the Directorate from office at any time after the start of the proceedings of a Committee of the National Assembly for the removal of that person; and

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- (b) shall remove the National Head of the Directorate from office upon adoption by the National Assembly of the resolution calling for the National Head of the Directorate's removal.
- (6) The Minister may allow the National Head of the Directorate, at his or her request, to vacate his or her office –
  - (a) on account of continued ill-health; or
  - (b) for any other reason which the Minister deems sufficient.
- (7) The request in terms of subsection (6) shall be addressed to the Minister at least six calendar months prior to the date on which the National Head of the Directorate wishes to vacate his or her office, unless the Minister grants a shorter period in a specific case." (Emphasis added.)

[17] It is common cause that the Constitutional Court, in the 2014 judgment, dated 27 November 2014:

- (1) declared the "(2)" in section 17DA(1) inconsistent with the Constitution and therefore invalid, and deleted it from the date of the order;
- (2) declared section 17DA(2) inconsistent with the Constitution and therefore invalid, and deleted it from the date of the order.

[18] This means:

- (1) that section 17DA(1) now reads (in peremptory language):

"The National Head of the Directorate shall not be suspended or removed from office except in accordance with the provisions of subsections (3) and (4)."

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- (2) Where section 17DA(2) has now been deleted and declared unconstitutional and invalid, the Minister no longer has the power, in terms of that subsection, to provisionally suspend the National Head and, pending an inquiry, remove him or her from office for the reasons mentioned in the relevant subsection; and
- (3) the powers of the Minister to suspend or remove the National Head are now limited to the provisions of subsection (5)(a) and (b) which renders the Minister's power to suspend and/or remove the National Head subject to the prior start of the proceedings of a Committee of the National Assembly for the removal (subsection (5)(a)) and the passing of a resolution by the National Assembly calling for the removal of the National Head by a two-thirds majority (subsection (5)(b)).

[19] From the foregoing, the following remarks are also, in my view, valid:

1. The "Contemplated Provisional Suspension" notice by the Minister to Dramat of 9/10 December 2014 is invalid because it purports to base this contemplated provisional suspension on the provisions of section 17DA(2)(a)(i) and (iv) which, by then, had already been struck down as invalid and unconstitutional and deleted from the Act.
2. The remarks by the Minister in his suspension notice to Dramat of 23 December 2014 that

"The remaining provisions of the section (my note: which would include subsections (3), (4) and (5)) deal with the suspension and removal of the Head when the process for the removal has been



initiated by Parliament. These provisions are not applicable to the current situation."

are misplaced. It fails to take into account the peremptory provisions of section 17DA(1), as it now reads and as it read when the suspension notice was given, that "the National Head of the Directorate shall not be suspended or removed from office except in accordance with the provisions of subsections (3) and (4)".

[20] It is common cause that, when the suspension and provisional suspension notices were sent to Dramat, there had not been (and still is not) a "start of the proceedings of a Committee of the National Assembly for the removal of that person" or a resolution by the National Assembly calling for the National Head to be removed, which are the only two occurrences which can trigger the powers of the Minister to suspend or remove the National Head, depending on the circumstances.

[21] In their comprehensive and able argument, counsel for the Minister offered submissions on the interpretation of the 2014 judgment and the effect thereof on the striking down of subsection (2) which are not in harmony with the remarks I have made. I will consider those submissions when dealing with the 2014 judgment.

Helen Suzman Foundation v President of the Republic of South Africa and others: Glenister v President of the Republic of South Africa and others (CCT 07/14, CCT 09/14) [2014] ZACC 32 of 27 November 2014: "the 2014 judgment"

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[22] As I have already indicated, the Minister contends for a different conclusion following the deletion by the Constitutional Court of section 17DA(2) to the one I attempted to advance.

[23] Correctly, the Minister says the following:

"33. The contemplated suspension in section 17DA(5) is triggered by the process that is initiated by the Committee of the National Assembly for the removal from office of the Head of the DPCI on account of misconduct, incapacity or incompetence. If the Committee of the National Assembly makes a finding against the Head of the DPCI, he/she may be removed from office by the adoption of a resolution supported by a vote of at least two-thirds of the members of the National Assembly. The procedure in section 17DA(5) for the suspension of the Head of the DPCI is triggered by the commencement of the proceedings before the Committee of the National Assembly. So, the section 17DA(5) suspension is parliamentary initiated. That is the marked difference between the procedure in the repealed section 17DA(2) and the section 17DA(5)."

[24] The Minister then goes on to submit that, despite the striking down and deletion of 17DA(2), he nevertheless retains the right of suspension and removal of the Head. He does so in the following terms:

"34. In striking down section 17DA(2) the Constitutional Court did not explicitly or implicitly say that as the Minister I cannot suspend the Head of the DPCI other than in terms of section 17DA(5). To the


contrary, the Constitutional Court affirmed my power to suspend and my power to execute an oversight role over the Head of the DPCI. If the judgment of the Constitutional Court were to be read to imply that I cannot suspend the Head of the DPCI other than in terms of section 17DA(5) then this would invariably mean that my oversight role over the Head of the DPCI has been abrogated."

[25] The Minister then goes on to advance the following interesting and, at first blush, attractive, argument:

"This would mean that I would play a meaningless oversight role to hold the Head of the DPCI accountable to the legislation applicable to him, but I cannot initiate an investigation upon receiving information pointing to serious allegations of misconduct against him, and I cannot initiate an inquiry to ascertain the veracity of such allegations nor to institute a disciplinary inquiry. This would mean that I can only fold my arms and be at the mercy of the parliamentary Committee should it decide to start the proceedings for the removal of the Head of the DPCI. It is also not clear how the parliamentary Committee would initiate the proceedings for the removal of the Head of the DPCI without an investigation relating to the alleged conduct."

[26] The Minister then goes on to advance what he considers to be the correct interpretation of the judgment in the context of the Minister's powers to suspend the Head:

"36. On a proper reading of the Constitutional Court judgment, it struck down section 17DA(2) on two grounds: first that the subsection lacks

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clarity meaning that it is convoluted; second, that the words 'as the Minister deems fit' gives the Minister the discretion to suspend the Head of the DPCI without pay which invariably compromises the job security of the Head of the DPCI and insulation from political and executive interference. I fully agree with the Constitutional Court's *ratio decidendi* on this issue. The Head of the DPCI and the DPCI must be protected from executive and political interference. He or she must be independent and perform his/her duties without fear, favour or prejudice.

37. However, in finding that section 17DA(2) is inconsistent with the provisions of job security, independence and that it lacks clarity, the Court, however, made it clear that that does not mean that I do not have the power to suspend the Head of the DPCI in the context envisaged in section 17DA(2) save for the offending provisions of the subsection which I have already dealt with above."

- [27] In support of his argument, the Minister relies on what was said in paragraph [85] of the 2014 judgment:

"[85] But for 'as the Minister deems fit' and the possibility of a suspension without pay and benefits provided for in subsection (2)(c), I can find no reason to attack the bases on which this subsection empowers the Minister to suspend the National Head. These are specific, objectively verifiable and acceptable grounds for suspension and removal. Suspension without pay defies the exceedingly important presumption of innocence until proven guilty or the *audi alteram partem* rule and

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unfairly undermines the National Head's ability to challenge the validity of the suspension by withholding the salary and benefits. It irrefutably presumes wrongdoing. An inquiry may then become a dishonest process of going through the motions. Presumably, the Minister's mind would already have been made up that the National Head is guilty of what she is accused of. Personal and familial suffering that could be caused by the exercise of that Draconian power also cry out against its retention. It is the employer's duty to expedite the inquiry to avoid lengthy suspensions on pay."

(I emphasised the first portion of this paragraph in the judgment because it is also emphasised by the Minister, if I understand him correctly, as the main thrust of his argument as to how to interpret the judgment.)

[28] What the Minister fails to do, is to also scrutinise the paragraphs in the 2014 judgment following upon paragraph [85]:

"[86] The only real threat to job security is the Minister's power to remove the National Head from office in terms of section 17DA(1) and (2). These provisions are not clearly set out and therefore do not provide even a modicum of clarity. The removal process is initiated through the appointment of a judge by the Minister to head an inquiry into whether the National Head should be removed from office on any of the grounds listed in section 17DA(2)(a). Based on the recommendation of that judge, the Minister may remove the Head. Thereafter the fact of the removal, the reason therefor and the

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representations of the National Head, if any, are to be conveyed to Parliament within fourteen days of the removal.

[87] Unlike section 12(6) of the NPA Act that empowers Parliament to reverse the removal of the NDPP or Deputy NDPP by the President, section 17DA(2)(b) does not say what it is that Parliament is required to do upon receipt of the information relating to the Minister's removal of the National Head. There is no provision made for Parliament's interference with that decision. This begs the question, what purpose does it then serve to inform Parliament? A proper reading of subsection (2) indicates that the Minister's removal of the National Head is, subject to whatever Court processes that may ensue, final. Parliament has no meaningful role to play but merely to note the decision. One would have thought that the requirements that Parliament be informed of the removal, be furnished with reasons for the removal and the representations by the National Head within fourteen days of removal, were intended to facilitate speedy intervention by Parliament before more, possibly unjustified, damage is done to the life of the National Head or the functionality of the DPCL. That intervention would ordinarily entail an assessment of the propriety of the finding of wrongdoing and the punishment meted out to the National Head, if correctly found guilty of wrongdoing.

[88] But, not only is the section silent on what Parliament is supposed to do, it is also silent on how it is to do whatever is supposed to be done, if any, and on the time frames within which any action is to be taken. It is similar to section 17CA(3) which requires the Minister to inform

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Parliament of the appointment of the National Head within fourteen days of the appointment, but does not say what, if any, Parliament is supposed to do with that information. Evidently it is, as in this instance, merely for noting. All these are additional pointers to the lack of clarity that pervades the SAPS Act as amended. Parliament's power to intervene, as in the case in terms of section 12(6) of the NPA Act, cannot be read into this section without the Court usurping the legislative role of Parliament. There is a yawning chasm between the subsection (2) procedure and the role of Parliament set out in subsections (3) to (6).

[89] This subsection (2) removal power is inimical to job security. It enables the Minister to exercise almost untrammelled power to axe the National Head of the anti-corruption entity. The need for job security was articulated in *Glenister II* in these terms:

'At the very least the lack of specially entrenched employment security is not calculated to instil confidence in the members of the DPCI that they can carry out their investigations vigorously and fearlessly. In our view, adequate independence requires special measures entrenching their employment security to enable them to carry out their duties vigorously.'

(My note: this is a reference to *Glenister v President of the Republic of South Africa and others* 2011 3 SA 347 (CC) at paragraph [222].)

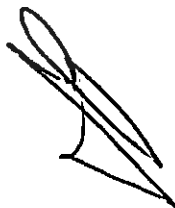
[90] Subsections (3) to (6) provide for those special measures that entrench the employment security of the National Head. They deal



with the suspension of the National Head by the Minister, flowing from a possible removal process initiated by a Committee of the National Assembly. Although the Minister still has the power to suspend, no provision is made for suspension without salary, allowances and privileges. A recommendation by a Committee of the National Assembly for the removal of the National Head would have to enjoy the support of at least two-thirds of the members of the National Assembly to be implemented. The removal would then be carried out by the Minister.

- [91] This suspension by the Minister and removal through a Parliamentary process guarantees job security and accords with the notion of sufficient independence for the anti-corruption entity the State creates. That portion of section 17DA(1) that refers to subsection (2) and subsection (2) itself are, however, inconsistent with the constitutional obligation to establish an adequately independent corruption-busting agency. They must thus be set aside. The balance of section 17DA passes constitutional muster and would thus continue to guide the suspension and removal process of the National Head." (Emphasis added.)

- [29] The Minister, in his argument, has placed a particular emphasis on the last sentence of paragraph [91] which stipulates: "The balance of section 17DA passes constitutional muster and would thus continue to guide the suspension and removal process of the National Head." The Minister argues that the use of these words "is quite telling" and then submits:



"The choice of the words in these lines is consistent with what the Court had already found in paragraph [85] that my power to suspend the Head of the DPCI do not get abrogated by the deletion of section 17DA(2)."


The Minister appears to argue that these remaining provisions of section 17DA (including (3), (4) and (5) dealing with suspension and/or removal through the parliamentary process) can be used by the Minister for "guidance" when he exercises his still existing powers of suspension in a manner other than in terms of section 17DA(5).

Astonishingly, the Minister then says the following about the "guidance" so available to him:

"The guidance I received from the remaining provisions of section 17DA is that a suspension must be with pay and the removal if it were to be considered must be done through a parliamentary process." (Emphasis added.)

It seems to me that the Minister concedes that the "guidance" is linked to the suspension or removal through a parliamentary process. This concession, if it is one, flies in the face of the Minister's argument that "... the Court however made it clear that that does not mean that I do not have the power to suspend the Head of the DPCI in the context envisaged in section 17DA(2)..."

[30] I can find no support whatsoever for the Minister's submissions and for the interpretation which he seeks to attach to the 2014 judgment:



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1. In paragraph [91] of the 2014 judgment, it is stated unequivocally that the reference to subsection (2) in 17DA(1) as well as subsection (2) itself are inconsistent with the constitutional obligation to establish an adequately independent corruption-busting agency and must be set aside. This was done with effect from the date of the order, on 27 November 2014.
2. This means that section 17DA(1) now provides, in peremptory terms, that: the National Head of the Directorate shall not be suspended or removed from office except in accordance with the provisions of subsections (3) and (4). There is no room whatsoever for the Minister's argument that he can, somehow, still suspend the Head "in the context envisaged in section 17DA(2)".
3. It follows that the "contemplated provisional suspension" of Dramat, of 9/10 December 2014, which was expressly based on the provisions of section 17DA(2), long after this subsection was deleted by the Constitutional Court, was unlawful as it flew in the face of the 2014 judgment and section 17DA(1), and therefore void *ab initio* ("van die aanvang af nictig" – Hiemstra and Gonin *Trilingual Legal Dictionary* 2<sup>nd</sup> ed page 144).
4. It follows that the suspension of Dramat by the notice of suspension of 23 December 2014, which incorporates, by reference, the contemplated provisional suspension, and which declares the provisions of section 17DA(3) and (4) to be "not applicable" and which, like the "contemplated provisional suspension" was written well after the deletion of the offending provisions on 27 November 2014, is also unlawful and void *ab initio* as it flies in the face of the 2014 judgment and the provisions of section 17DA(1).





*In Pikoll v President of Republic of South Africa and others* 2010 1 SA 400 (GNP) at 408C-E the following is said:

"The purported exercise of public power that is not authorised by law is invalid from the outset. A declaration that executive action is invalid 'is merely descriptive of a pre-existing state of affairs'. In the interest of an orderly society, however, such action is treated as if it were valid until it is declared invalid. The Court that finds executive action not authorised by law, must declare it invalid."

See also sections 1(c) and 2 of the Constitution of the Republic of South Africa, 1996.

*Cora Hoexter Administrative Law in South Africa* 2<sup>nd</sup> ed p545-546.

*Fase v Minister of Safety & Security* 1997 3 SA 786 (CC) where the learned Judge, still dealing with the interim Constitution 200 of 1993, says the following at 834F:

"Section 4(1) makes unconstitutional conduct a nullity, even before Courts have pronounced it so."

At 834I, the learned Judge points out that it is not the declaration itself (that administrative or executive conduct is unconstitutional) that renders the conduct unconstitutional. The declaration is merely descriptive of a pre-existing state of affairs.

*Cora Hoexter, op cit*; also referred to by the learned Judge in *Pikoll*, puts it as follows on p545-546 where she deals with remedies in proceedings for judicial

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review (more with regard to the Promotion of Administrative Justice Act no 3 of 2000, or "PAJA", but I am of the view that the same remarks apply to other executive action not necessarily included in the definition of "administrative action" in PAJA. Indeed, in *Pikoli*, the court was confronted with executive action not included in the definition of administrative action, and involving the removal from office by the President of the National Director of Public Prosecutions):

"An administrative action or decision, no matter how blatantly illegal it may appear to be, continues to have effect until such time as it is pronounced invalid by the Court. At that point the decision not only ceases to have effect but may be treated as if it never existed. Invalidity thus operates with retrospective effect, both at common law and under the Constitution, as a consequence of constitutional supremacy and in accordance with the doctrine of objective invalidity. In administrative law 'setting aside' is a logical consequence of declaring the decision to be invalid, and is simply a way of saying that the decision no longer stands, or that it is void. It is one of the remedies provided for in section 8 of the PAJA."

(The learned author here refers to section 8(1)(c) of PAJA.) At 547, the learned author also states: "An invalid act, being a nullity, cannot be ratified, 'validated' or amended." I do not refer to all the authorities listed in the footnotes.

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Mr Mokhari, in his diligent address, and on the subject of the unlawful act being treated as valid until it is declared invalid, also referred me to the well-known case of *Oudekraal Estates (Pty) Ltd v City of Cape Town and others* 2004 6 SA 222 (SCA) where the following is said at 242B-C:

"The proper functioning of a modern State would be considerably compromised if all administrative acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question. No doubt it is for this reason that our law has always recognised that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside."

It is clear, as I pointed out, that this principle is recognised both in *Pikoli*, and by *Cora Hoexter*. However, where the declaration of invalidity operates with retrospective effect, and has the effect of the unlawful act being treated as if it never existed, it would seem to me that all actions taken by the Minister following the unlawful suspension will be tainted and of no consequence if I were to declare the suspension to be unlawful and invalid.

- [31] As to the reference by *Cora Hoexter* to PAJA, Mr Mokhari also reminded me of the provisions of section 8 of that Act. If I understood him correctly, he argued that from the wording of paragraph 5.1 of the founding affidavit ("to review and set aside the decisions of the Minister ..."), it is plain that this is an application for review in terms of PAJA, so that the remedy sought falls under section 8(c) of that Act which reads as follows:

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It seems to me that one of the leading cases on the subject is *Fedsure Life Assurance Ltd and others v Greater Johannesburg Transitional Metropolitan Council and others* 1999 1 SA 374 (CC) where the following is said at 400D-F:

"It seems central to the conception of our constitutional order that the Legislature and Executive in every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law. At least in this sense, then, the principle of legality is implied within the terms of the interim Constitution. Whether the principle of the rule of law has greater content than the principle of legality is not necessary for us to decide here. We need merely hold that fundamental to the interim Constitution is a principle of legality."

In this case, I have found, that the Minister purported to exercise a power and perform a function beyond that conferred upon him by law, following the order in the 2014 judgment.

*Cora Hoexter* distinguishes between the application of the principle of legality and the PAJA route. At 122 she says:

"But legality also has a wider meaning that goes *beyond* administrative action, and this is probably the more common usage of the term today. Here it refers to a broad *constitutional* principle of legality that governs the use of *all* public power rather than the narrower realm of administrative action. This principle of legality (or 'legality and rationality') is an aspect of the rule of law, a concept implicit in the interim Constitution and the founding value of our constitutional order in terms of section 1(c) of the 1996 Constitution. The



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fundamental idea it expresses is that 'the exercise of public power is only legitimate where lawful'."

For these reasons, I am of the view that it is appropriate to attack the actions of the Minister on the strength of the principle of legality, rather than in terms of PAJA. It should also be borne in mind that the executive powers or functions of the National Executive, or some of them referred to in the definition of "administrative action" in PAJA, are excluded from the operation of that Act. One of the actions excluded from the PAJA definition is contained in the provisions of section 92(3) of the Constitution which reads:

"Members of the Cabinet must --

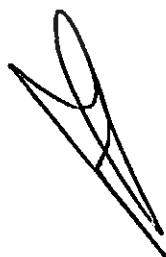
(a) act in accordance with the Constitution ..."

[32] I turn to the position of the third respondent.

The position of the third respondent, Major-General Beming Ntsemeza ("the third respondent")

[33] In the founding affidavit, the applicant alleges that an Acting National Head (here purportedly the third respondent) cannot be appointed if Dramat was not lawfully suspended. The applicant argues that in the circumstances the appointment decision of the third respondent must suffer the same fate as the suspension decision of Dramat.

[34] This allegation is not dealt with in the opposing affidavit. The Minister only offers a blanket denial of everything in the founding papers inconsistent with his version in the opposing affidavit.



[35] I have pointed out that section 17C of the SAPS Act provides for the establishment of the DPCI and provides that the Directorate will, *inter alia*, consist of a Deputy National Head at national level.

[36] The procedure involving the appointment of the Deputy National Head as Acting National Head is governed by the provisions of section 17CA(12). This subsection reads as follows:

- "(12) (a) Whenever the National Head of the Directorate is absent or unable to perform his or her functions, the Minister shall appoint the Deputy National Head of the Directorate as the Acting National Head of the Directorate.
- (b) Whenever the office of the National Head of the Directorate is vacant or the National Head of the Directorate is for any reason unable to take up the appointment contemplated in subsection (1), the Minister shall appoint the Deputy National Head of the Directorate as the Acting National Head of the Directorate.
- (c) If both the National Head of the Directorate and the Deputy National Head of the Directorate are absent the Minister shall appoint a suitably qualified and experienced person as the Acting National Head of the Directorate.



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- (d) Whenever the Deputy National Head of the Directorate is absent or unable to perform his or her functions, the National Head of the Directorate shall appoint a suitably qualified and experienced person as the Acting Deputy National Head of the Directorate.
- (e) Whenever the office of the Deputy National Head of the Directorate is vacant the Head of the Directorate shall appoint a suitably qualified person as the Acting Deputy National Head of the Directorate."

[37] In the Minister's heads of argument, it is stated that the Minister appointed the third respondent as Acting National Head in terms of subsection (12)(c). It is stated that the Minister could not appoint the Deputy National Head of the DPCI because the DPCI does not have a Deputy National Head currently. Under these circumstances, it is questionable whether the Minister complied with the provisions. Subsection (12)(c) provides that if the office of the Deputy National Head is vacant (like here) the Head of the Directorate shall appoint a suitably qualified person as the Acting Deputy National Head, and not the Minister. It is also questionable whether subsection (12)(c) was applicable because that foreshadows a situation where both the National Head and the Deputy National Head "are absent". It may be arguable that such a state of affairs does not apply to the present circumstances. Nevertheless, I make no formal pronouncement on this, as the issue was not pressed before me.



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[38] In prayer 3 of the notice of motion, the applicant seeks declaratory relief to the effect that the appointment of the third respondent by the Minister as Acting National Head of the DPCI is unlawful and also for the setting aside of that appointment decision.

[39] It was argued on behalf of the Minister that the relief sought in prayer 3 would not necessarily follow even if prayer 2 was granted. The relief sought in prayer 2 is a declaration that the decision of the Minister to suspend Dramat as the National Head is unlawful and the setting aside of that suspension decision is also sought.

It was argued on behalf of the Minister that the granting of prayer 3, following upon the granting of prayer 2, will only be a foregone conclusion if further relief is granted to the applicant to the effect that Dramat should be reinstated in his position, something not expressly requested in the notice of motion.

In this regard, I was referred by Mr Mokhari to the case of *Transnet Ltd and others v Chirwa* 2007 2 SA 198 (SCA) where it is stated that the process by which the employee was dismissed was tainted through bias, and was correctly set aside in terms of section 6(2)(a)(iii) of PAJA. It was held that where the learned Judge *a quo*, having set aside the dismissal by the employer, also granted retrospective reinstatement, he was wrong in taking the latter step. It was held that in administrative law the subject is usually entitled only to have the decision at issue set aside and the matter remitted for a fresh decision. It is on this basis, if I understood the argument correctly, that it was argued that reinstatement of Dramat will not follow, even upon granting of the relief in prayer 2 namely a declarator to the effect that the suspension was invalid and unlawful. It was further argued that, even upon the granting of prayer 2, and the







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setting aside of the suspension of Dramat as unlawful, the Minister is still obliged "in the absence of the reinstatement of Dramat" to ensure that the DPCI has a National Head, which the Minister did by appointing the third respondent in compliance with section 17CA(12)(c).

In his replying address, Mr Unterhalter confirmed that reinstatement of Dramat was not specifically sought and need not be granted in those terms. He argued, correctly, that this was not a PAJA application, as I have already pointed out so that the *dicta* in *Chirwa* and, for that matter, the provisions of the Labour Relations Act are not applicable. This is not a case of Dramat approaching the court as an aggrieved employee. The applicant is not acting on behalf of Dramat but as a non-governmental organisation with the objective, *inter alia*, to defend the values that underpin our liberal constitutional democracy and to promote respect for human rights. He pointed out that the applicant approaches the court, firstly, in its own interest. It is an organisation that is primarily concerned with the principles of democracy and constitutionalism, as well as the rule of law. These are all implicated by the unlawful decisions of the Minister to suspend Dramat and to appoint the third respondent. It was argued that, in addition to his unlawful actions, the Minister has failed in his constitutional duty to protect the independence of the DPCI and uphold the rule of law in South Africa. It was argued, secondly, that the applicant also approaches the court in the public interest. All South Africans have an interest in the rule of law, the requirements for a properly functioning constitutional democracy and, in particular, that urgent steps be taken to root out corruption. Counsel confirmed, correctly in my view, that this is a challenge based on the principle of legality, and not a PAJA application.

[40] I return briefly to the argument raised in the founding papers (not specifically challenged in the opposing affidavit) that the third respondent cannot be appointed if Dramat was not lawfully suspended and that the appointment decision of the third respondent must suffer the same fate as the suspension decision of Dramat.

In *Seale v Van Rooyen NO and others, Provincial Government, North West Province v Van Rooyen NO and others* 2008 4 SA 43 (SCA) the following is said at 50C-D:

"I think it is clear from *Oudekraal*, and it must in my view follow, that if the first act is set aside, a second act that depends for its validity on the first act must be invalid as the legal foundation for its performance was non-existent."

In commenting on this decision, *Cara Hoexter*, at 549-550, says, after quoting the relevant passage from *Seale*:

"In other words, as *Oudekraal* itself makes clear, the factual existence of an act is capable of supporting subsequent acts only as long as the first act is not set aside. In this instance a decision to grant a servitude had indeed been set aside, and the subsequent registration of the servitude was therefore of no force and effect."


[41] In the circumstances, I have concluded that the position is as follows, and I find accordingly:

1. the purported suspension of Dramat was not authorised by law, unconstitutional and invalid from the outset – *Pikoli* at 408C-D;



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2. the appointment of the third respondent as Acting National Head depends for its validity on the suspension of Dramat and is, consequently, invalid as the legal foundation for such an appointment was non-existent – *Seale* at 50C-D;
3. where the suspension of Dramat was invalid and a nullity from the outset, he was, in law, never suspended, so that there is no basis for ordering his reinstatement;
4. where the appointment of the third respondent as Acting National Head depended for its validity on the suspension of Dramat, which was invalid and a nullity, the appointment of the third respondent is also invalid as the legal foundation therefor was non-existent. Such appointment, therefore, also falls to be declared invalid, and, inasmuch as it may be necessary, set aside.

Other legislation and provisions relied upon by the Minister in support of his decision to suspend Dramat

[42] In the face of the striking down and deletion by the Constitutional Court of section 17DA(2) of the SAPS Act, which the Minister argues, as I have illustrated, did not deprive him of his powers to suspend and remove Dramat, the Minister also, in the purported suspension notice of 23 December 2014, suggested that he is empowered to suspend Dramat by the provisions of the Public Service Act, Proclamation no 103 of 1994, and the so-called *SMS Handbook*, and more particularly chapter 7 thereof.

[43] In section 1 of the Public Service Act ("the PSA") "member of the services" is defined as meaning a member of –

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- (b) the South African Police Service appointed, or deemed to have been appointed, in terms of the South African Police Service Act, 1995 (Act 68 of 1995); or
- (c) ..."

Section 2(2) of the PSA provides:

- "(2) Where members of the services, educators or members of the Intelligence Services are not excluded from the provisions of this Act, those provisions shall, subject to subsection (2A), apply only in so far as they are not contrary to the laws governing their employment."
- (Emphasis added.)

The provisions in subsection (2A) are not applicable for present purposes.

- [44] As already pointed out, chapter 6A of the SAPS Act (containing sections 17A to 17L) deals with the DPCL, which is also established in terms of section 17C(1). It also, in section 17CA contains detailed provisions relating to the appointment, remuneration and conditions of service of those comprising the DPCL. I have quoted, at some length, from some of the provisions of the SAPS Act. In short, the provisions of the SAPS Act fully govern the employment of members of the DPCL. This includes 17DA dealing with the removal from office of the National Head of the Directorate. Consequently, any conditions or provisions in the PSA, not in harmony with what is enacted in the SAPS Act, will not apply to Dramat. The argument of the Minister, in this regard, can therefore not be upheld.

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[45] It was pointed out by counsel for the applicant, correctly in my view, that the *Senior Management Service Handbook*, published in 2003 ("*SMS Handbook*") is delegated legislation under the PSA and would therefore also not be applicable to the suspension and/or removal of the Head of the DPCI as this is governed, as pointed out, by section 17DA of the SAPS Act.

[46] In any event, if one has regard to chapter 7 of the *SMS Handbook*, on which the Minister relies, the provisions of paragraph 2.3 thereof under the heading "Scope of application" read as follows:

- "(1) This Code and Procedure applies to the employer and all members. It does not, however, apply to the employer and members covered by a disciplinary Code and Procedure --
- (a) ...
  - (b) contained in legislation or regulations."

The disciplinary procedure in the present case, specifically the suspension and/or removal of the National Head of the DPCI, is covered by the SASP Act so that chapter 7 of the *SMS Handbook* does not apply to Dramat.

It was also argued on behalf of the applicant that the *SMS Handbook* merely confirms that which the SAPS Act makes abundantly clear. Section 17DA(1) of the SAPS Act unambiguously provides, as already mentioned, that the Head of the DPCI shall not be suspended or removed from office except in accordance with the provisions of subsection (3) and (4). Peremptory language in a statute must, in the absence of strong indications to the contrary, be interpreted as compulsory and not merely

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directory. Not only are there no such contrary indications, but all the indications are that it should be interpreted to exclude any other mechanisms for suspension. It follows that the Minister's attempted reliance on any other legislation to justify his actions is misplaced.

Other arguments offered on behalf of the Minister

[47] I have dealt with most of the arguments presented on behalf of the Minister.

[48] An argument advanced on behalf of the Minister, which I have not yet mentioned, was raised for the first time during the proceedings before me. It has to do with a compromise or *transactio*.

In short, it has to do with Dramat's letter to the Minister of 24 December 2014, extracts of which I have quoted. The argument seems to be based on Dramat's utterance that he is willing to submit a request to vacate his office by applying for approval of early retirement but subject to the precondition that the unlawful precautionary suspension be uplifted without Dramat having to approach the court to do so.

[49] The argument, if I understood it correctly, appears to be that these utterances by Dramat constitute a compromise or an agreement not to litigate so that the applicant is debarred from proceeding with this application.

[50] I was referred to the case of *Gollach and Gomperts (1967) (Pty) Ltd v Universal Mills and Produce Co (Pty) Ltd and others* 1978 1 SA 914 (A). In the judgment it was

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stated, at 921B-C that a *transactio* is an agreement between litigants for the settlement of a matter in dispute and the purpose thereof is not only to put an end to existing litigation but also to prevent or avoid litigation.

Inasmuch as such a *transactio* may have been binding on the applicant, which it clearly is not, there is no evidence whatsoever of such an agreement having been entered into between the Minister and Dramat. Indeed, in his opposing affidavit, dated 14 January 2015, the Minister says that he is in the process of arranging a meeting with Dramat.

[51] In any event, as Mr Unterhalter correctly argued, no agreement between Dramat and the Minister, if there were to be one, can act as a bar to the applicant proceeding with the present application. The applicant, as stated, litigates in its own interest and in the public interest in an effort to uphold the principles of democracy and constitutionalism, as well as the rule of law. The application is aimed at attacking the constitutionality and validity of the Minister's actions.

[52] In the circumstances, I see no merit in the Minister's argument based on the alleged compromise or *transactio*.

The applicant's *locus standi*/standing to launch this application

[53] In the opposing affidavit, the Minister argues that this relief is sought by the applicant "on behalf of the second respondent" in circumstances where the second respondent has not authorised the applicant to bring the application on his behalf neither has he filed an affidavit supporting the application. It is argued that the applicant has no right

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in law to bring an application on behalf of the second respondent for his reinstatement or the upliftment of his suspension when there is no evidence in the founding papers to the effect that the second respondent seeks to challenge the suspension in court. It is argued that the applicant seeks to be the guardian of the second respondent when the latter has the ability and capacity to act on his own behalf and to bring an application himself, if he so wishes.

[54] The applicant's assertion that it brings the application in the public interest is, so the Minister submits, a red herring because the applicant cannot act in the public interest when the aggrieved party is present and available to act on his own. It is argued that the applicant cannot rely on the provisions of section 38 of the Constitution to establish the necessary *locus standi* to launch this application. The applicant is required, so the argument goes, to demonstrate in the founding papers that Dramat is unable to act on his own and for that reason it was in the public interest that the applicant should so act. Consequently, the applicant does not have the necessary legal standing to bring this application.

[55] In response to this argument, it was pointed out on behalf of the applicant that the latter does not contend that it seeks relief "on behalf of the second respondent". This is not a requirement under the law on own-interest standing. Nor is it a requirement that the applicant must demonstrate that Dramat "supports the application". It is irrelevant whether Dramat is "present and available to act on his own". This fact is irrelevant to the objective legal question as to whether or not the Minister acted in accordance with the law in his attempts to remove Dramat from office.

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[56] Counsel for the applicant pointed out that their client relies on own-interest and public interest standing, *inter alia* as provided for in sections 38(a) and (d) of the Constitution.

Section 38 reads as follows:

"38. **Enforcement of rights.** - Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are –

- (a) anyone acting in their own interest;
- (b) anyone acting on behalf of another person who cannot act in their own name;
- (c) anyone acting as a member of, or in the interest of, a group or class of persons;
- (d) anyone acting in the public interest, and
- (e) an association acting in the interest of its members."

(Emphasis added.)

[57] I was reminded by counsel for the applicant that their client brings this application, firstly, in its own interest. It was submitted that it is trite that our law accords generous rules for standing which permit applicants to seek relief either on their own behalf or on behalf of others. It is also trite, so it was submitted, that constitutional standing is broader than traditional common law standing. See *Giant Concerts CC v Renaldo Investments (Pty) Ltd and others* 2013(3) BCLR 251 (CC).

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It was further argued that even if the applicant's own interest standing is questionable (which the applicant denies) this may not prohibit a court from hearing the matter, if the interests of justice so demand. CAMERON J said in *Giant Concerts*,

"There may be cases where the interests of justice or the public interest might compel a court to scrutinise action even if the applicant's standing is questionable. When public interest cries out for relief, an applicant should not fail merely for acting in his or her own interest."

[58] Counsel submitted that the applicant has sufficiently demonstrated that as an organisation which is primarily concerned with the principles of democracy and constitutionalism, as well as the rule of law, its rights and interests are affected by the unlawful decisions of the Minister to suspend Dramat and to appoint the third respondent. This is a matter of such grave importance that it is undoubtedly in the interest of justice for the applicant to invoke section 38(a) of the Constitution. This is particularly so in the context of the applicant's involvement in ensuring that the DPCI is properly insulated from political interference and safeguarding the DPCI's independence, through its interventions as an *amicus curiae* in *Glenister II* and as an applicant in the 2014 judgment. In neither of those cases the *locus standi* of the applicant was attacked. It is difficult to see how an objection to the *locus standi* can be upheld in this particular matter under these circumstances. After all, the present matter flows from the 2014 judgment for reasons which have already been explained.

[59] As to public interest standing, which also involves the 2014 judgment, section 38(d) of the Constitution allows a party to bring constitutional challenges "in the public

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interest". It has been held repeatedly that the court should adopt a "generous" or "broad" approach to standing in these matters. CAMERON J held in *Beukes v Krugersdorp Transitional Local Council* 1996 3 SA 467 (W) at 474 that such a generous approach is not limited to the Constitutional Court, but should be adopted by "all courts that are called upon to adjudicate constitutional claims" and the generous nature of the test applies both in respect of who qualifies as having standing and how that standing may be evidenced.

[60] It was also argued that the conduct or views of Dramat do not in any way affect the public interest in upholding the rule of law and dealing with blatantly unlawful acts by the National Executive in respect of a key public institution. In any event, so it was further argued, it is clear from Dramat's letter of 24 December 2014 that the offer (of taking early retirement) was made under duress and because Dramat is disillusioned with the Minister's inability to act lawfully and with attempts to subvert his office and authority.

[61] In all the circumstances, I am satisfied that the applicant has made out a proper case for legal standing and that the attack on the applicant's standing is ill-founded. I add, for the sake of clarity, that I was specifically informed by counsel for the Minister during the proceedings that the issue of standing was not raised as a point *in limine* for immediate decision but that it had to be decided as part of the main judgment.

#### Conclusions

[62]. I have already set out my conclusions, particularly when dealing with the position of the third respondent and other subjects.

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[63] For the reasons mentioned, and because of my finding of unlawful conduct and unconstitutional conduct on the part of the Minister, I am satisfied that a proper case was made out for the relief sought.

Costs

[64] The costs should follow the result in the normal manner. The costs should also include the costs of two counsel.

[65] Counsel on both sides were in agreement before me that the costs flowing from the proceedings of 15 January 2015 should be costs in the application.


The order

[66] I make the following order:

1. It is declared that the decision of the first respondent (the Minister of Police) of 23 December 2014 to suspend Lieutenant General Anwa Dramat, the National Head of the Directorate for Priority Crime Investigation ("the DPCI") is unlawful and invalid and the decision is set aside.
2. It is declared that the decision of the Minister to appoint Major-General Berning Ntlemeza as Acting National Head of the DPCI is unlawful and invalid and the decision is set aside.
3. It is declared that the Minister is not empowered to suspend the National Head of the DPCI other than in accordance with sections 17DA(3) and (4), read with section 17DA(5), of the South African Police Service Act, 1995.

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4. The Minister is ordered to pay the costs of the applicant, which will include the costs of the proceedings of 15 January 2015 and the costs of two counsel.



W R C PRINSLOO  
JUDGE OF THE GAUTENG DIVISION, PRETORIA

1054/2015

HEARD ON: 15 & 19 JANUARY 2015  
FOR THE APPLICANT: D UNTERHALTER SC ASSISTED BY M DU PLESSIS  
INSTRUCTED BY: WEBBER WENTZEL  
FOR THE 1ST RESPONDENT: W MOKHARI SC ASSISTED BY M<sub>S</sub> T SEBOKO  
INSTRUCTED BY: HOGAN LOVELLS (SOUTH AFRICA) INC AS ROUTLEDGE  
MODISE INC



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

**CASE NO: 1054/2015**

In the application for leave to appeal between:

**THE MINISTER OF POLICE**

1<sup>ST</sup> Applicant

**MAJOR-GENERAL BERNING NTLEMEZA**

2<sup>ND</sup> Applicant

and

**THE HELEN SUZMAN FOUNDATION**

1<sup>ST</sup> Respondent  
(Applicant in the Court a quo)

**LIEUTENANT GENERAL ANWA DRAMAT**

2<sup>ND</sup> Respondent  
(2<sup>ND</sup> Respondent in the Court a quo)

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**NOTICE OF APPLICATION FOR LEAVE TO APPEAL**

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**KINDLY TAKE NOTICE THAT** the applicants in the application for leave to appeal lodge an application for leave to appeal against the whole of the judgment and orders made by Honourable Justice Prinsloo J on 23 January 2015 a copy of which is annexed marked "A".

1. The Honourable Justice Prinsloo ("the Court a quo") has made the following orders on pages 52 and 53 of the judgment:

**"66. I make the following order:**

1. It is declared that the decision of the first respondent ("The Minister of Police") of 23 December 2014 to suspend Lieutenant General Anwa Dramat, the National Head of the Directorate for Priority Crime

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*Investigation ("the DPCI") is unlawful and invalid and the decision is set aside.*

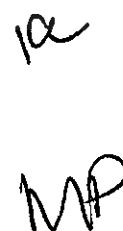
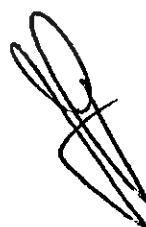
- 2. It is declared that the decision of the Minister to appoint Major-General Berning Nlemeza as Acting National Head of the DPCI is unlawful and invalid.*
- 3. It is declared that the Minister is not empowered to suspend the National Head of the DPCI other than in accordance with section 17DA(3) and (4), read with section 17DA(5), of the South African Police Service Act, 1995.*
- 4. The Minister is ordered to pay the costs of the applicant, which will include the costs of the proceedings of 15 January 2015 and the costs of two counsel."*

2. The two principal issues for determination by the Court a quo were:

- 2.1 whether the applicant had locus standi to launch the application for review and the setting aside of the decision of the first respondent ("the Minister");
- 2.2 whether the Minister had the power to suspend the second respondent ("Lieutenant General Dramat").

#### GROUND OFS OF APPEAL

3. The finding of fact and/or ruling of law appealed against and the grounds upon which the appeal is founded are set out below.
4. In finding that the first respondent ("applicant in the Court a quo") had locus standi to bring the application the effect of which was to reinstate Dramat, the Court a quo erred in law.



4.1 Dramat did not bring an application before this Honourable Court or any other Court for an order setting aside the decision of the Minister to place him on precautionary suspension.

4.2 Dramat was cited as the second respondent in the application by the first respondent and simply filed a notice to abide.

4.3 Dramat did not file an affidavit in support of the application.

5. The first respondent has not made out a case that in law it is entitled to act in its own interest and in the public interest in respect of a decision taken by an administrative functionary which directly affects an individual who is capable of acting on his own.

**THE MINISTER'S POWER TO SUSPEND**

6. The Court a quo has found that the Minister does not have the power to suspend the Head of the DPCI except in terms of section 17DA(3) and (4) read with section 17DA(5) of the South African Police Service Act 1995.

7. The Court a quo found that the deletion of section 17DA(2) from Chapter 6A of the South African Police Service Act, 1995 has left the Minister with no power to suspend other than in terms of section 17DA(3) and (4), read with subsection (5) because the provisions of section 17DA(1) are peremptory.



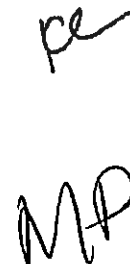
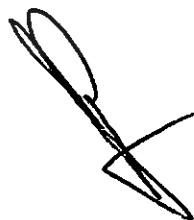
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8. The Court a quo erred in finding that the Minister has no power to suspend the Head of the DPCI other than as contemplated in sections 17DA(3) and (4) read with section 17DA(5) of the South African Police Services Act, 1995.
9. The Court a quo erred in finding that the provisions of section 17DA(1) are peremptory despite that the Court has found in paragraph 85 of its judgment that the Minister's powers to suspend the Head of the DPCI as contemplated in section 17DA(2) cannot be faltered save for the offending portions of subsection (2) which gave the Minister untrammelled powers from the words "as the Minister deems fit" and the possibility of the suspension of the Head of the DPCI by the Minister without pay.
10. The Court a quo ought to have found that the order of the Constitutional Court in which it struck down section 17DA(2) and deleted it from the South African Police Services Act, must be read together with the reasons that the Constitutional Court gave for making such an order.
11. The Court a quo ought to have found that the order of the Constitutional Court in striking down section 17DA(2) must be read with the reasons given by the Constitutional Court in the majority judgment in paragraph 91 when it said that the remainder of section 17DA will continue to guide suspension of the Head of the DPCI, which must be read to mean that the provisions of section 17DA(1) must not be read to be peremptory to the extent that the Minister's power to suspend the Head of the DPCI have been abrogated and that no suspension of the Head of the DPCI could take place other than as contemplated in subsection (5) of the South African Police Service Act.



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**THE SETTING ASIDE OF THE DECISION TO SUSPEND**

12. The Court a quo has found that in setting aside the decision to suspend it was not necessary to make an order of reinstatement of Dramat because the declaration of the invalidity of the decision of the Minister is *ab initio* and it is as if Dramat had not been suspended.
13. The setting aside of the decision and the declaration of the invalidity of the decision of an organ of State or an executive does not operate retrospectively unless the Court stipulates that it operates with retrospective effect.
14. In making the order of invalidity, the Court a quo failed to deal with an appropriate remedy given that:
- 14.1 Dramat had been on suspension since 23 December 2014;
- 14.2 An Acting Head of DPCI ("second applicant") has been performing the functions and duties of the Head of the DPCI since his appointment immediately after the suspension of Dramat;
- 14.3 No order was sought by the first respondent that decisions made by the Acting Head of the DPCI must be declared null and void;
- 14.4 In law, the decisions made by the Acting DPCI as an administrative functionary, are valid and lawful unless set aside by the Court;



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14.5 the failure by the Court a quo to pronounce itself on the status of the decisions that were made by the Acting Head of DPCI since his appointment on or about 25 December 2014 is a misdirection;

14.6 the Court a quo ought to have pronounced itself on the validity or otherwise of the decisions made by the Acting Head of DPCI during the period of suspension of Dramat and before the Court a quo declared the Minister's decision to suspend invalid and unlawful.

**THE SETTING ASIDE OF THE APPOINTMENT OF MAJOR-GENERAL NTLEMEZA**

15. The Court a quo set aside the appointment of Major-General Ntlemeza as Acting Head of DPCI on the grounds that once the decision to suspend Dramat was found to be unlawful *ab initio* it follows that the decision to appoint Major-General Ntlemeza is also unlawful.
16. The Court a quo erred in setting aside the appointment of Ntlemeza on this basis.
17. The Minister is required to appoint an Acting Head of DPCI when the Head of DPCI is absent or unable to fulfil his functions.
18. Ntlemeza was appointed by the Minister with the Minister exercising his powers in terms of section 17CA(12) of the South African Police Services Act. This subsection states that:



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**"(12)(a) Whenever the National Head of the Directorate is absent or unable to perform his or her functions, the Minister shall appoint the Deputy National Head of the Directorate as the Acting National Head of the Directorate.**

**(b) Whenever the office of the National Head of the Directorate is vacant, or the National Head of the Directorate is for any reason unable to take up the appointment contemplated in subsection (1), the Minister shall appoint the Deputy National Head of the Directorate as the Acting National head of the Directorate."**

19. It is common cause that upon the suspension of Dramat, Dramat could not perform his functions and could not report for duty and his absence or inability to perform his functions, oblige the Minister in terms of section 17CA(12)(a) to appoint an Acting Head of DPCI.

20. The effect of section 17CA(12)(a) is that the declaration of the invalidity of the suspension of Dramat by the Minister does not necessarily lead to the declaration of the invalidity of the appointment of the Acting Head of the DPCI.

21. The Court a quo erred in setting aside the appointment of Ntlemeza as Acting Head of DPCI.

#### **APPROPRIATE REMEDY**

22. The Court a quo erred in failing to deal with the appropriate remedy.

23. In an application for review, in setting aside the decision of an organ of State or a functionary, the Court is enjoined to make an appropriate remedy.



24. The Court a quo ought to have found that:

24.1 the declaration of the invalidity of the suspension of Dramat does not invariably result in his reinstatement. The Court did not pronounce itself on whether in terms of this Court order Dramat is entitled to return to work;

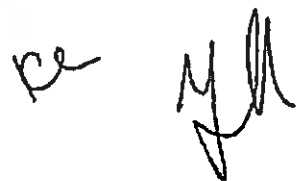
24.2 the declaration of the invalidity of the suspension of Dramat does not operate retrospectively;

24.3 the decisions taken by the Acting Head of DPCI in the absence of Dramat, are lawful decisions and therefore valid;

24.4 the declaration of the invalidity of the suspension of Dramat only operate from the date of the order.

**TAKE NOTICE FURTHER THAT** the applicants seek leave of this Honourable Court to appeal against the whole of the judgment and orders of this Honourable Court and that such leave be granted to the Supreme Court of Appeal ("SCA") on the grounds that:

- (a) there are reasonable prospects of success in that the SCA may come to a different conclusion other than the one arrived at by the Court a quo;
- (b) the matter raises important and complex legal issues which require clarification by the SCA;



- (c) the effect of the declaration of the invalidity of the decision of a functionary on decisions made prior to the declaration of the invalidity;
- (d) the constitutional issues that arise from this matter and the interpretation accorded to these constitutional issues by the Court a quo in its judgment.

WHEREFORE may the following order be made:

- 1. leave to appeal be granted to the SCA;
- 2. the costs be costs in the appeal.

DATED AT SANDTON ON THIS THE 23<sup>RD</sup> DAY OF JANUARY 2015.

**Hogan Lovells (South Africa) Incorporated**  
**as Routledge Modise Inc**  
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Ref: Ms Mpepo/R Mudau

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*[Signature]*

*MD*



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TO:  
THE REGISTRAR OF THE ABOVE  
HONOURABLE COURT  
PRETORIA

AND TO:

**WEBBER WENTZEL**

First Respondent's Attorneys  
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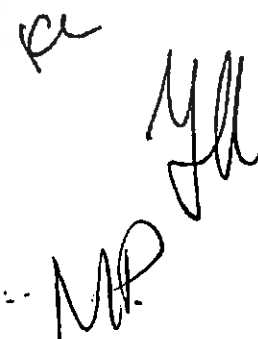
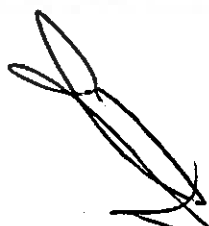
Received copy hereof this  
the \_\_\_\_\_ day of JANUARY 2015.

\_\_\_\_\_  
for: First Respondent's Attorneys

AND TO:

**Riley Incorporated**  
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Ref.: JFR/MAT11144/wd

*Service by Email*



"FA3"

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MINISTRY OF POLICE  
REPUBLIC OF SOUTH AFRICA

Private Bag X463 PRETORIA 0001, Tel (012) 393 2800, Fax (012) 393 3818/20 - Private Bag X9080 CAPE TOWN 8000, Tel (021) 457 7021, Fax (021) 457 7033

TO : Lt General Anwar Dramat  
: National Head of the Directorate for Priority Crime Investigation: Republic  
Of South Africa

FROM : The Minister of Police

DATE : 9 December 2014

File Ref : 1/12/2014

Re : Contemplated Provisional Suspension of the National Head of the  
Directorate for Priority Crime Investigation Lt General Dramat in  
Terms of Section 17 DA 2 (a) (i) and (iv) of the South African Police  
Service Act 68 of 1995, SAPS Act.

SUBJECT : Rendition of Zimbabwean Nationals in 2010/2011

This serves to advise your good-self that the Minister of Police is considering placing you on provisional suspension in terms of section 17 DA (2)(a)(i) and (iv) of the SAPS Act on the following grounds:-

The following Zimbabwean nationals were renditioned and/or illegally deported by the  
Directorate for Priority Crime Investigation in 2010 and 2011 following a joint operation with Zimbabwean police.

- i. Shepard Chuma
- ii. Maqhawe Sibanda
- iii. Nelson Ndlovu

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- iv. Witness Ndeya
- v. Prichard Chuma
- vi. Johnson Nyoni
- vii. Gudi Dube
- viii. Bongani Moyo

The Zimbabwean nationals in roman figures (i) to (vii) were allegedly fugitives for a crime of murder and robbery committed in Zimbabwe. They were renditioned from South Africa to Zimbabwe; it is further alleged that, two of them were eventually killed by Zimbabwean police. The Zimbabwean national in roman figure (viii) was renditioned from Zimbabwe to South Africa, after his escape from custody in South Africa.

The exchange of criminal suspects between the two law enforcement agencies was allegedly not done in terms of Southern African Development Community's Protocol on Extradition; South Africa's Extradition Act 67 of 1962, as well as national legislation on mutual legal assistance in criminal matters.

According to the Hansard record of parliament of the 13<sup>th</sup> December 2011, your reply dated 25<sup>th</sup> November 2011, you supposedly responded to a parliamentary question on these acts of renditions, wherein you supposedly misled the Minister and Parliament by stating that it was the Department of Home Affairs who deported the Zimbabwean nationals; well knowing that the Zimbabwean nationals were wanted for criminal offences in Zimbabwe and had been illegally deported by Directorate for Priority Crime Investigation (DPCI).

There is suggestive evidence at my disposal that the Zimbabwean nationals were wanted in Zimbabwe in connection with the murder of a police colonel, in KwaBulawayo. Therefore, in such an instance, mutual legal assistance on criminal matters and extradition procedures should have been instituted.

Evidence at my disposal, suggest that you probably sanctioned the entry of Zimbabwean police to South Africa and further sanctioned a joint operation between Directorate for Priority Crime Investigation (DPCI) and Zimbabwean police to trace the fugitives.

Furthermore, there is suggestive evidence that the South African Department of Home Affairs and the Zimbabwean Embassy were not involved in the illegal deportation of the Zimbabwean nationals.



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Attorneys, Notaries and Conveyancers  
Reg no: 2009/012814/21

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OUR REF: JFR/MAT11144/wd  
YOUR REF: 1/12/2014

December 12, 2014

The Minister of Police  
Wachthuis  
PRETORIA

Honourable Minister

[amellamonaheg@saps.gov.za](mailto:amellamonaheg@saps.gov.za)

cc: The State Attorney Cape Town

[lgava@justice.gov.za](mailto:lgava@justice.gov.za)

cc: The State Attorney Pretoria

[BMlnnaar@justice.gov.za](mailto:BMlnnaar@justice.gov.za)

**CONTEMPLATED IRREGULAR AND UNLAWFUL PROVISIONAL SUSPENSION OF THE  
NATIONAL HEAD OF THE DIRECTORATE FOR PRIORITY CRIME INVESTIGATION**

1. We are the attorneys of record for Lt-Genl A Dramat since September 2013 in the matter surrounding the so-called "Zimbabwe Rendition". Correspondence was exchanged between this office, the State Attorney Pretoria, the National Commissioner and IPID regarding this matter.
2. We refer herewith specifically to the Notice of Contemplated Suspension handed by you to Lt-Gen Dramat on 10 December 2014 with your file reference 1/12/2014. You instructed Lt-Gen Dramat to furnish reasons to you within 5 days as to why you should not provisionally suspend him pending an Internal Investigation.

DIRECTOR: JOHN FRED RILEY, BJURIS, LLB  
ASSOCIATES: STEVEN BARKER, BJPROC | DENNIS BUNT CAVERNELLS, BA, LLM | TRACEY-LEE JAMES, BA, LLB | RUKIA ALLIE DA COSTA, BCOM, LLB  
CONSULTANT: SAGEER PANSARI, BA, LLB



3. It is evident from the notice that you are exercising powers in terms of section 17DA(2)(a)(i) and (iv) of the SAPS Amendment Act. On 27 November 2014 the Constitutional Court confirmed in Helen Suzman Foundation / President of the Republic of South Africa (Case No. CCT 07/14) and in Hugh Glenister / President of the Republic of South Africa (Case No. CCT 09/14) that the "(2)" in section 17DA(1) and the whole of section 17DA(2) were invalid and unconstitutional and further, that these sections should be deleted from the Act from the date of the Constitutional Court's order. The purpose of the constitutional litigation in Suzman and Glenister was to ensure that the DPCI is adequately independent both structurally and to have operational autonomy. The main thrust was to forbid improper interference by the Minister and the National Commissioner with the Head and members of the DPCI in the exercise or performance of their powers, duties and functions.
4. You as the honourable Minister of Police were cited as the second respondent in the Constitutional Court and in the preceding hearing of the matter in the Western Cape Division of the High Court. You were fully represented by three advocates in both courts and we therefore find it alarming and surprising that you are unaware of both judgments and orders of constitutional invalidity of the above impugned sections. You would therefore be in contempt of the Constitutional Court, should you proceed with the contemplated provisional suspension of Lt-Gen Dramat. Clearly your advisors should from time to time look at the law and recent Constitutional Court judgments against you.
5. It is alleged in the Notice of Contemplated Suspension that Lt-Gen Dramat *"misled the Minister and Parliament by stating that it was the Department of Home Affairs who reported the Zimbabwean nationals; well knowing that the Zimbabwean nationals were wanted for criminal offences in Zimbabwe and had been illegally deported by the Directorate for Priority Crime Investigation (DPCI)." You further stated in the notice that "evidence at my disposal, suggest that you probably sanctioned the entry of Zimbabwean police to South Africa and further sanctioned a joint operation between the Directorate for Priority Crime Investigation (DPCI) and Zimbabwean police to trace the fugitives."*
6. Lt-Gen Dramat dealt with the above allegations in a comprehensive statement dated 23 October 2013 (annexure A). What has alarmed us in the above so-called IPID investigation is that it has already come to the attention of Lt-Gen Dramat that certain witnesses had been told that unless they incriminate Dramat, they would be of no value to the investigator. It was further submitted in the statement that the DPCI was at the time (and still is) tasked and seized with very sensitive and high profile investigations and that the timing of the then IPID investigation and the current contemplated suspension is clearly a *"smear campaign"* to derail any investigations or arrests that the DPCI is in the process of conducting. For obvious reasons we shall not list the details of the sensitive matters or the identity of the high profile individuals.



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7. IPID sent an undated letter to Lt-Gen Dramat which contained the same allegations as referred to in your Notice of Contemplated Suspension. Lt-Gen Dramat was required to answer certain questions regarding the "rendition" of the Zimbabwean nationals. These questions were answered with our assistance in a statement dated 11 November 2013 (annexure B). It was specifically pointed out that Lt-Gen Dramat never authorised or sanctioned co-operation or kidnapping of any of the Zimbabwean nationals referred to in the IPID correspondence. It was further pointed out that Lt-Gen Dramat unequivocally denied any knowledge of any action whatsoever that he authorised or participated in which was aimed to defeat the due administration of justice. It was emphasised that the fraud and theft allegations were equally vague and spurious and that Lt-Gen Dramat could not and still cannot disprove allegations that do not factually exist. Surprisingly the Notice of Contemplated Suspension takes the matter far beyond the allegations made by IPID – i.e. that Lt-Gen Dramat undermined the legislative authority of the Minister of Justice and the judiciary, and that he is allegedly an accomplice and co-perpetrator on torture, murder and renditions. These are, of course, very serious allegations and Lt-Gen Dramat therefore reserves his rights in this regard.
8. We reiterate our request which was contained in paragraph 28 of annexure A and paragraph 32 of annexure B that, as a matter of urgency, we should be furnished with all the relevant affidavits that contain facts to support the above very serious allegations and not be presented only with those spurious allegations in the IPID letter which were clearly cut and pasted into your Notice of Contemplated Suspension. It goes without saying that neither IPID nor the National Commissioner or the NDPP complied with the request to furnish concrete evidence to Lt-Gen Dramat since our request more than a year ago. Lt-Gen Dramat proffered his full co-operation with a *bona fide* investigation if such an investigation exists. It is, however, impossible to do so without having any statements implicating him. Kindly advise specifically if you have seen this correspondence personally.
9. It came to the attention of Lt-Gen Dramat that the powers to be are fervently seeking to obtain a warrant of arrest. We again reiterate what has been said in paragraph 25 of annexure A and paragraph 5 of annexure B, – that is that we rely on the NDPP to appoint a senior advocate who has no vested interest in the outcome of the decision to charge Lt-Gen Dramat if sufficient grounds exist to do so. It was further pointed out that if IPID were to approach any presiding officer, Magistrate or Judge in order to apply for any warrant of arrest, that all the correspondence to date, including the previous statements of Lt-Gen Dramat be annexed to any such application.
10. There is absolutely no reason to arrest Lt-Gen Dramat other than to embarrass him and his family. We have made it abundantly clear that should the NDPP charge him on the spurious allegations, Lt-Gen Dramat will voluntarily appear before a competent court to answer to any charges. We reiterate that the broad nature of the "supposedly" sanctioning







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and involvement in the illegal deportation of the Zimbabwean nationals which took place more than four years ago are nothing other than slanderous, malicious conjecture that have, by design been made in order to derail sensitive investigations of the DPCI and/or an attempt to discredit the reputation and integrity of Lt-Gen Dramat and the DPCI.

11. In conclusion, the Minister of Police does not have the power to suspend the Head of the DPCI. Should you proceed with such unconstitutional and contemptuous conduct, we will approach the High Court on an urgent basis for appropriate relief. Given the clear ulterior motives/purpose underlying the vague allegations against Lt-Gen Dramat, we will ask the High Court to issue a punitive cost order against any individual in his personal capacity who will proceed with any unlawful action against Lt-Gen Dramat.
12. Kindly verify all these facts yourself as Honourable Minister so that there can be no dispute that you yourself applied your mind and that you have not been supplied with false information or misled by individuals who have hidden agenda's or sinister motives which will ultimately cause yourself serious embarrassment.

Yours faithfully

RILEY INCORPORATED

Per:  
JOHN RILEY

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IN RE: IPID INVESTIGATION

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STATEMENT OF ANWA DRAMAT

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I, the undersigned,

Anwa Dramat

hereby state as follows:

1. I am an adult male Lt. General and Head of the DPCL. I have elected to depose to the following statement. It is not my intention to be overly profix in this statement insofar as I fully reserve my rights to deal with and comment on any aspect that may emerge at a later stage. I have however decided that it is of the utmost importance that I be transparent in this matter and that I set out my position comprehensively right from the outset.
2. On or about the 12<sup>th</sup> of September 2013 I was advised that I was being investigated in a matter surrounding a so-called "Zimbabwe rendition", whatever that may mean. I was advised by one Mr Khuba who I believe to be the Limpopo Acting Head of IPID that he was busy investigating the matter and that I was a suspect and that I had one week to obtain the necessary legal assistance.

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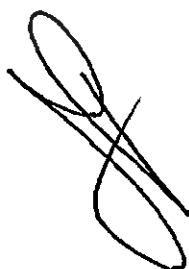
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3. Pursuant to that and without burdening this statement with the content thereof I addressed correspondence to the Honourable National Commissioner of SAPS requesting legal assistance in the matter. Pursuant to this letter certain events took place and a legal representative from the State Attorney was appointed to represent me. This being one Mr Peter Seleka.
4. I have subsequently however engaged the services of Mr John Riley (my attorney) of Riley Incorporated of 212 Rosmead Avenue, Wynberg, Western Cape. I have also requested my attorney to instruct two counsel of my choice to represent me in this matter.
5. The teleological purpose of my current statement is to provide IPID with certain background information and to, right from the outset, set out where I intend to go with this matter and how I intend to deal with it.

#### MY PERSONAL BACKGROUND

6. I was born on the 16<sup>th</sup> of July 1968. Both my parents are alive. I have two brothers and one sister. I grew up in an area known as Bontshauwel in the Western Cape.
7. From a very early age I became acutely aware of the injustices brought about by apartheid in South Africa. I saw many things that were wrong with the country, among other things, the severe impact of racial discrimination and the gross inequality that "non white" and black people were subjected to. I



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was further severely affected by police brutality, torture and detention without trial.

8. I completed my schooling at Spas Bone in Athlone. My intention as a young person was to enrol at the Technikon as I intended to pursue a career in engineering.

9. However I could not stand by passively and watch the injustices unfold in front of me. I became politically <sup>conscious</sup> conditioned at an early age. As a result I had to take certain decisions at a very young age and became accustomed to the idea that whatever decisions I took would ultimately lead to my death or long term incarceration in my quest to achieve a free and democratic South Africa. At an early age I became politically involved and joined the ANC in the armed struggle against the oppression that was pervasive in this country prior to 1994.

10. I was arrested in 1987, shortly after completing school. I was one of youngest detainees at the time and kept in custody awaiting trial under the Old "Terrorism Act". I was brought before the High Court in the Western Cape and was charged and convicted of, *inter alia*, sabotage. As a result of my beliefs and what I stood for I was sentenced to 22 years imprisonment. I was only required to serve twelve years imprisonment.

11. I was thereafter taken to Robben Island where I was imprisoned. I had made the decision to become involved in the ANC and the armed struggle because I



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wanted a better country where we had a Constitution where people would be treated equally and fairly, where everyone had the same opportunities and that the illegal apartheid system that was in place would cease to exist.

12. At a young age, and based on strong Islamic principles of fairness and equality of treatment, I made a decision that I would stand by my principles even at great cost to myself and my family who clearly suffered tremendously as a result of my incarceration.
13. I pause to mention that even those police officers who had previously investigated me, I had forgiven and I totally reconciled myself with the concept of a new South Africa, a new democracy and a better life for everyone. I was released from prison sometime after the release of President Nelson Mandela. After my release from prison I worked as a volunteer for the African National Congress at Bonteheuwel in the period leading up to the democratic elections of 1994. It was at that time that I was integrated into the South African Police services as a trainee constable.
14. My vision for the South African Police at that stage was that I would do everything I could to ensure that our country transformed into an equal and just society where everyone was treated fairly before the law.
15. My exposure in the police has involved working in crime intelligence, working in situations where there was existing and continued tensions between organised crime syndicates and underworld figures. In general I applied



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myself to learn as much as I could in order to be as respected as the principled police officer which I believe I still am at present.

16. I have two minor children aged 18 and 11 respectively and I am married. I have throughout my life attempted to instil in them the values that I have always stood for and that I have sacrificed my freedom for, and that I hoped to achieve. I verily believe that my integrity and my commitment to a better South Africa has been displayed through various independent acts by myself and in the manner in which I have performed my extremely difficult task as a police man and in particular the present position that I hold.

#### AD MY APPROACH

17. At first glance having heard the wild allegations I thought that it would be proper to immediately attend on meeting with IPID and explain my situation. However, it soon became apparent to me that the newspapers knew more about the investigation against me than I did myself. It concerned me that an investigation of this nature would be out in the public domain before I was appraised of all the relevant facts, presented with cogent evidence or offered a proper opportunity to exercise my right of *audi alteram partem*.
18. I was accordingly shocked and dismayed when I was contacted by a journalist and advised by the journalist that the journalist knew about a meeting that had been scheduled between myself and IPID. At that stage I had not yet been appraised of the date, time or place of the meeting but the journalist had already been advised of this fact. It concerned me and it was self-evident that



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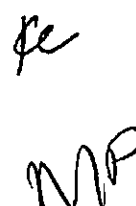
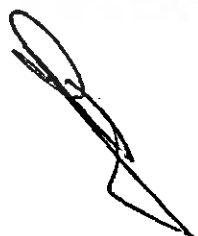
the only source where a journalist could have obtained this information must have been IPID itself.

19. A further issue which has caused me grave concern is that I have reliably learnt that the investigators from IPID, more specifically one Mr Khuba has advised a witness that he would not take an affidavit from this witness if this witness did not furnish him with a version that incriminated myself. If this is proved to be correct, the conduct of Mr Khuba, would in my respectful view amount to an attempt to defeat the ends of justice and further show that IPID has set upon a course of investigating this matter in a selective manner with the object of implicating me in the commission of the alleged offences irrespective of whether there are witnesses and or evidence which exculpates me from blame.

20. Good and sound police practice teaches that it is not for an investigator to tailor his investigation or dismiss exculpatory evidence when such evidence is presented. I intend to reserve my right to deal with this specific issue in the appropriate forum.

The least that I expect at this stage is that IPID conducts whatever investigation they are conducting in an objective manner as is required by the law.

AD INTEGRITY OF THE DPCI



21. It is self-evident that my unit is tasked and seized with investigating various sensitive and high profile matters. I have no intention whatsoever to ventilate these investigations on paper but I can assure IPID and the National Director of Public Prosecutions that in the execution of my duties I have at all relevant times acted without fear or favour and transparently as I believe that I am required to. It is for this very reason that it is in the interests of justice that this matter be dealt with in terms of the trite rules of evidence and with the due deference and respect to the principles and values enshrined in our Constitution.
22. If it transpires that this investigation is merely a "smear campaign" to derail any investigations I have conducted or which I am in the process of conducting I will have no hesitation in ensuring that those that are behind it are brought to book and that they face the full might of the law.
23. Similarly I do not expect any special treatment whatsoever. I have no hesitation in avowing that I will wish for this entire matter, if it needs to be proceeded with, to be dealt with expeditiously, in a court of law and subject to public scrutiny.
24. As an ordinary citizen and as Head of the DPCI I have a responsibility not only to my unit but also to the rule of law to ensure that nothing is done to compromise any of the investigations that my unit is currently busy with.



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25. I also specifically rely on the NDPP to appoint a senior advocate who has no vested interest in the outcome of the decision that is to be made as to whether sufficient grounds exist for charges to be brought against me or not. I am embarrassed to have to point this out, but I feel it necessary to emphasize this point strongly at this stage so that there can be no confusion later should an adverse decision be made on a case against me where there is no merit. I would certainly want to deal with this issue in the appropriate forum.
26. I therefore respectfully request that the NDPP himself and/or a duly delegated senior advocate who has not been involved in any of the matters which my Unit has or is dealing with and, which have been rather controversial in recent times, be involved in the decision-making process as to whether there is merit in pursuing a prosecution against me:

AD RIGHT TO AUDI ALTERAM PARTEM

27. I have taken some time to reflect on how I wish to deal with this particular aspect. My *prima facie* view is that I will do everything necessary to co-operate with a *bona fide* investigation if such an investigation exists. I will however under no circumstances legitimize any attempt, by any person(s), to discredit me through a "smear campaign" or by running a campaign through the print or other media, or leaking disinformation about the case to the media.
28. My position is therefore that if IFID is prepared to present me with a list of questions, together with a proper and transparent summary, of the merits and



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demerits against me, I will most certainly apply myself diligently and provide a comprehensive response to the matters that require my comment.

29. However, if the position is that I am to be cross-examined by ambush, my approach is that the matter be expedited as soon as possible. I can make myself available at any time should the intention be to arrest me, and I will respectfully request that if such an arrest is contemplated that the investigation be finalised and that the matter be enrolled in a court of law as a matter of urgency so that I can confront my accusers and subject myself to judicial scrutiny. In any event it is my respectful view that there is no reason why I should be arrested as there is no reason why I cannot be brought before court by way of a summons.

30. I would not want a situation where there is an expedited arrest and thereafter the State indicates that they need several months, if not years, to investigate the matter. Such a move will only serve to taint and or derail any current investigations, frustrate the rights of various complainants who have legitimate complaints that are being investigated by my unit and serve to sideline me from the work I have to complete.

31. I can respectfully point out that I am ready to go to trial today on any issue and accusation that will be levelled against me subject to me being provided with all the witness statements and evidentiary material whether of an incriminatory and / or exculpatory nature.

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**AD RULES OF ENGAGEMENT**

32. I wish to emphasize that I would expect IPID to respect the rule of law, the policies of transparency and to operate within the framework of the law. If it emerges that my communications have been interfered with, that my legal privilege has been breached in any way, or that witnesses have been threatened or tampered with, or disinformation leaked, I reserve all my rights and remedies against those responsible for such action.
33. Similarly I undertake, from my side, to respect the process and co-operate to the fullest extent.

**CONCLUDING REMARKS**

34. It is self-evident that there is no likelihood that I will not stand my trial. It is further self-evident that there is no likelihood that I will interfere with witnesses or tamper with evidence or undermine the proper functioning of the criminal justice system.
35. From the very limited and vague allegations that have been made, more specifically from the information that I have gleaned from the newspapers, I have no hesitation that I will be acquitted in any court of law, if prosecuted.
36. I wish, however, to emphasize that if the matter goes to court and the evidence emerges that this has been a stratagem to undermine legitimate investigations and to run "smear campaigns" against persons in my position

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who have immense responsibilities towards the citizens of this country, it will be a turning point for our democracy. I will most certainly not rest until those who have attempted to malign me and run smear campaigns against me, are brought before the proper forums and dealt with appropriately in terms of the laws of the Republic.

37. I make this statement freely and voluntarily and respectfully request that it be treated confidentially and that, as a matter of urgency, IPID and/or the NDPP liaise with my instructing attorney.

DATED AT CAPE TOWN THIS 23 DAY OF OCTOBER 2013.

  
ANWA DRAMAT

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**STATEMENT OF ANWA DRAMAT**

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I, the undersigned

**ANWA DRAMAT**

hereby state as follows:

1. I am an adult male Lieutenant-General and the National Head of the DPCI. By virtue of my post, I am also a Deputy National Commissioner of the South African Police Service.
2. I have been requested by IPID to make a statement with regards to certain very serious, in my view, vexatious "*allegations*" that have been made against me by IPID.
3. I wish to make certain preliminary remarks. Following an application to the State Attorney for legal representation, and after not having received a definite answer, my attorney, Mr Riley, has entered into correspondence with

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the SAPS Legal Services, Pretoria and the State Attorney in order to request that the legal representatives of my choice be appointed.

4. Despite the urgency created by IPID to provide them with a statement, it appears that no decision had been taken by the State Attorney or SAPS on legal representation. It appears now that I would have to launch review proceedings in the High Court in order to obtain the necessary relief. I have instructed my legal representatives to proceed with this application immediately. I believe that I am entitled to legal representation insofar as there is clear precedent for this and it appears to be trite law. Therefore insofar as I may have to make a further statement, or amplify or have further dealings with IPID I would respectfully request that the proceedings be held in abeyance until such time as there has been an outcome of the application.
5. I further respectfully point out that if IPID were to approach any Presiding Officer, Magistrate or Judge in order to apply for any warrant of arrest I will necessarily request that all the correspondence to date, including my previous statement, be annexed to any such application. I have made it abundantly clear as to where I reside, where my details are and that I will, at any time when called upon to do so, voluntarily come in and surrender myself if there are sufficient grounds in law to justify an arrest.
6. I have to emphatically point out that I believe that this entire investigation against me is one that has an ulterior purpose. Quite clearly, as I have said before, I am involved in very sensitive investigations and I respectfully point out that, in the appropriate forum, I will have no hesitation in dealing with any

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person who uses his office for an ulterior purpose and who acts irregularly, illegally or unlawfully in fabricating or attempting to create spurious charges against myself as the Head of the DPCI.

7. Conversely I would in the ordinary course and scope of events have no difficulty in answering simple questions. Unfortunately, as can be seen from the questions addressed to me by IPID, these questions are not simple. They are vague, ambiguous and, given the fact that I am precluded by certain pieces of legislation from disclosing classified information, I necessarily need to guard vigilantly as to what I am permitted in law to answer and not. I will need proper legal advice on these issues.
8. Therefore the correct approach to this entire matter is to look at the elements of the alleged offences, unpack them and deal with them *seriatim*. That can only be done upon receipt of statements substantiating the allegations levelled against me.
9. Insofar as it relates to reports that have been drafted, IPID would necessarily have to approach the National Commissioner of Police to get permission to obtain certain reports and/or the Minister himself, where applicable. The aforementioned parties would have to seek independent legal advice as to whether they may disclose certain information. I can only deal with the factual matrix insofar as it is relevant to, what I label, "*a spurious allegation against me*".

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MP

them anywhere. Similarly, I never assaulted them or instructed anyone to assault them.

15. With regards to the alleged offence of defeating the ends of justice, the necessary elements are unlawfully, *mens rea*, an act which defeats or obstructs the due administration of justice. Here too I can unequivocally point out that I know of no action whatsoever that I took, authorised or participated in which was aimed to defeat the due administration of justice. If presented with some tangible evidence and not speculative allegations or averments, I could perhaps deal with it in more detail but unfortunately there is just nothing that I can say in order to disprove something that does not exist in law, or, at the very least, on facts that form a *prima facie* basis.
16. With regards to the charge of fraud and theft, they are equally vague and spurious and I cannot disprove something that does not factually exist. Dealing specifically with the request for a warning statement and the allegations which were set out by IPID in its correspondence, I wish to state the following.
17. I am particularly concerned that IPID only reacts to reports that emanate in the Sunday Times and not based on actual factual complaints that are laid by witnesses. Our criminal justice system, with respect, should rely a lot more on evidence and its probative value, rather than to rely on the veracity of newspaper articles. Be that as it may, I can point out that pursuant to this matter, I launched an investigation re the matter. The outcome of the

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Investigation was furnished to the National Commissioner of Police. It would be up to the National Commissioner of Police to take independent legal advice and decide whether or not such a report may be handed over and whether or not there is anything in law that prevents the National Commissioner of Police from handing such information over to any individual or whether such information may come into the public domain. That is a discretion that the Honourable National Commissioner must exercise.

18. With regards to the allegation that:

***"During the investigation we uncovered that Lieutenant-General [Dramat] sanctioned the operation that led to the arrest and deportation of Zimbabwean nationals."***

I specifically request that IPID reveal on exactly what basis this allegation is made. At the very least I would expect there to be a first-hand statement from a witness and that such witness be credible.

19. Under the heading "*Allegation*" It is stated that certain members acted:

***"through the direction of Major General Sibeyi and Lieutenant-General A Dramat conducted operations in Soweto and Diepsloot to trace the following Zimbabwean nationals...."***

In this regard I specifically call on IPID to furnish myself with evidence of this "*allegation*", as I believe that it is no more than a spurious allegation and an invitation for me to add further "*spin and atmosphere*" to such a bald

*[Handwritten signatures and initials]*



statement. I specifically demand that I be furnished with an affidavit that corroborates this allegation. Then I can deal with facts and not speculative allegations.

20. Turning to the specific questions:

AD PARAGRAPH 2.1

21. The answer is "no".

AD PARAGRAPH 2.2

22. I am purportedly a suspect in a kidnapping charge and if I was privy to a kidnapping I would be able to answer this question. It is for IPID to investigate who they believe are responsible for offences but not to ask me to attempt to find mischief in something that was apparently not an offence.

AD PARAGRAPH 2.3

23. The answer to this again is the same as 2.1 insofar as I was not requested by the Zimbabwean police to assist in tracing and arresting the Zimbabwean nationals mentioned in 2.1.1 to 2.1.7.

AD PARAGRAPH 2.4

24. A report was drawn up and sent to the National Commissioner of Police. It would be up to the National Commissioner of Police to decide whether or not she is entitled to release the report.

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**AD PARAGRAPH 2.5**

25. I have had meetings with Zimbabwean police officials. Certain of the meetings may perhaps be classified and I would have to take proper legal advice on it. I can unequivocally however, point out that I have never attended a meeting with Zimbabwean police where I was asked to authorise the kidnapping of any individuals.

**AD PARAGRAPH 2.6**

26. Kindly refer to my answer in 2.1.

**AD PARAGRAPH 2.7**

27. The report to Parliament is not something that I can comment on as that now rests with another entity.

**AD PARAGRAPH 2.8**

28. The crisp answer is that the visit to Zimbabwe between 04/08/2010 and 06/08/2010 did not involve a meeting where I was requested by the Zimbabwean authorities to kidnap the individuals. As to the teleological purpose of that meeting it is irrelevant for the purposes of the alleged offence against me and I do not know whether I am in law permitted to disclose the facts. In this regard I would have to take further legal advice once the review application has been dealt with.

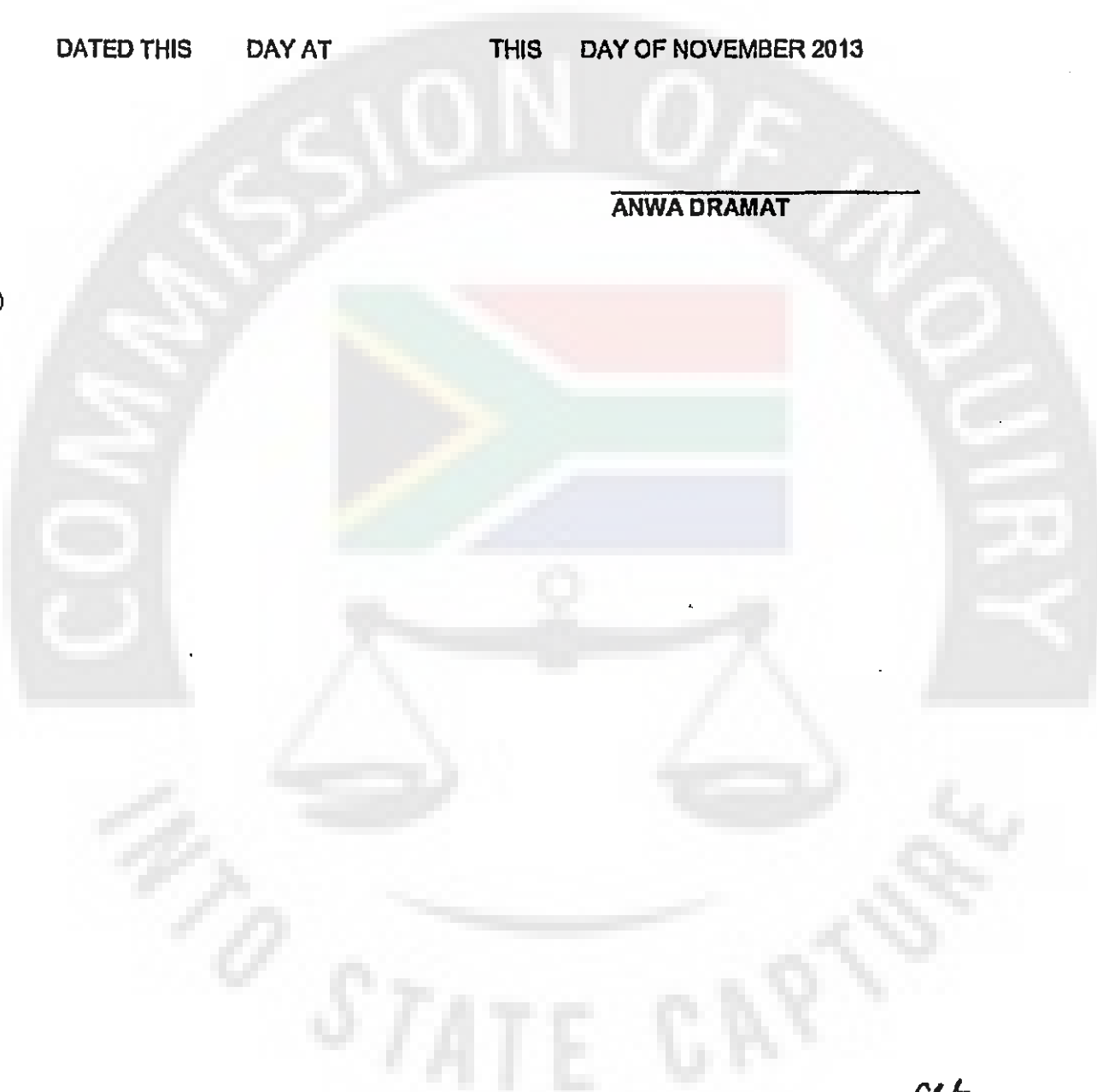
LP  
MP  
MR

29. What has alarmed me in this investigation is that it has already come to my attention that certain witnesses have been told that unless they incriminate me, they are of no value to the investigator. I reserve my rights fully in this regard. Secondly, my Unit [DPCI] is in the middle of many very sensitive investigations and the timing of this investigation against me and the progress in my investigations seem far too coincidental to be merely by chance.
30. If I am provided with affidavits that present facts from honest, reliable witnesses, or self-confessed rogues where there is independent corroboration for their say so, I may be able to deal with the issues paragraph by paragraph.
31. I respectfully conclude from the broad nature of the questions that the "allegations" that are being made against me are nothing more than slanderous, malicious conjecture that have, by design, been made in order to derail or in order to attempt to discredit my name and/or to derail the sensitive investigations that I am in charge of.
32. IPID is therefore respectfully requested, as a matter of urgency, to furnish myself with all the relevant affidavits that contain facts, and not spurious allegations. I further request that IPID bring this document to the attention of any Presiding Officer, if any relief is sought against me. I further request that IPID afford me the opportunity to bring the relevant review application insofar as I have adequate legal representation, I intend to ensure that this matter is expedited and that those who are behind a smear campaign against me are
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MP

brought before the appropriate forum and dealt with in accordance with the laws of the Republic of South Africa.

DATED THIS      DAY AT      THIS      DAY OF NOVEMBER 2013

ANWA DRAMAT



see  
MP





MINISTERIO DE POLICIA  
REPUBLICA DE COSTA RICA

TO: LEGAL ATTACHE  
HONORABLE THE DPO  
REF 3012011

FROM: LEGAL ATTACHE

RE: [Illegible text]

[Illegible text]

[Illegible text]

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[Illegible text]

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[Illegible text]

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STATE CAPTURE

*[Handwritten signatures and initials]*



struck down section 170A(2) on the basis that it was unconstitutional. Section 1 does not provide for the suspension of public employees. It leaves a discretion on the Minister of Police to decide whether or not to suspend. The Constitutional Court also struck it down for not being constitutional.

The remaining provisions of the section deal with the suspension of public employees. Head when the process for the removal has been initiated. The provisions are not applicable to the current situation. The provisions in the Amendment Act which came for the current situation, the striking down of section 170A(2), the applicable provisions are found in the Public Service Act, the Public Service Regulations and the Handbook, which empower me to place you on probationary suspension of Chapter 7 of the SAS Handbook. I am empowered to place you on suspension for a period not exceeding 90 days to allow the necessary enquiry to be conducted. You are a senior management employee and the Handbook, the Public Service Act and the Regulations are applicable to you.

Your representations have not persuaded me that suspension is not warranted in regard to the allegations against you as contained in the 1702 Enquiry Report. You have also confirmed in your representations that the allegations against you have also been taken into account and you accept a responsibility for the actions of the Service, and that I have reason to believe that you are not fit to continue in the Service. It is in the interest of the Service that you be placed on probationary suspension for a period not exceeding 90 days to allow the necessary enquiry to be conducted.

I have no doubt that you will accept the suspension and that you will co-operate with the enquiry.

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MP



244.

"FA6"

24 December 2014

To: The Honourable Minister of Police  
NP NHLEKO

And to: The National Commissioner of  
Police

From: Lt-Gen A Dramat

Honourable Minister/Commissioner

Your letter of 23 December 2014 refers.

**IN RE: PRECAUTIONARY SUSPENSION WITH FULL PAY AND BENEFITS**

1. I have for several months reflected very carefully on the issues that have unfolded in front of me. I have consulted my legal representatives and I have been advised of my legal remedies.
2. I respectfully point out that the tactical "back pedalling" from the initial notice and the current reliance on the Public Service Act and Public Service Regulations and SMS Handbook is a clear indication to me that no matter what steps I take to defend my position, a decision had already been made, from the outset, to remove me from my position.
3. As you will know Honourable Minister, at a very young age I took an informed decision to do whatever it takes to contribute towards the liberation of our country. I did this because I believe in our country, I believe in what was right

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and I wanted there to be a full democracy, as envisaged by our Honourable late President Nelson Mandela. I was young, idealistic and filled with energy.

4. Having seen our country enter into a democratic phase, I felt that I could contribute in a meaningful way and continued to develop the principles which I fought and for which I was imprisoned.
5. My appointment as the Head of the DPCI, I perceived at the time, was based on my credentials, my level of expertise and the fact that I respectfully believe that I have always acted with integrity in the manner in which I deal with people and investigations.
6. No doubtably you are aware that I have recently called for certain case dockets involving very influential persons to be brought or alternatively centralised under one investigating arm and this has clearly caused massive resentment towards me.
7. I can unequivocally point out that I am not willing to compromise the principles that I have always believed in. I am not willing to be "agreeable", or "compliant" insofar as I would then be acting contrary to my own moral principles and, also, contrary to the position in which I was appointed.
8. I have been advised, and respectfully believe it to be true that from a purely legal point, I could immediately challenge the precautionary suspension and I would be reinstated. It does, with respect, then beg the question "what is



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next? If it is clear that a decision has been made to remove me from office, for reasons that I have recorded but need not ventilate in this letter, then I am left with hard choices.

9. The choices that I am left with are whether to fight, continue trying to operate within the system in order to effect meaningful change by investigating and root out corruption which has reached the level of epic proportions. On the contrary, I can take a decision that I have done all that I can for the struggle for my country and that my family's interests are paramount.

10. After much introspection and having considered all the options available to me, I have decided that I will not engage on a level that has nothing to do with a "Zimbabwean rendition" but is pregnant with ulterior motives and hence my approach to this matter is as follows:

- 10.1. The so-called "Zimbabwean Rendition Investigation" is a smokescreen.

There are no facts whatsoever that indicate that at any given time I have acted illegally or unlawfully. I verily believe that this investigation is already complete and handed to the National Director of Public Prosecutions. It goes without saying that, had there been *prima facie* evidence against me, of any nature whatsoever, I would have been charged and prosecuted. I am acutely aware of the fact that the, with respect, allegation that "I have reason to believe that your presence in the workplace is likely to jeopardise the investigation and deter potential witnesses from coming forward", has absolutely no probative



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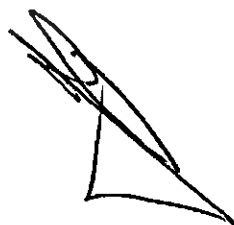
value. The investigation was clearly badly conducted by the investigator of IPID and the spurious allegations were made to tarnish my reputation. From the facts available to me and given my previous representations, which you have in your possession, it is self-evident that I asked for a transparent process and that the facts be evaluated by a suitably qualified legal practitioner who has no vested interest. Most certainly there has never been any evidence whatsoever that I have, in any way, interfered with any potential witnesses or attempted to jeopardise the investigation against me during the past four years.

10.2. I wish to reserve my rights to fully vindicate myself against all those who have sought to tarnish my name and reputation. I do not wish to engage with those involved in this correspondence, insofar as that is reserved for another forum, if necessary.

11. I therefore deny, with respect that the Notice of Precautionary Suspension is legal, valid or regular. In fact it is totally irregular and constitutionally invalid.

12. I am also aware that in the next two months there will be a drive to remove certain investigations that fell under my "watch", reallocate certain cases and that unfortunately, certain sensitive investigations may even be closed down. This is something that I have to live with.

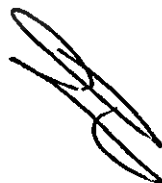
13. I also wish to point out that I have had to give very careful consideration to the message that I am sending to the other members of my Unit by capitulating or



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agreeing to a precautionary suspension without challenging it in a court of law. I do not want there to be a message that there is no hope and that members should just acquiesce or go away when they are targeted. That having been said, I have spent 28 years of my life doing everything I can for the struggle for our country and I have been fully committed. The time has now come for me to consider my options very carefully and, quite clearly take an informed decision as to whether I can sustain my position while my hands are tied behind my back, or there are incremental acts to muzzle me.

14. I note with interest that a two month period has been set to hold an "enquiry" (sic). - I can honestly say that the investigation into the "Zimbabwean Rendition" case, has run for a very lengthy period of time and till to date there has been no evidence whatsoever. It is clear that I am being pushed out.
15. I do, however, have to reserve all my rights insofar as this is the "first warning shot over the bow" and, if necessary, I would necessarily have to go to the relevant forum to deal with each and every allegation, including the current precautionary suspension.
16. Lastly I would respectfully urge yourself, Honourable Minister, to proceed with extreme caution in making or allowing any persons under your authority to make vexatious, spurious or defamatory allegations against me or orchestrate campaigns to undermine my standing or my reputation. This is because I am prepared to be totally transparent and I am a family man and any hurt which



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my children may suffer as a result will necessarily mean that I would be forced into taking a position.

17. It became clear to me during the past year that the intention is to get rid of me. You, as the Minister, with respect, should have engaged with me in terms of Section 17DA(4)(b) of the Amendment Act which I am willing to accept depending on the terms and conditions. After due consideration, with specific reference to the background alluded to above, I am willing to submit a request to vacate office by applying to the National Commissioner to approve my early retirement in terms of Section 35 of the Act. Quite clearly there is a precondition that the unlawful precautionary suspension be uplifted without me having to approach the court to do so.
18. I therefore require that we should enter into a joint consensus seeking meeting as a matter of urgency to prevent any instability within the DPCI. Under the above circumstances your reply is eagerly anticipated by no later than 5<sup>th</sup> of January 2015.

Yours sincerely

LT-GENERAL A DRAMAT

*[Signature]*

*ce*

*[Signature]*

*MAP*



"FA 7"

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**WEBBER WENTZEL**

In alliance with &gt; Linklaters

The Honourable Mr Nkosinathi Nhleko, MP  
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Pretoria  
0002

and

9th Floor  
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[TuntuwanaM@saps.gov.za](mailto:TuntuwanaM@saps.gov.za)

Your reference

Our reference

Date

V Movshovich / D Rafferty / K Eksteen  
2328211

30 December 2014

Dear Sir

The purported suspension of Lt Gen Anwa Dramat, the National Head of the Directorate of Priority Crime Investigation ("DPCI") ("the National Head" or "Lt Gen Dramat")

1. We represent the Helen Suzman Foundation ("our client").
2. Our client understands that Lt Gen Dramat has been placed on "precautionary suspension" by you in your capacity as the Minister of the Police and that the suspension is for a period of 60 days from 23 December 2014. Our client also understands that no other disciplinary processes to remove Lt Gen Dramat have been instituted or followed by you or any other body at this stage.

Letter To The Minister 31122014

Senior Partners: DM Lancaster, Partners: SM Adcock, RS Africa, NG Alp, KL Appelbaum, BA Baillie, JH Bellon, AE Bennett, HJ Bester, DHL Booysse, AR Dordick, PG Bradshaw, EG Brandt, JL Brink, JL Buitendijk, HS Burger, RS Coetjse, KL Coeber, KN Colman, KE Coster, K Courzyn, JH Davies, ME Davis, PM Days, JMB de Lange, BEC Dickson, HA Diment, DA Dingley, NF Dlamini, KZ Dlotha, HJ du Preez, CP du Toit, SK Edmondson, JC Ete, AE Esterhuysen, HJR Evans, GA Fichardt, JB Forman, EL Gallo, CI Gouws, JP Gouws, PD Gressly, SM Gumede, A Harley, VW Harrison, JH Harvey, MH Huthorn, JS Henning, KR Hubs, HA Huiswoud, XNC Huiswoud, S Hickey, CH Hoffeld, PM Hoffmeyer, MGH Houbell, SJ Hutton, KA Jarvis, KE Jarvis, CH Jenker, S Jooste, LA Kahn, H Kennedy, A Keyser, PN Kingston, J Lamb, PSG Leon, PG Leyden, L Marens, T Masindi, S McCarthy, MC McIntosh, ST Metzger, SH Methula, CS Meyer, AJ Mills, JA Milner, D Mole, SP Mngomezulu, VS Moodley, LA Morphet, VM Movshovich, M Mshab, KA Nelson, SP Ngwenya, ZH Ntshona, MD Ntshona, L Odendaal, GJP Olivier, H Paige, AMT Pardon, AS Parry, S Petri, GR Perold, SB Phisoane, C Pilley, MC Potgieter, D Ramjetlan, NGA Radebe, DC Roodman, JW Scholtz, KE Shepherd, DM Summ, AJ Sempson, J Simpson, H Singh, MP Spalding, L Steyn, PS Steyn, LJ Swaine, ER Swanevood, Z Swanevood, A Thakur, A Toefy, D Veketh, PZ Vanda, JP van der Poel, SE van der Heulen, ED van der Vyver, M van der Walt, N van Dyk, A van Niekerk, MH van Schaarszenburgh, JE Verdon, D Venter, B Versfeld, HG Versfeld, TA Versfeld, DH Vrege, J Watson, JWL Westgate, KJ Williams, RM Wilson, H Yulakten, Chief Operating Officers: SA Boyd

Webber Wentzel is associated with ALN

Handwritten signatures and initials: "ce", "JH", "MAP", and a large stylized signature.

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In alliance with > Litigators

Page 2

3. As you will know, as a matter of South African law, it is imperative for the DPCI to be adequately independent from the National Executive. The suspension of the National Head strikes at the very heart of our constitutional democracy.
4. As you will also know, our client is (and has been) concerned to ensure that the rule of law is upheld in all spheres, including the essential fight against corruption and organised crime mandated by the Constitution.
5. You will doubtless agree that, in this context, it is important to ensure that any suspension of the National Head or any office bearers in the DPCI is constitutionally compliant and lawful. It appears that the suspension was not grounded in law.
6. To this end, our client requires you to furnish the following information in writing by no later than Wednesday, 7 January 2015, so that it may adequately protect its rights and the public interest:
  - 6.1 A copy of any document which evidences or constitutes the purported suspension of Lt Gen Dramat, including any letter of suspension issued to Lt Gen Dramat;
  - 6.2 The effective date of the suspension;
  - 6.3 The duration of the suspension;
  - 6.4 Whether any of the facts in paragraph 2 above are incorrect and, if so, which facts and for what reason;
  - 6.5 A copy of any documents and information on the basis of which the suspension was decided by you;
  - 6.6 A copy of any reports pertaining to Lt Gen Dramat produced by the Independent Police Investigative Directorate;
  - 6.7 Full reasons for the suspension of the National Head;
  - 6.8 Details of what empowering provision you have used or invoked for the purposes of the purported suspension of the National Head;



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Page 3

- 6.9 What disciplinary steps have been taken by you or any other institution or body in relation to Lt Gen Dramat that relate in any way to the suspension or the grounds for such suspension;
- 6.10 A copy of any letter purportedly appointing any other person, including Major General Beming Ntsemeza, as Acting National Head of the DPC.
7. Should you fail to deliver the above information timeously or should the information not negate our client's concerns about the unlawfulness of the decision to suspend the National Head, our client will have no option but to assume that there was no lawful basis for such decision, to assume that the facts in paragraph 2 above are correct and to exercise its legal rights in its and the public's interest on an urgent basis.

Yours faithfully

P.P. *[Signature]*  
**WEBBER WENTZEL**

V Movshovich

Direct tel: +27 11 530 5887/5216

Direct fax: +27 11 530 6887

Email: [vlad.movshovich@webberwentzel.com](mailto:vlad.movshovich@webberwentzel.com)

Cc: Lt Gen Dramat

Major General Beming Ntsemeza

General Mangwashi Victoria Phiyega

*[Signature]**[Signature]**[Signature]**[Signature]*

"FA8"

SOUTH AFRICAN  
POLICE SERVICE

PROVINCIAL HEAD: DEPT. GAUTENG

Verifying Reference	2018-001
Name	Major General M. Ntsemeza
Private	
Telephone	011-445-4444
Mobile	081-445-4444
Facsimile	011-445-4444
Postcode	2001

OFFICE OF THE NATIONAL HEAD

DIRECTORATE FOR PRIORITY CRIME INVESTIGATION

PRETORIA

15/01/2018

A. Provincial Head

Attention: Major General M. Ntsemeza, Personally

GAUTENG PROVINCE

**NOTICE FOR INTENDED PRECAUTIONARY SUSPENSION IN 08180456-5**  
**MAJOR GENERAL S. M. BIBIYA, PROVINCIAL HEAD, DEPT. GAUTENG PROVINCE**

1. It has come to our attention that there are certain allegations of illegal rendition of South African nationals related to investigations that implicate you and other members within the Directorate during the period 2010 and 2011.
2. We view these allegations as serious and as they constitute possible criminal offences and/or acts of misconduct on your part, and bring the name of the South African government into serious disrepute.
3. We have therefore decided to institute an enquiry against you with regard to these allegations, which have implications with regard to your fitness for the position that you occupy.
4. We consider placing you on precautionary suspension pending the finalization of such an enquiry.
5. We hereby afford you an opportunity to inform me why you should not be suspended pending the enquiry mentioned above within five (5) calendar days from the receipt of this letter. Anything that you wish to bring to my attention with respect to the said precautionary suspension must be delivered to this office within the said five (5) calendar days. If no representations have been received by then, it will be accepted that you do not wish to say anything and your possible suspension will be decided on without further notice to you.

Maj General

ACTING NATIONAL HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION  
 S. M. Ntsemeza

DATE: 08/01/2018

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Handwritten initials "MP"

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## Sibiya's suspension notice withdrawn

January 14 2015 at 10:25am  
By seps

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Johannesburg - The suspension notice served on Gauteng Hawks head Maj-Gen Shadrack Sibiya has been withdrawn, the Hawks said on Wednesday.

"Yes, it has been withdrawn. It was withdrawn yesterday [on Tuesday] by [acting Hawks head] Gen Berrang Mlambe," Hawks spokesman Brigadier Hangweni Muburuzi confirmed by phone, ahead of the matter being heard in court.

"Unfortunately, I can't give the reasons why right now, as we still have the case at the Labour Court... it's just a formality at court. We are just following protocol and seeing the matter finalised."

Sibiya was due to head to the Labour Court on Wednesday to challenge the suspension notice from the Hawks, which was served on him last Monday.

He was given a week to give reasons why he should not be suspended.

The suspension relates to Sibiya's alleged involvement in facilitating the illegal rendition of Zimbabweans.

Senior Hawks official, Colonel Leslie Makhaka, was also reportedly served with a notice of suspension last week. On December 23, Hawks boss Arwa Dramal was suspended over his alleged involvement in the November 2010 renditions.

Saga

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Join the discussion...



Thulani Kaufman • 3 hours ago

It will get a lot worse before it gets better. Maar hier kom 'n ding...

• Reply • Share



Babe Felipe • 3 hours ago

"I die daily", Paul in the book of Corinthians.

Well, I cry daily!

When I read every day just how Mr Zuma has raped (no pun intended) this country. That the ANC have not impeached him is an epic fail on their part.

1 • Reply • Share



Made-In-The South • 4 hours ago

This was addressed to me recently: Made-In-The South, the bone of contention in the Hawks is the protection of Mkhuli supporters with the knowledge that he has the President's ear. Let me tell you, if Phiyega was honest about clearing house, she shall have suspended Major General Simon Mapeye who is facing fraud charges in Mpumalanga since May 2013 and not transfer him to Head Quarters of Hawks where all the corruption files are kept; She shall have suspended Major General Jan Mabula of North West for the death of Solomon which is investigated by the EPD; she shall have suspended Colonel Killer Ximba of Crios Intelligence who has a criminal record and is under investigation via Kempton Park CAS 885-01-2012 for perjury; She shall have suspended Kille Ximba's sibling Portia Ntshahle Mkhelase for perjury via Brooklyn CAS 57-01-2012; she shall have charged the members who used R200 000,00 from Mkhuli fund to build the wall of Minister Mchetswa; she shall have charged Mkhuli for appointing his two wives Lily Mkhuli and Theresa Lyons as colonels, his daughter Bonny Mkhuli as Lieutenant Colonel, his son Clement Mkhuli as Captain when they were mere clerks; She shall have suspended Lieutenant General Lamoer who is under investigation for serious crime

2 • Reply • Share



Thulani Kaufman • Made-In-The South • 4 hours ago

Thanks for not keeping silent...

• Reply • Share



Made-In-The South • Thulani Kaufman • 4 hours ago

Ok no problem. Will continue to talk

• Reply • Share



Made-In-The South • Made-In-The South • 4 hours ago

cont:

The Detectives do not have mandate to investigate serious commercial crime involving RSCM, that is the responsibility of the Serious Economic Offences of the Hawks in Pretoria. Major General Benny Ntsemeza was appointed by Mkhuli to investigate allegations against Mkhuli and report the findings to Mkhuli; Phiyega is not clearing house, she can't do it with dirty hands from Sipping Lamoer and misleading Marikana Commission

• Reply • Share



Mkhuli • 5 hours ago

Well, we didn't see that one coming.

• Reply • Share



Made-In-The South • Mkhuli • 4 hours ago

Dianne Kohler-Barnard has said that the removal of Dramat is also related to attempts by Zuma to remove General Johan Booysse. Only the head of the Hawks can remove General Johan Booysse. Dramat won't do it. So Zuma will find a head of the Hawks that will be prepared to do that and to shelve investigations like Ntshahle and other investigations like against John Black, mention is also made of a R50 Million fraud case in ICZN. Phiyega requested the dockets, and Dramat don't want to hand it over

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251

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<http://www.iol.co.za/news/crime-courts/sibiya-s-suspension-notice-withdrawn-1.1804...> 14/01/2015

ke

*[Handwritten signature]*

*[Handwritten signature]*

MP

"FA10"  
258

Privaatsak/Private Bag X 1500

Verwysing Reference	0619846-5
Navres Enquiries	Maj General Ntsema
Telefoon Telephone	012 846 4200
Faksmmer Fax number	012 846 4418

OFFICE OF THE NATIONAL HEAD  
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION  
PRETORIA

14 JANUARY 2016

The Provincial Head  
DPCI  
GAUTENG PROVINCE

Attention: Major General Shadrack M SIBIYA

**NOTICE OF INTENTION TO PLACE YOU ON PRECAUTIONARY SUSPENSION:  
No 0619846-5 MAJOR GENERAL S.M. SIBIYA:PROVINCIAL HEAD: DPCI GAUTENG**

1. I intend to place you on precautionary suspension with full pay and benefits as contemplated in the South African Police Service Act 68 of 1995 as amended, read with the Police Discipline Regulations to the extent that same are applicable to you. You are employed by the South African Police Service within the Directorate for Priority Crime Investigation (DPCI) as the Provincial Head of the DPCI in the Gauteng Province. The directorate is an important crime fighting unit of the SAPS mandated constitutionally and by the SAPS Act as amended, to fight and combat priority crimes such as organised crimes in South Africa. Members of the Directorate in particular, senior members of the Directorate like yourself are required to be men and women of integrity whose conduct must at all times be beyond reproach. In the performance of your duties in fighting organised and priority crimes, you are required to be independent, and perform your duties without fear, favour or prejudice. Your actions and conduct in fighting priority crimes must be lawful and conducted strictly in accordance with the laws of the Republic of South Africa in particular the South African Police Service Act as amended, the Constitution of the Republic of South Africa, and the international obligations of the Republic.

ce  
MP

259

**NOTICE OF INTENTION TO PLACE YOU ON PRECAUTIONARY SUSPENSION:**  
**No 0619846-5 MAJOR GENERAL S.M. SIBIYA:PROVINCIAL HEAD: DPCI GAUTENG**

2. The allegations have surfaced, which have been brought to my attention, in my capacity as the Acting Head of the Directorate for Priority Crime Investigation which directly implicate you in serious acts of misconduct, wrongdoing, and possible criminal acts. It has been alleged by various persons whom I will not disclose their names in order to protect their identity because they are possible witnesses, and persons who assist the investigation that you have been involved in the illegal rendition of four Zimbabwean nationals whom, either with your direct participation, or your instructions to the junior officials employed in the DPCI, abducted or caused to be abducted or kidnapped **Dumisoani Witness Ndeya; Nelson Ndlovu; Maqhabane Sibanda and Shepard Chuma** under the pretext that they were being arrested by the South African Police Service as illegal immigrants and ought to be deported to Zimbabwe. It is alleged that this illegal action or conduct by yourself or DPCI officers under your command or instruction or who have been directed by you to act as aforesaid occurred on or about the 5<sup>th</sup> of November in the evening in Diepsloot township near Fourways, Johannesburg. They were then, taken to Belt Bridge where the Home Affairs Deportation Forms were falsified for their illegal deportation.
3. Witness statements in my possession, which cannot be disclosed because the investigation is still continuing, and also to protect their identity, have directly implicated you in the alleged offences, and that upon unlawfully arresting the above mentioned Zimbabwean nationals, under your command or direction or instruction you caused them to be illegally deported to Zimbabwe to be unlawfully handed over to the Zimbabwean Police, to be unlawfully arrested, assaulted, and harassed by the Zimbabwean Police. It is also alleged that one of the DPCI officers who directly participated in the rendition of these Zimbabweans either with you present, or upon your direction or instruction is **Colonel M.L. Maluleke** who has since been placed on suspension arising from the same allegations of unlawful rendition of Zimbabwean nationals.
4. Independent Police Investigative Directorate ('IPID') investigated these allegations against the members of the DPCI. IPID has submitted its report to the National Director of Public Prosecutions (NDPP) for a decision on the criminal aspect of the matter. The investigation relating to the criminal aspect is still continuing and for that reason IPID had been unable to make the report public again such report containing the names of the potential witnesses and the statements made by them, cannot at this stage be disclosed in order to protect the witnesses or the potential witnesses.

ke  
MP  
YH

260

**NOTICE OF INTENTION TO PLACE YOU ON PRECAUTIONARY SUSPENSION:  
No 0619846-5 MAJOR GENERAL S.M. SIBIYA: PROVINCIAL HEAD: DPCI GAUTENG**

5. Apart from the fact that the conduct to which you are directly or indirectly implicated constitute serious criminal acts, I have an obligation in my capacity as the employer in these instances to investigate further these allegations on the basis of whether your conduct did not breach your duties and responsibilities as an employee and Head of DPCI and whether such conduct does not constitute gross misconduct. I regard these allegations as very serious given the seniority of your position, the nature of your job, the integrity and the beyond reproach that must accompany your job, that such allegations must be thoroughly investigated, and those who have committed these atrocious acts must be disciplined and brought to book. It is important that this investigation be conducted fairly in order to afford you an opportunity that your name be cleared if it is found that you did not play any role directly or indirectly you did not sanction these atrocious acts directly or indirectly, you did not participate in the commission of these atrocious acts by commission or omission.
6. What makes the alleged acts of misconduct which occurred in or about the 5<sup>th</sup> of November 2010 more serious is that it is alleged that two of the above mentioned Zimbabwean nationals or those who were illegally deported to Zimbabwe and unlawfully handed over to the Zimbabwean authorities were subsequently killed by the Zimbabwean Police. This conduct if it is proven and in respect of yourself will mean that you have committed serious acts of misconduct, contravened the South African International Obligation and adherence by the South African Government to international instruments against torture, contravention of SADC protocol, contravention of the Extradition Act of 1967.
7. I am obliged in these circumstances and in light of the seriousness of the allegations to give you an opportunity to make written representations to me by no later than the close of business on Monday, 19 January 2015 as to why I should not place you on precautionary suspension pending the finalisation of the disciplinary enquiry.
8. Your written representation should be addressed to me, for my consideration and I will upon considering the written representations make a decision on whether or not I should place you on precautionary suspension with full pay.

ke  
JH  
NAP

261

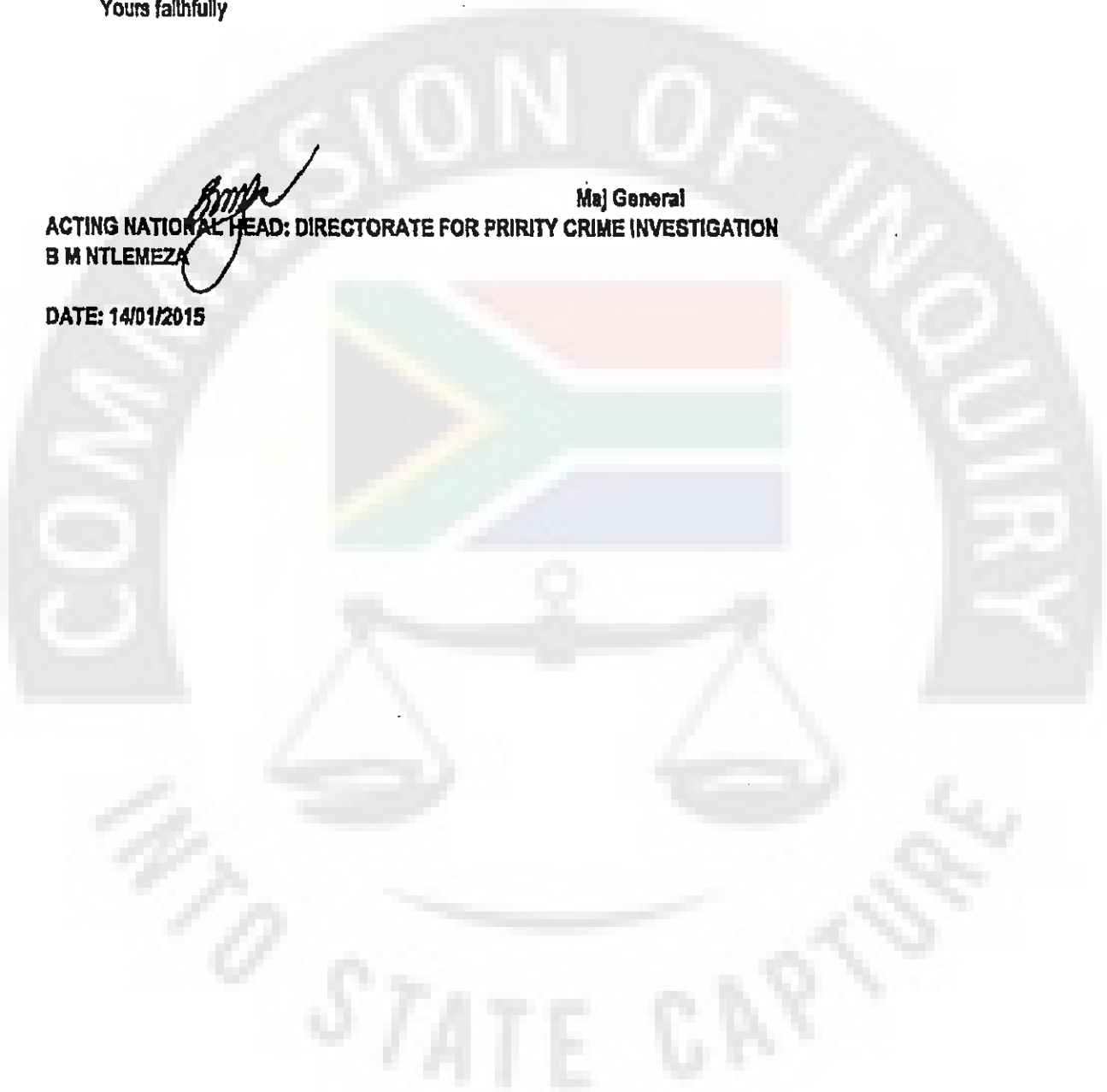
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**No 0619846-5 MAJOR GENERAL S.M. SIBIYA: PROVINCIAL HEAD: DPCI GAUTENG PROVINCE**





9. I have noted your desire to co-operate fully with these investigations, and I appreciate your gesture in that regard and I look forward to your co-operation in this regard.

Yours faithfully

  
Maj General  
ACTING NATIONAL HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION  
B M NTLEMEZA

DATE: 14/01/2015





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**Gauteng Hawks head disappointed by suspension**

2016-01-21 15:49

Johannesburg - The head of the Hawks in Gauteng, Major General Shadrack Sibye, is disappointed about his suspension and still deciding on the way forward, his lawyer said on Wednesday.

"We are studying the letter that was handed to him yesterday. At the moment, we do not hold instruction of the route he is going to take," Victor Ntshweni said.

"He is both disappointed and might use the word distressed in the sense that he feels that his representation, which shows his innocence, was not taken into account when the decision was taken to suspend him."

Ntshweni said he would meet Sibye later on Wednesday to discuss his options.

On Tuesday night, the Hawks confirmed Sibye's suspension.

"I can confirm that he has been suspended. Unfortunately we can't go into the details because it is an internal matter," spokesperson Hengweni Mufundzi said at the time.

"But I can confirm that he was suspended earlier today with full pay."

Mufundzi said the suspension would last as long as the investigation took and said the Hawks would ensure all processes were followed.

"The investigation will not be compromised. We will ensure that all the processes are followed without prejudicing anyone."

Ntshweni confirmed the suspension was related to Sibye's alleged involvement in facilitating the illegal rendition of Zimbabweans in November 2010.

This was the second time Sibye was handed a notice of suspension.

An application to get reasons behind Sibye's first notice of suspension was struck from the roll of the Labour Court in Johannesburg last week Wednesday.

He handed in reasons to why he should not be suspended and the notice was subsequently withdrawn.

- SABA

Read more on: [Hawks](#) | [shadrack sibye](#) | [Johannesburg](#)

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<http://www.news24.com/SouthAfrica/News/Gauteng-Hawks-head-disappointed-by-su...> 22/01/2015

re

*[Signature]*

22/01/2015

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News24 **Grand yet untried in its Hawks search** by General Barry Mkhomo, former SAPS Commissioner in Limpopo and a vocal critic of the Hawks, is being held in contempt of court for his role in the Richard Mkhulu case. Mkhulu was a conspiracy against Mkhulu to thwart Mkhulu's promotion.

1 1 [Back to Hawks in the South](#)



**Richard Mkhulu** - January 21, 2015 at 22:41

Comments Policy

Report incorrect

For Peter's sake can we not stop Zuma and the ANC? What about the calls he took when he was arrested in 77? Can the bench of the constitutional court or the chief justice not stop him? Surely our constitution can't be as bad that there is no way to suspend, fire, impeach a President when there is sufficient circumstantial evidence to warrant an investigation? There must be a way to force the ANC to recall him.

0 0 [Back to Richard Mkhulu](#)

**SocksWillCashin**  
2015  
It's The End Of This But  
Ready For The 2015 N  
3 6

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This week's violence and looting against foreign shop owners in Soweto is not acceptable, Gauteng's community safety MEC says.

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**More police sent to Soweto to quell looting**  
Police reinforcements have been sent to Soweto to control the ongoing violence and looting sparked in the Johannesburg suburb, the Gauteng provincial police commissioner says.



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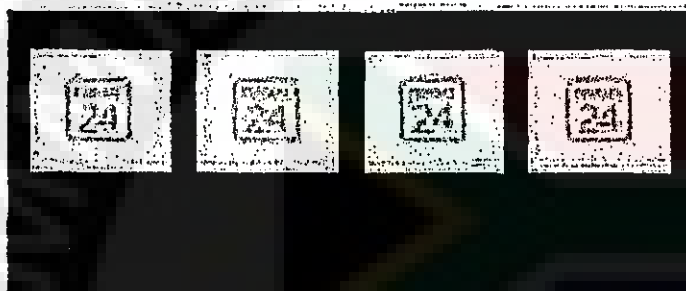
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"FAIZ"



265

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HOF EN MISDAAD

# Voorste Valke gelem

## Waarnemende hoof 'destabiliseer' eenheid

Deur Paul van Wyk en Leanne George | Dinsdag 13 Januarie 2015 4:30 vm.

Terwyl 'n storm woed oor die skorsing van lt.genl. Anwa Dramat, Valke-baas, is sy waarnemende opvolger besig om dié elite-teenmisdadeenheid te "destabiliseer".

Beeld het met drie senior Valke-bronne met kennis van genl.maj. Benny Ntlemenza se skuiwe gepraat. Hulle sê hy tree op "soos iemand wat weet hy is permanent aangestel".

▲ SKAKELS

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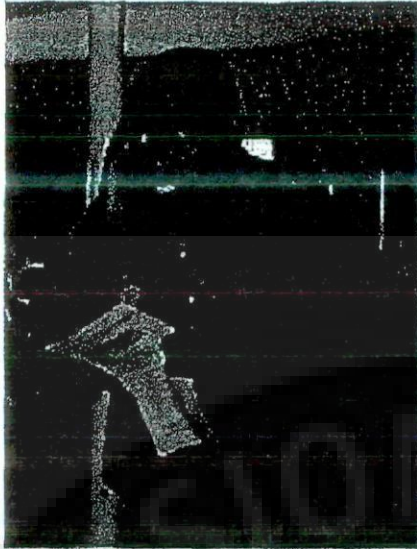
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14/01/2015

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*[Handwritten signatures: ke, MP]*

266



(<http://redactor-images-live.s3.amazonaws.com/54b43974af9bb8f628000001.jpg>)

Genl.maj. Benny Ntlemeza

Ntlemeza, oudhoof van die Valke in Limpopo, is deur polisieminister Nathi Nhleko aangestel nadat hy Dramat geskors het. Dramat se skorsing word Donderdag in die hooggeregshof in Pretoria uitgedaag.

Volgens *Beeld* se bronne het Ntlemeza sy eerste maand deurgebring deur van Dramat se vertrouellinge ontslae te raak.

"Genl. Ntlemeza kan enigiemand rondskuif soos hy goeddink, want hy is in beheer van die Valke," het sy woordvoerder, brig. Hangwani Mulaudzi, aan

#### Beeld gesê.

Ntlemeza het binne dae ná sy aanstelling die volgende gedoen:

- Kol. Zama Basi, hoof van Integriteit en Dramat se boesemvriend, verplaas. Volgens 'n bron het Ntlemeza glo gesê Basi kan nie vertrou word nie;
- Kol. Mike Reddy, hoof van finansies, is glo verplaas omdat R56 miljoen van die Valke se begroting nog nie bestee is nie. Die Valke se boekjaar sluit eers einde Maart;
- Geëis dat die Valke-struktuur aan hom voorgelê word in 'n vergadering waar "veranderinge oorweeg sal word";
- Opnametoestelle in sy vergaderings verbied nadat hy woedend gereageer het oor nuusberigte waarin hy "woordeliiks aangehaal" word. Ntlemeza het gister verder 'n nuwe interne ondersoek na media-lekkasies aangekondig en sy kollegas met skorsings gedreig;
- Gesê rasseregstelling is 'n topprioriteit. Verdere verskuifwings is onafwendbaar, want Ntlemeza meen daar is onder meer "te veel Indiërs in KwaZulu-Natal en te veel wit mense in Gauteng". Bronne meen dit is 'n verskoning vir verdere skuiwe;

SKAKELS

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■ Gerugte doen die rondte dat die Valke se Tactical Operations Management Section (Toms), 'n nasionale eenheid wat veronderstel is om 'n sentrale rol in die Valke se operasies te speel, toegemaak gaan word.

Beeldverneem lede van dié eenheid is opdrag gegee om beweerde Zimbabwiese misdadigers in Suid-Afrika te arresteer. Luidens 'n bron is die mans direk aan kol. Leslie "Cowboy" Mahuleke oorhandig wat glo die skakel tussen die Suid-Afrikaanse en Zimbabwe-polisie was.

**" GENL.  
NTLEMEZA KAN  
ENIGIEMAND  
RONDSKUIF  
SOOS HY  
GOEDDINK,  
WANT HY IS IN  
BEHEER VAN DIE  
VALKE "**

**- Brig. Hangwani  
Mulaudzi**

Die mans is later glo deur die Zimbabwe-polisie vermoor. Dit is dié kwessie wat tot Dramat se skorsing gelei het.

Volgens 'n bron kan dit dalk as rede aangevoer word vir die sluiting van Toms;

■ Aangedui dat sy eie stafoffisier uit Limpopo ingevoer gaan word en dat dié in die rang van brigadier aangestel sal word;

■ 12 senior offisiere en hoofde van sub-eenhede, wat sake soos korrupsie, sigaretsmokkelary en georganiseerde misdaad ondersoek, met ander offisiere vervang, het City

Press die naweek berig; en

■ Gesorg dat kap. Paul Ramaloko, voormalige Valke-woordvoerder, met sy eie woordvoerder uit Limpopo vervang word.

Mulaudzi, Ntlemenza se woordvoerder, het heftig kopsie gemaak teen "verskeie onwaarhede" en gesê daar is mense wat die reeds "brose situasie in die Valke" verder wil destabiliseer.

Volgens Mulaudzi is Ntlemenza se planne daarop gemik om die Valke te stabiliseer. "Daar sal streng opgetree word teen bronne wat die goeie naam van genl. Ntlemenza en die polisie beswadder met gerugte en lekkasies."

SKAKELS

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*[Handwritten signature]*

*[Handwritten initials MP and signature]*



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Mulaudzi het ook herhaaldelik gesê "niemand is nog rondgeskuif nie", al is hy self uit Limpopo in die plek van Ramaloko geskuif.

Mulaudzi het verder gesê Ntsemeza kan nie veranderings aanbring tensy hy dit met Nhleko en Riah Phiyega, polisiehoof, bespreek het nie.

"Genl. Ntsemeza is nog besig om inligting in te win en indien hy dink skulpe is nodig, sal hy dit eers met die minister en kommissaris (Phiyega) bespreek."

### G'n verdere stappe as hof só beslis

Lt.genl. Anwa Dramat, geskorste hoof van die Valke, beplan nie verdere regstappe as die hooggeregshof in Pretoria vandeeweek sy skorsing handhaaf nie.

Sy regsverteenwoordigers het Maandagaand gesê hy sal berus by die hof se besluit in die aansoek wat die Helen Suzman-stigting (HSF) teen sy skorsing ingedien het. Die aansoek word Donderdag aangehoor.

Nathi Nhleko, minister van polisie, hou by sy besluit om Dramat te skors en sal die aansoek teenstaan, het Musa Zondi, sy woordvoerder, gesê.

Die HSF voer aan Dramat se skorsing weens sy beweerde rol in die onwettige uitlewering van Zimbabwiërs in 2010 is ongrondwetlik aangesien die konstitusionele hof beslis het die polisie-minister is nie by magte om die hoof van die Valke te skors nie.

Zondi het gesê die minister is van plan om met Dramat oor sy skorsing te vergader, maar 'n datum vir die vergadering is nog nie vasgestel nie.

Beeld'verneem die voorlopige datum vir dié ontmoeting is 19 Januarie.

Helen Zille, DA-leier, het gesê die DA sal vra dat die parlement Nhleko se besluit om Dramat te skors, hersien.

– Charl du Plessis en Maryna Lamprecht

▲ SKAKELS

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14/01/2015

MP

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## 23 KOMMENTARE

13



Willem Liebenberg 1d · 2

Dit is maar net nog een van Zuma se skulwe om die Nkandla ondersoek te vertraag. Zuma se tyd sal kom. Ten slotte die ou is bloot besig om te luister wat die tor in sy kop vir hom fluister en toe skrik hy!



George Havenga 1d · 1

...wat is nog goeie nuus in hierdie bedonnerde korrupte land van ons...??...absoluut niks...die sous trein van korupsie ry net van stasie tot stasie en elke NAR in die sirkus cover vir sy of haar allie...!!!!



Dopple Du Plessis 1d · 1

Nee, ek verskil met jul almal. Hy het so pas gehoor daar is niks gratis etes vandag nie, en die 56 miljoen in die Valke se budget is klaar deur Zuma "gedeps"



Johan Steytler 1d

Daar ding kon tek nog nooit verstaan nie, wat dan die R56m en gee dit vir Ekxosom? Hier kom 'n ding... kyk die etter se oë, dit spreek vanself! Elsebet



Mike Htsoe 1d

Zuma het beslis n vinger in die koelke blik. 1 van sy makkers wat die job gekry het om seker te maak die Valke bly van sy gat af.



Hendrik Theron 1d · 1

Shame netwerk24. Ek het die bal gespeel en nie die man nie maar nogtans het julle dit goedgevind om my kommentaar te verwyder. Is ek dalk te naby aan die waarheid?



Frederik Dutheland 1d

C M van den Heever het sy verhaal "Wie 'n ander Jaag" met die woorde aan Tant Betta, 'n korrupte ou siel, afgesluit met die woorde: "Onthou tante, wie 'n ander jaag, word self moeg!" Dieselfde geld vir Zumpie en sy kornulte. Hoe harder hulle die eerlike mense van hierdie land jaag, hoe lammer gaan hulle word en op 'n dag gaan hulle uitvind dat daar niks meer is om te steel nie. Dit is

SRKES

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KE  
MP

Yll

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die werklikheid van die toekoms wat hulle in die gesig staar.



Karol Black 1d

Die tragiese feit is Dramat is nie swart genoeg nie, seker Jan van Riebeeck se skuld.



Hein Swart 23h

"Ntlemenza, oudhoof van die Valke in Limpopo" Say no more.



Andie Schlebusch 20h

Nee, Jislaalk, Elsebet, hy lyk soos 'n Zombie, hy tree op soos 'n Zombie, hy moet een wees.

Jy moet aangemeld wees op ons webwerf om kommentaar te kan lewer.

Kliek hier om aan te meld (/paywall/paywall/login), of hier om te registreer (/paywall/paywall/subscribe) indien jy nog nie 'n gebruikersprofiel geskep het nie.

Media24 Digitale Nuus: 56 voer ons gesprek

Ons is ten gunste van 'n open gesprek en wil aan al ons leers die platform gun om saam te praat. Die "wagwoord" in die kommentaar-afdeling van ons webwerf is respek. Respek vir mense-lesers en die mense en gebeure waaroor ons berig. Ons sal nie seksisme, homofobie, rasisme of ander vorme van haatpraak duld nie en behoort ons die reg voor om kommentaar te verwyder. Kortom, speel die bal, nie die man nie.

<https://nuut.com/>

## GEWILDSTE



### BEROU OOR VIDEO WAT WYD SKOK

Die man wie se amateurvideo van die koelbloedige moord op 'n polisiebeampte in die Franse hoofstad die wêreld geskok het, het nou berou omdat hy dit aanlyn versprei het.

<http://www.netwerk24.com/nuus/2015-01-13-berou-oor-video-wat-wyd-skok>

SKAKELS

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*[Handwritten signature]*

*[Handwritten signatures: pe, MP, and others]*

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## 2. TOESTEL WAT GOGGAS VANG, EIS BOER

'n Elektriese goggavanger het 'n jong Noordwes-boer die naweek voorsy familie doodgestok.

(<http://www.netwerk24.com/nuus/2015-01-13-toestel-wat-goggas-vang-eis-boer>)



## 3. KOVSTES VERLOOR VS SE SLIMSTE

Die Vrystaat se topmedisiant, Ravi van Rooyen (18), het nooit uitgevind of sy keuring vir medies aan die Universiteit van die Vrystaat (UV) gekry het nie, omdat haar aansoekvorm verkeerd geraak het.

(<http://www.netwerk24.com/nuus/2015-01-12-kovstes-verloor-vs-se-slimste>)



## 4. MAN STEEK DRIE MENSE MET SKÊR IN KAAPSE SUPERMARK

"Dit was heftig!" Sê het 'n ooggetuie, Hendrik Booyens, die gebours bedryf toe 'n man (45) Maandag omstreeks 14:00 by 'n supermark in Boston, Kaapstad, ingeloop en drie mense met 'n skêr gestrek het.

(<http://www.netwerk24.com/nuus/2015-01-12-man-steek-drie-mense-met-skr-in-kaapse-supermark>)

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14/01/2015

*[Handwritten signature]*

*[Handwritten signatures: KC, MP, and others]*

"FA13"  
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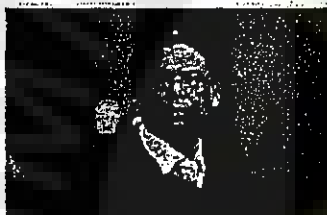
JUST IN OBAMA'S LACK OF CHEMISTRY WITH CONGRESS WON'T SCORE HIM POINTS

## NEWS

### McBride backs Dramat, Sibiya

Abram Mashego @City\_Press  
11 January 2015 17:00

Topic: 401



McBride

Head of IPID is in lawyers that both the Hawks chiefs were cleared of wrongdoing in an investigation conducted by the watchdog.

Independent Police Investigative Directorate (IPID) boss Robert McBride is supporting both suspended Hawks head Lieutenant General Anwar Dramat as well as Gauteng Hawks head Major General Shadrack Sibiya in their battle to keep their jobs.

City Press has been reliably informed by two senior police sources and one senior IPID source that McBride confirmed to both Dramat and Sibiya's lawyers that the police watchdog had

found no "wrongdoing on their clients' part".

Dramat was suspended on December 23 by Police Minister Mkhulu for his alleged role in the illegal rendition of seven Zimbabwean police.

According to a letter sent to Dramat on December 8 by Mkhulu, which informed Dramat of Mkhulu's intention to suspend him, two of the men were killed by Zimbabwean police.

In the letter, Mkhulu also alleges Dramat played a role in the illegal extradition to South Africa of serial escapees and armed robber Bongani Moyi, a Zimbabwean national.

On Monday, acting Hawks head Major General Benzo Mthembu suspended Sibiya and section head Colonel Leslie Makhela in connection with the case.

City Press has learnt McBride wrote to Dramat's lawyer, Johann Nortje, in December and to Sibiya's lawyer, Victor Mkhomo, on Friday following access to information applications they had both submitted.

McBride told the lawyers that the IPID investigation, which has been handed to the National Prosecuting Authority for a decision, found that "both Dramat and Sibiya were cleared of wrongdoing".

However, Makhela is likely to face the music.

"IPID, however, does not clear Hawks section head Colonel Leslie 'Cowboy' Makhela of any wrongdoing and has left the police service management to decide on remedial action," said a senior police source.

The Mail & Guardian reported on Friday that McBride met Dramat and his lawyers in Cape Town last week, and told those who attended the meeting that the IPID investigation cleared Dramat and found evidence of an attempt to falsely implicate him.

Tomorrow, Makhela and Sibiya will make submissions to arbitrators detailing why they should not be suspended. City Press understands that Sibiya will say he was not involved in operational matters.

## TALKING POINT



### Ekam must get its house in order: Nene

Finance Minister Makhela Nene says Ekam must sort out its problems because they are hurting the economy.

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## VOTE

There is a growing call within the Democratic Alliance for Helen Zille to step down and allow the party to grow. I think...

- ☐ I agree, the party needs new blood
- ☐ Zille still has a lot to contribute to the party
- ☐ Zille should step down in 2018 ahead of the country's next national elections
- ☐ Who could lead the party?

VOTE

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A senior Hawks source said: "He will also tell Nkomo the complaints he has been suspended for are old and he has been cleared by Ipod. He will also attach a letter from Ipod to support his claim."

"He will also say that officers close to suspended crime intelligence boss Richard Mdluli framed him because he wanted to arrest Mdluli."

A Hawks source close to Makhela said he "will say he doesn't know of any laws that declare rendition as a charge and that he acted on the deportation order granted by home affairs."

He will also tell Nkomo that the four complainants in the case were responsible for arresting the Zimbabwean suspects."

On Friday, the Helen Suzman Foundation filed an urgent application in the North Gauteng High Court, asking for Dramat's suspension to be overturned and Nkomo's appointment to be reversed.

The foundation's head, Francis Antonio, said Nkomo's suspension of Dramat violates two recent Constitutional Court rulings.

In a letter to Nkomo on December 22 opposing Dramat's notice of suspension, attorney John Riley writes that Nkomo did not have the power to suspend him.

Riley cited both Constitutional Court rulings - in matters brought by the Helen Suzman Foundation and businessman Hugh Glenister - which rendered invalid and unconstitutional certain sections of the SA Police Services Amendment Act, which gave powers to the police minister and the national police commissioner to suspend the head of the Hawks.

In court papers, Antonio said that Dramat can only be suspended after a decision by the relevant parliamentary committee.

In his letter, Riley states that the purpose of the constitutional litigation in the Suzman and Glenister matters was to ensure the Hawks were adequately independent and enjoyed operational autonomy.

Constitutional law professor Pieter de Vos agreed, saying on his blog this week that Nkomo "relied on the unconstitutional and thus deleted section of the SA Police Services Act to 'suspend' the head of the Hawks. This was unlawful. No court in South Africa will endorse the illegal suspension of Mr Dramat by the minister of police."

However, in a response to Dramat, Nkomo writes that he had read both judgments and "found nothing... which precluded me from exercising my powers as your employer to place you on precautionary suspension."

The cases Dramat was working on

In his response to Nkomo on December 24, Aowa Dramat alleges he was aware of a plan to remove him from the Hawks because of cases he was overseeing.

He claimed the cases were to be "centralised" or closed, and that the rendition allegations were a "wrecked screen".

Two Hawks sources close to Dramat and one within the crime intelligence division said that before he was suspended, he defied Nhleko's instruction to hand over some cases to her to be "centralised".

However, Phiyega's spokesperson, Lieutenant General Solomon Makgale, denied this.

Two senior police sources told City Press that some of the cases Dramat refused to include

a Nkomo investigation

Two sources said that a few months ago, the police's head of detectives, Lieutenant General Vinash Moonoo, approached Dramat for his docket attached to the Hawks investigation into the R246 million spent on upgrades at Nkomo's.

The docket, the sources said, contains documents given to the Hawks by the Special Investigating Unit, which include sensitive "correspondence" revealing the "influence of politicians in the awarding of the projects".

Dramat refused, but seven minutes later, he received a call from police commissioner Nhleko Phiyega, who told him to hand over the docket.

"Dramat told Phiyega that the cases fell under the mandate of the Hawks and therefore should be investigated by his unit," a senior source said.

a Gaddafi millions

National Prosecuting Authority (NPA) and police sources say that the Hawks were involved in compiling a list of the late Libyan leader Muammar Gaddafi's assets in South Africa - which are believed to include millions in cash, and which have been locked up in warehouses in several locations in Gauteng.

These sources allege there were a number of politicians and others who wanted to take some of the cash for themselves, and Dramat and a senior NPA official stood in the way.

a Fraud and corruption investigation into suspended CI head Richard Mdluli

This week, acting Hawks head Major General Bheki Nkomo travelled to Cape Town to collect the docket attached to the investigation Dramat was overseeing into former police crime intelligence boss Richard Mdluli.

The investigation, said two senior police sources, was at an "advanced stage" after a breakthrough that came in the form of a statement made by one of Mdluli's former allies.

Handwritten signatures and initials: "ce", "MP", and a large stylized signature.



274.

The Hawks were investigating the thush and crime intelligence officers allegedly looked to buy themselves properties and luxury cars. Mtema, however, has reassigned the case to a colonel, whose name is known to City Press, who is widely believed to be close to him.

Mtema's new spokesperson, Hangweni Mubudzi, was unable to comment because he only officially starts his new job tomorrow. Police spokesperson Solomon Mphahlele was not immediately able to comment.

In 2011, Mtema wrote a report that was submitted to the Botshaburg Magistrates' Court as an inquest into the killing of Mdu's love rival Dips Ramogaba. In it, he said there was a conspiracy against Mdu.

Mtema has also begun reshuffling the unit's senior officers.

Two sources who attended Mtema's first Hawks staff meeting on Wednesday, said he told them he was "in charge until further notice". He has also removed all heads of "forums" - 12 specialised subunits within the Hawks that deal with specific cases such as corruption, tobacco smuggling and organised crime - and replaced them with other officers.

His explanation was that he was "expecting" the unit, but senior officers worry that critical expertise will be lost.

Founding Affidavit (including Annexes) (Savvas) 09012015

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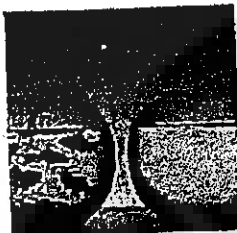
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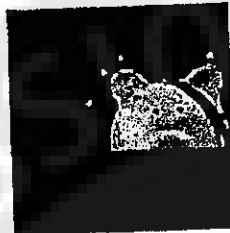


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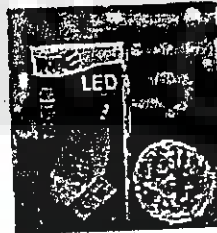
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OUR REF: JFR/MAT11144/wd  
YOUR REF: 1/12/2014

January 16, 2015

The Minister of Police  
Wachthuis  
PRETORIA

HONOURABLE MINISTER

PER EMAIL TO: [amellamonaheng@saps.gov.za](mailto:amellamonaheng@saps.gov.za)

**RE: CONTEMPLATED IRREGULAR AND UNLAWFUL PROVISIONAL SUSPENSION OF  
THE NATIONAL HEAD OF THE DIRECTORATE FOR PRIORITY CRIME INVESTIGATION**

The above matter and our previous correspondence refers.

1. It is our instruction that our client has been contacted by the office of Honourable Minister of Police requesting that he attend a meeting with the Honourable Minister in Pretoria at 7pm on Monday the 19<sup>th</sup> of January 2015.
2. We have previously indicated to the Honourable Minister that our client would be willing to accede to such a request for a meeting provided that, for the sake of costs and convenience, the meeting be held in Cape Town and with our client's Cape Town based legal representatives in attendance.
3. To date the State Attorney's office and the office of the National Commissioner of the South African Police Services has neglected to respond affirmatively to our client's numerous requests for funding to pay for his legal costs in this matter and as a result our client's legal costs to date have been for his own account.
4. Given all of the foregoing, we propose the following:

DIRECTOR: JOHN FRED RILEY, B.JURIS, LL.B.  
ASSOCIATES: STEVEN BARKER, B.PROC | DENNIS BURT CAVERNEUS, BA, LL.M | TRACEY-LEE JAMES, BA, LL.B | RUKIA ALLIE DA COSTA, B.COM, LL.B  
CONSULTANT: SAGEER PANSARI, BA, LL.B

ce  
MP

- a) That the meeting be held in Cape Town on **Thursday the 22<sup>nd</sup> of January 2015** at 6pm in Cape Town and with our client's legal representatives in attendance.

Alternatively,

- b) That the meeting be held in Pretoria on **Thursday the 22<sup>nd</sup> of January 2015** (time to be confirmed) but with a written undertaking from the Honourable Minister that the legal costs incurred by our client (including counsels fees, travel costs and expenses) be borne by the State Attorney's office.
5. Importantly the proposed meeting should in no way be construed as a basis for postponing the pending litigation. It would be inappropriate to ventilate these issues until a court has made an order.
6. Our client's firm instructions remain that the Honourable Court seized with the matter must determine the merits, or alternatively the suspension must be forthwith uplifted in terms of an order by agreement.

We await your urgent response hereto.

Yours faithfully

**RILEY INCORPORATED**

Per: JOHN RILEY

ice JH J  
MP



**Riley Incorporated**  
**212 Rosmead Avenue**  
**Wynberg**  
**Email: [john@rflaw.co.za](mailto:john@rflaw.co.za)**  
**Fax: 0217971499**

Mr S J Thama  
sl.thama@hoganlovells.com  
D (27 11) 775-8388  
F 086-588-1489

Your ref JFR/MAT11144/wd  
Our ref 135484/SJ Thoma/L  
Silkhakhane/dn

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**MEETING SCHEDULED BETWEEN THE MINISTER OF POLICE & LIEUTENANT GENERAL DRAMAT**

1. We act on behalf of the Minister of Police in the suspension matter of Lt General Dramat.
2. We have been instructed by the Minister to respond to your letter dated 16 January 2015, which was addressed to the Minister. The Minister has noted the contents of your letter and he has asked us to respond to your letter as follows.
3. On 24 December 2014, your client addressed a letter to the Minister in which he requested to have a meeting with the Minister in order to discuss his early retirement. The Minister has acceded to his request. At no stage did your client indicate that he would like lawyers to be involved in what he described as the "joint consensus seeking meeting". The letter of 24 December also came from him personally and not from the lawyers, despite that at that stage, he was already legally represented. It is clear that your client wanted to engage with the Minister individually and did not want to involve the lawyers in that meeting.
4. Your client was correct because such a meeting would not require the presence of the lawyers since it relates to issues of early retirement which are employment issues. The Minister acceded to the request from your client through his office and did not involve any lawyers and in keeping with your client's request to meet the Minister, which the Minister acceded to, he invited him to a meeting between him and the Minister, at Pretoria on Monday, 19 January 2015 at 7pm.
5. The Minister is surprised that your client is now insisting that he must come to the meeting with the lawyers and that the Minister should bear the costs of his lawyers, unless the Minister is prepared to travel to Cape Town. As already indicated hereinabove, the meeting that has been arranged by the Minister for Monday, 19 January 2015, is

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Handwritten signatures: "ce", "M", and "MP".

between the Minister and your client and the lawyers are not invited to it. The Minister's lawyers will also not be invited. The outcome of the meeting will determine whether there is a need for the lawyers to be engaged or not.

6. Your client is on suspension with full pay and benefits, which include travelling allowance and accommodation. Your client will be undertaking a work related trip when he travels to Pretoria on Monday, 19 January, because he will be coming to meet the Minister on a work related matter. He has furthermore been invited by the Minister and therefore his travelling costs and accommodation will be covered, the same way his travelling costs and accommodation are covered when he is on a work related trip.
7. Your client is invited to attend the meeting with the Minister on Monday 19 January 2015 at Pretoria to discuss the issues he has requested to discuss with the Minister in his letter of 24 December 2015 in order to reach a consensus agreement with the Minister.
8. Do confirm to us in writing as a matter of urgency that your client will attend the meeting as scheduled.

Yours faithfully

Hogan Lovells (South Africa)  
Mr SJ Thema  
Partner

TRANSMITTED ELECTRONICALLY WITHOUT SIGNATURE



ke

MP

MP

MP



Fax 011-2866901

"FA 16"

John Riley

To:  
Cc:  
Subject:Thema, SJ  
nortje@capebar.co.za  
RE: Lt Gen Anwa Dramat//Minister of Police

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Hogan Lovells

Attention: SJ Thema  
althama@hoganlovells.com

Dear Sirs

Re: Meeting between the Minister of Police and Lt Gen Dramat

We refer to your letter dated 16 January 2015 which was sent by email at 10.59 pm and have noted the contents thereof. Our client does not intend to respond to each and every matter raised therein. His failure to do so at this stage must not be construed as an admission of the truth thereof and our client reserves the right to respond thereto fully at a later stage should the need arise.

We record the following:

1. It is correct that after the Minister unlawfully suspended our client that our client addressed correspondence to the Minister in which he requested a meeting with the Minister to discuss inter alia his early retirement.
2. This letter as well as our subsequent correspondence makes it clear that our client regarded his suspension as unlawful and without basis in fact or the law.
3. In our clients letter to the Minister he specifically requested the Minister to respond to him by 5 January 2014.
4. Apart from receiving an email from Amelia Monaheng, the Ministers Personal Assistant, who confirmed that the contents of the letter had been brought to the Ministers attention, no formal response was addressed either to ourselves or our client apart from the telephone call to our client which resulted in our letter dated 16 January 2015.
5. The truth is that the Minister failed to respond to our clients request for a meeting by the deadline set.
6. Nowhere in our client's letter dated 24 December 2014 does our client state that he has waived his right to legal representation and or that he intended to meet with the Minister on his own. It was and has always been our client's intention to have his legal representatives present when meeting with the Minister, particularly considering the complex issues involved.(eg. Sections 35 and 45 of the SAPS Act).
7. Subsequent to our clients letter and on 9 January 2015 The Helen Suzman Foundation brought an urgent application in the Gauteng High Court in terms of which they seek inter alia an Order declaring that the Ministers decision to suspend our client as being unlawful and asking the court to set aside the suspension decision.
8. The Minister is well aware that our client is the Second Respondent in the matter and that our client has agreed to abide the decision of the court.

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9. It must be clear that the issues which are at the heart of the discussions at any meeting between the Minister and our client is subject matter of this court application and must accordingly be sub judice.
10. What is surprising that the Minister has waited until after the institution of the proceedings against him and just before the hearing of the matter to request to meet with our client.
11. We understand that the matter is set down for hearing on Monday 19 January 2015.
12. We are concerned and more so surprised at the Ministers insistence to meet with our client on his own and without his legal representatives being present. We reiterate that our client's legal representatives will be present when he meets with the Minister or any of his representatives.
13. Principles of fairness and transparency and the complexity of the issues involved dictate that our client's legal representatives be present when our client meets with the Minister.
14. Although our client is keen to meet with the Minister on the reasonable terms as set out in our correspondence and after the hearing of the matter, our client will not be forced and or intimidated into meeting with the Minister on his own and or without his legal representatives being present.

In conclusion we wish to emphasize that the fact that our client has agreed to abide by the decision of the court and the fact that he has not filed any papers in the matter which is pending before the court must not and cannot be construed to mean that our client agrees with the unlawful conduct of the Minister in suspending him. All our client's rights are reserved.

Yours Faithfully  
John Riley



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Addr : 213 Rosewood Avenue, Wynberg, 7800  
Web : [www.riley.co.za](http://www.riley.co.za)

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From: Thema, SJ [mailto:sj.thema@hoganlovells.com]  
Sent: 16 January 2015 10:59 PM  
To: John Riley; 27217971499@vax.co.za  
Cc: Ahir, Ushir; Mayila, Londeka; Nkotswe, Daphney  
Subject: Lt Gen Anwa Dramat/Minister of Police

Dear Sir/Madam

Kindly take note of the attached letter, marked for your urgent attention.

Kindly acknowledge receipt.

Regards,

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RRN/FRM/1

RRN/1/R/12/1/1/1

KESH UNOR RIAL 5102/1001

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**SJ Thema**  
Partner

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MP

*AN*

*[Signature]*

18/01/2015 18:08 John Hwey

(FAX)0217971499

PJ05/088

[ 11009144 ]

*[Signature]*

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4. Apart from receiving an email from Amelle Monaheng, the Minister's Personal Assistant, who confirmed that the contents of the letter had been brought to the Minister's attention, no formal response was addressed either to ourselves or our client apart from the telephone call to our client which resulted in our letter dated 15 January 2015.
5. The truth is that the Minister failed to respond to our clients request for a meeting by the deadline set.
6. Nowhere in our client's letter dated 24 December 2014 does our client state that he has waived his right to legal representation and or that he intended to meet with the Minister on his own. It was and has always been our client's intention to have his legal representatives present when meeting with the Minister, particularly considering the complex issues involved (eg. Sections 35 and 45 of the SAPS Act).
7. Subsequent to our clients letter and on 9 January 2015 The Helen Suzman Foundation brought an urgent application in the Gauteng High Court in terms of which they seek inter alia an Order declaring that the Minister's decision to suspend our client as being unlawful and asking the court to set aside the suspension decision.
8. The Minister is well aware that our client is the Second Respondent in the matter and that our client has agreed to abide the decision of the court.

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Attorneys, Notaries and Conveyancers  
Reg no: 2008 / 012614 / 21

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"FA17"

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OUR REF: JFR/ MAT11144/wd  
YOUR REF: 1/12/2014

The Minister of Police  
Wachthuis  
PRETORIA

Honourable Minister  
[amellamonaheng@saps.gov.za](mailto:amellamonaheng@saps.gov.za)

**LIEUTENANT-GENERAL DRAMAT**

1. We refer to the judgment in the matter of *Helen Suzman Foundation / Minister of Police and others* handed down in the North Gauteng High Court today.
2. Following the aforementioned judgment we record that :
  - 2.1 The purported suspension of Lt-Gen Dramat was not authorised by law, unconstitutional and invalid from the outset;
  - 2.2 The subsequent appointment of Maj-Gen Ntsemeza as acting head is invalid as the legal foundation for such an appointment was non-existent;
  - 2.3 Where the suspension of Lt-Gen Dramat was invalid and a nullity from the outset, he was, in law, never suspended, so that there was no basis for the Court to order his reinstatement.
3. The effect of the judgment is that Lt-Gen Dramat will resume his duties on Monday 26 January 2015. We assume in the circumstances that Lt-Gen Dramat will be allowed to exercise his duties, functions and responsibilities unhindered and without any

DIRECTOR: JOHN FRED RILEY, B.Juris, LLB  
ASSOCIATES: STEVEN BARKER, B.PROC | DENNIS BURT CAVERNELLS, BA, LL.M | TRACEY-LEE JAMES, BA, LL.B | RUKIA ALLIE DA COSTA, BCOMM, LLB  
CONSULTANT: SAGEER PANSARI, BA, LLB

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interference. Lt-Gen Dramat will inevitably be entitled to restore structures, procedures and investigations retrospectively from the date of his purported suspension.

4. We further trust that you as the Honourable Minister will comply with the High Court judgment and take the necessary steps to ensure that Maj-Gen Ntsemeza [who was in effect never appointed] vacate the office of Lt-Gen Dramat prior to Monday the 26<sup>th</sup> of January 2015.
5. Finally we note and appreciate the media statement release by your spokesperson, Mr Zondi, earlier today that confirms that you will not 'stop' Lt-Gen Dramat from returning to his offices.

Yours faithfully

**RILEY INCORPORATED**

Per:  
**JOHN RILEY**

ke  
MP





Mr S J Thema  
s.j.thema@hoganlovells.com  
D (27 11) 775-6386  
F 088-888-1489

Your ref JFR/MAT11144/wd  
Our ref I35484/SJ Thema/L  
Sikhkhane/dn

**Riley Incorporated**  
**Attention: Sageer Pansari**  
**212 Rosmead Avenue**  
**Wynberg**  
**Email: [john@frlaw.co.za](mailto:john@frlaw.co.za) /**  
**[Sageer@frlaw.co.za](mailto:Sageer@frlaw.co.za)**  
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**Dear Sir/Madam**

**MEETING BETWEEN THE MINISTER OF POLICE & LIEUTENANT GENERAL DRAMAT**

1. We refer to the above matter and to previous correspondence herein. We again confirm that we act on behalf of the Minister of Police, in the suspension matter of Lt General Dramat.
2. Your undated letter addressed directly to our client, the Minister of Police, sent at 17:48 yesterday (23<sup>rd</sup> January) afternoon, has been handed to us for advice and assistance with a response.
3. We do not intend to traverse the contents of the aforesaid letter in detail, suffice to state as follows that,
  - 3.1 Our client denies your interpretation of the effect of the judgment (by Judge Prinsloo delivered on 23 January 2015), as outlined in paragraph 3 of your aforementioned letter. We in this regard refer you to the order on page 52 of Judge Prinsloo's judgment;
  - 3.2 Our client has in any event, proceeded to file an application for leave to appeal the judgment, which application was served on you electronically (at 17:18, which you acknowledged in an email sent at 17:38, incidentally, 10 minutes before you sent the letter to the Minister);
  - 3.3 The application was also served on Webber Wentzel physically, whom you indicated in your email 'have agreed to accept service of all processes and notices pertaining to this matter on our behalf at their Johannesburg offices'; and

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Hogya Lovett (South Africa) partner; L. Modise (Chairman), J. Anzures, W. Baderhorn, W. Beach, S. Belayev, A. Dostoff, K. Elmaghrabi, A. Curry, P. Chery, S. Coler, W. Dine, A. Elliot, M. Elia, D. Francis, M. Gonder, J. Jacobs, J. Jacobson, W. Josephson, D. Kaural, P. Lofgren, D. Mordina, I. Mordovskaya, S. Murry, E. Nel, D. Nombela, D. Pennington, C. Piller, R. Piller, D. Pfaffard, R. Rantchojones, C. Runyan, H. Schenkenberg, C. Seibert, A. Shapiro, S. Thoma, H. Thynn, V. Vargaber, N. Webb  
 Consultants: D. Adams, C. Maria, M. Middleton, D. Pashy, S. Rabin, S. Associates, C. Andrews, S. Baker, J. Evans, G. Kfir, R. Aldin, M. Labowitz, A. Nardone, L. Piller, J. Radt, M. Veltin  
 Associates: M. Adams, S. Chalka, A. Crompton, T. D'Amico, A. Graham, J. Hogg, A. Khan, S. Khoury, P. Lawrence, M. Lawrence, P. Melillo, S. Melius, S. Murrain, M. Nothmann, A. Mohr, M. Ngobu, S. Nolas, K. Nolaseng, T. Palmer, P. Barnett-Pillay, D. Rappas, H. Roshchinskaya, D. Sobota, L. Shikharshin, S. Shikharshin, S. von Tonder, M. Webb, S. Whyn, G. Yu  
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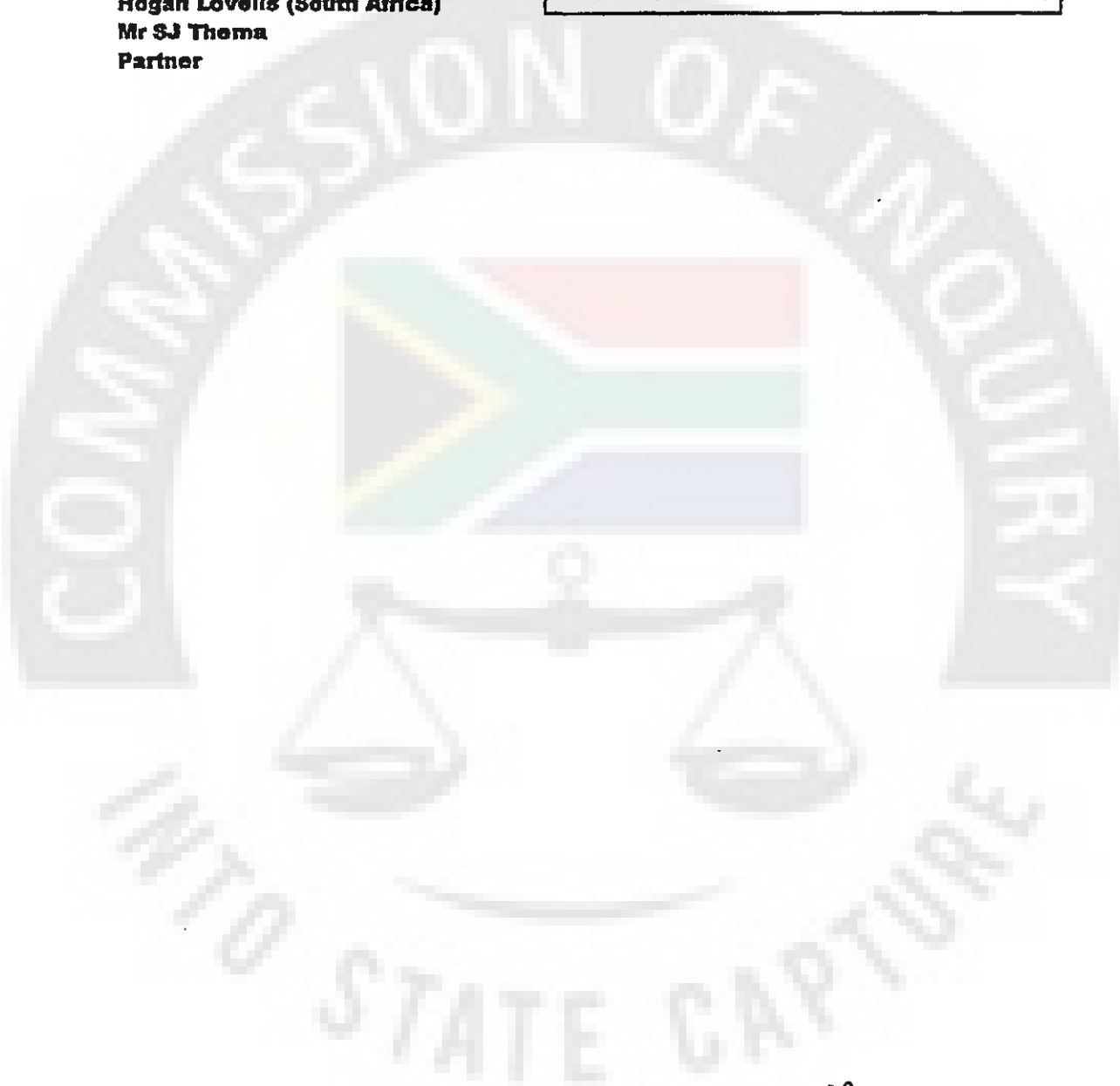
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- 3.4 The effect of our client's application for leave to appeal is that it suspends the application and the effects of the judgment.
4. In the circumstances, your client cannot resume his duties as yet, pending our client's application for leave to appeal.
5. We trust he will be advised accordingly.

Yours faithfully

Hogan Lovells (South Africa)  
Mr SJ Thoma  
Partner

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19.1 IPID is established in terms of Independent Police Investigation Directorate Act 1 of 2011, the objects of which are, *inter alia*, the following:

- (a) to ensure independent oversight of the SAPS and municipal police service; and
- (b) to enhance accountability and transparency by the SAPS and municipal police services in accordance with the principles of the constitution.

20. The IPID has since submitted its report to the National Director of Public Prosecutions ("NDPP") for consideration, and I have been advised by IPID that the matter is still under investigation. The file to the best of my knowledge had not been closed. I must add that even if the file could have been closed, that could not in law preclude me from conducting my own initiated investigation. I would have still initiated an investigation due to the seriousness of the matter and the fact that it is the DPCI, its head and senior officials who are implicated in these atrocious acts.

21. I have noted that it has been mentioned in the media and elsewhere that the second respondent had been exonerated by IPID's investigation. These assertions are made without facts or appreciation of why such a conclusion was made by IPID. IPID simply makes recommendations which do not tie my hands from taking further steps if there is reason to believe that IPID's conclusion is not correct on the facts and the law. In fact IPID's investigation

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places the members of the DPCI at the centre of the Zimbabwe rendition and that same was unlawful.

22. If there was no criminal act committed it would baffle me that IPID would refer its investigation report to the NDPP for a decision and further investigation. What also bothers my mind is that the crime committed in the renditions of the Zimbabwean nationals which led to the killing of at least two of them cross border by the Zimbabwean police is a criminal act that will fall under DPIC's complex inter-country operation. I regard it as a priority crime which would have been at the top of the priority list of the DPCI for investigation, taking into account that the South African Government's standing and obligations, its role in terms of the SADC protocol was at stake.

22.1 Article 5(j) of the protocol provides that extradition may be refused if the offence for which extradition is requested carries a death penalty under the law of the requesting State, unless the State that gives such assurance, as the requested State, considers sufficient that the death penalty will not be imposed, or if imposed, will not be carried out.

22.2 Whereas there is no extradition treaty between South Africa and Zimbabwe, an application for the extradition of the Zimbabwean nationals would have to be made in accordance with the statutory law of Zimbabwe. This was not done, hence the illegal rendition. Such illegal renditions made South Africa, or have the effect of making South Africa an accomplice and co-perpetrator in acts of human rights violations. It is for these reasons that I consider the allegations relating

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to the Zimbabwean rendition report in a serious light. These allegations are sufficient to warrant action against the alleged perpetrators.

23. I would have expected that by now, four years later since the alleged commission of the offence, DPCI would have investigated the matter to find out who has committed these atrocious crimes so that the perpetrators be brought to book.

24. In my mind, it possibly explains why no concrete steps have been taken by DPCI when it is its members who have been accused of the said crimes. I regard accountability as the hallmark of a constitutional democracy, especially from those occupying high office, such as the one occupied by the second respondent. Similarly I regard myself as accountable within the parametres of my statutory powers. If I do not act when confronted with such serious allegations alleged to have been committed by the DPCI, in which its head is alleged to have been involved. An assertion that I am complicit to these heinous crimes will not be far-fetched. To me it does not matter whether the victims are of Zimbabwean origin or South Africans. Life is life and must be valued equally irrespective of one's social status, origin, colour, sex or creed.

25. South Africa is a party to the following international instruments:-

- a) 1947 – Geneva Conventions;
- b) 1951 – Convention and Protection Relating to the Status of Refugees (1951 Refugees Convention);

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

Case no: 1054/15

In the matter between:

THE HELEN SUZMAN FOUNDATION

Applicant

and

MINISTER OF POLICE

First Respondent

LIEUTENANT GENERAL ANWA DRAMAT

Second Respondent

MAJOR-GENERAL BERNING NTLEMEZA

Third Respondent

NATIONAL COMMISSIONER OF THE SOUTH  
AFRICAN POLICE SERVICE

Fourth Respondent

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NOTICE IN TERMS OF RULE 35(12)

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TAKE NOTICE that the applicant requires the first respondent to produce for its inspection, and to permit the applicant to take copies, by no later than 12:00 on Friday, 16 January 2015, of the following documents referred to in the first respondent's answering affidavit dated 14 January 2015:

1. The "Independent Police Investigation Directorate ("IPID") report" and "IPID report" referred to in paragraph 19 of the answering affidavit;
2. Each of the "witness statements", "other relevant documentation" and "other documents" referred to in paragraph 19 of the answering affidavit;
3. The "report" referred to in paragraph 20 of the answering affidavit;
4. The "file" referred to in paragraph 20 of the answering affidavit;





5. The "Investigation report" referred to in paragraph 22 of the answering affidavit.

Dated at Johannesburg on this 15<sup>th</sup> day of January 2015

  
**WEBBER WENTZEL**  
Applicant's Attorneys  
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Johannesburg 2196  
Tel: (011) 530 5867  
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vlad.movshovich@webberwentzel.com  
Ref: V Movshovich / S McKenzie /  
P Dela / D Rafferty / K Eksteen  
2329211

**c/o HILLS INCORPORATED**  
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**TO: THE REGISTRAR**  
Pretoria

**AND TO: HOGAN LOVELLS (SOUTH AFRICA)**  
First Respondent's Attorneys  
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Ref: SJ Thema / L Sikhakhane

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MP

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Ref: Ms Mabudusha / R Mudau



*[Handwritten signatures]*

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294

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

CASE NO: 1054/2015

In the matter between:

THE HELEN SUZMAN FOUNDATION

Applicant

and

THE MINISTER OF POLICE

1<sup>ST</sup> Respondent

LIEUTENANT GENERAL ANWA DRAMAT

2<sup>ND</sup> Respondent

MAJOR-GENERAL BERNING NTLEMEZA

3<sup>RD</sup> Respondent

NATIONAL COMMISSIONER OF THE  
SOUTH AFRICAN POLICE SERVICE

4<sup>TH</sup> Respondent

---

RESPONSE TO APPLICANT'S NOTICE ITO RULE 35(12)

---

1. The applicant's Rule 35(12) notice amounts to the shifting of the goal post by the applicant.
2. The applicant's application is centred on what it calls a crisp legal issue of whether the Minister had the power to suspend the National Head of Directorate for Priority Crime Investigation ("DPCI") in the light of the Constitutional Court judgment in *the Helen Suzman Foundation vs The President of the Republic of South Africa*, delivered on 27 November 2014.
3. The applicant's application has never been centred on whether an investigation was conducted which exonerated the second respondent.



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4. For the above reason, the applicant is not entitled to the documents listed in its Rule 35(12) notice.
5. The second reason why the first respondent objects to the production of the documents mentioned in the Rule 35(12) is that:
- 5.1 the report has been submitted to the NDPP by the IPID for a decision and further investigation;
  - 5.2 the IPID has said that the matter is still under investigation;
  - 5.3 the report mentions the names of witnesses or potential witnesses whose lives may be placed in danger if they were to be disclosed;
  - 5.4 the report should, until the investigation is completed be kept confidential, so are the documents which informed the report.
6. For the above reasons, the first respondent objects to the Rule 35(12) notice.

DATED AT SANDTON ON THIS THE 16<sup>TH</sup> DAY OF JANUARY 2015.

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as Routledge Modise Inc.  
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Fax: 012 321 1491  
Ref: Ms Mpepo/R Mudau

TO:  
THE REGISTRAR OF THE ABOVE  
HONOURABLE COURT  
PRETORIA

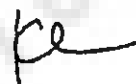
AND TO:  
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P Dela / D Rafferty / K Eksteen  
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Tel: 0872307314  
Ref: A Engelbrecht

Service by Email

Received copy hereof this  
the \_\_\_\_\_ day of JANUARY 2015.

\_\_\_\_\_  
for: Applicant's Attorneys









297

"RM6"



## IN THE HIGH COURT OF SOUTH AFRICA

/ES

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED	✓
DATE 22/11/15	SIGNATURE <i>[Signature]</i>

CASE NO: 1054/2015

DATE:

IN THE MATTER BETWEEN

THE HELEN SUZMAN FOUNDATION

APPLICANT

AND

THE MINISTER OF POLICE

1<sup>ST</sup> RESPONDENT

LIEUTENANT GENERAL ANWA DRAMAT

2<sup>ND</sup> RESPONDENT

MAJOR-GENERAL BERNING NTLEMEZA

3<sup>RD</sup> RESPONDENTNATIONAL COMMISSIONER OF THE  
SOUTH AFRICAN POLICE SERVICE4<sup>TH</sup> RESPONDENTJUDGMENTPRINSLOO, J

- [1] The applicant (also, at times, referred to as "HSF") applies for certain declaratory relief flowing from the suspension by the first respondent ("the Minister"), on

*[Signatures]*



23 December 2014, of the second respondent (without being disrespectful, but for the sake of brevity, I will refer to him as "Dramat") from his position as the National Head of the Directorate for Priority Crime Investigation ("DPCI").

The applicant also applies for ancillary declaratory relief, *inter alia*, flowing from the appointment by the Minister of the third respondent as Acting National Head of the DPCI following the Minister's suspension of Dramat.

[2] Before me, Mr Unterhalter SC, assisted by Mr Du Plessis, appeared for the applicant and Mr Mokhari SC, assisted by Ms Seboko, appeared for the first respondent.

[3] Dramat, although duly cited by the applicant, did not take an active part in the proceedings although he did, through his attorney, file a written notice to abide on 13 January 2015.

Attached to the founding papers, there is also a letter from Dramat's attorney, dated 12 December 2014, written to the Minister in response to the latter's notice of "contemplated provisional suspension" to Dramat dated 9 December 2014. In this letter to the Minister, Dramat's attorney also challenges the lawfulness of the intended suspension of his client.

[4] The third and fourth respondents did not take part in the proceedings.

[5] The matter was enrolled before me as an urgent application on Thursday 15 January 2015. On that occasion the question of urgency was challenged on behalf of the

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Minister, not because the latter felt that the case was not urgent, but because of the technical objection that the case was enrolled for a Thursday instead of a Tuesday, in terms of the existing Practice Directive, and insufficient time was given to the Minister to file his opposing affidavit and heads of argument.

During an adjournment, the question of urgency was resolved, and the Minister was afforded an opportunity to file his opposing papers and heads of argument which were given to me over the week-end of 17 and 18 January. The case was postponed until 19 January, when the merits of the case were argued before me.

Brief notes on the chronological sequence of events

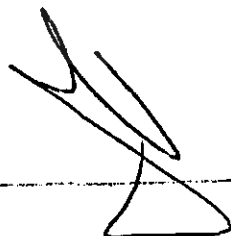



- [6] On 9 December 2014, the Minister wrote a letter to Dramat under the following heading:

"Contemplated Provisional Suspension of the National Head of the Directorate for Priority Crime Investigation Lieutenant General Dramat in terms of section 17DA(2)(a)(i) and (iv) of the South African Police Service Act 68 of 1995, SAPS Act.

Subject: Rendition of Zimbabwean nationals in 2010/2011

This serves to advise your good-self that the Minister of Police is considering placing you on provisional suspension in terms of section 17DA(2)(a)(i) and (iv) of the SAPS Act on the following grounds ..."

For reasons which will appear later, the repeated reference by the Minister to the provisions of section 17DA(2) is of some significance.

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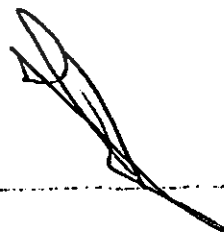
- [7] The notice of 9 December 2014 (evidently only given to Dramat on 10 December) is a lengthy affair. However, I consider the contents to be, in particular, of importance from the point of view of the Minister, so that it is convenient to quote extracts therefrom:

"The following Zimbabwean nationals were renditioned and/or illegally deported by the Directorate for Priority Crime Investigation in 2010 and 2011 following a joint operation with Zimbabwean police (then follows eight names).

The Zimbabwean nationals ... were allegedly fugitives for a crime of murder and robbery committed in Zimbabwe. They were renditioned from South Africa to Zimbabwe; it is further alleged that two of them were eventually killed by Zimbabwean police. ...

The exchange of criminal suspects between the two law enforcement agencies was allegedly not done in terms of Southern African Development Community's Protocol on Extradition; South Africa's Extradition Act 67 of 1962, as well as national legislation on mutual legal assistance in criminal matters.

According to the Hansard record of parliament of 13th December 2011, your reply dated 25 November 2011, you supposedly responded to a parliamentary question on these acts of renditions, wherein you supposedly misled the Minister and parliament by stating that it was the Department of Home Affairs who deported the Zimbabwean nationals; well-knowing that the Zimbabwean



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nationals were wanted for criminal offences in Zimbabwe and had been illegally deported by Directorate for Priority Crime Investigation (DPCI).

There is suggestive evidence at my disposal that the Zimbabwean nationals were wanted in Zimbabwe in connection with the murder of a police colonel ... Therefore, in such an instance, mutual legal assistance on criminal matters and extradition procedures should have been instituted.

Evidence at my disposal, suggest that you probably sanctioned the entry of Zimbabwean police to South Africa and further sanctioned a joint operation between Directorate for Priority Crime Investigation (DPCI) and Zimbabwean police to trace the fugitives.

Furthermore, there is suggestive evidence that the South African Department of Home Affairs and the Zimbabwean Embassy were not involved in the illegal deportation of the Zimbabwean nationals.

In this regard you are instructed to furnish reasons to the Minister of Police, within the next five (5) days, as to why you should not be provisionally suspended pending internal investigations on the following acts of misconduct:

- (1) undermining the legislative authority of the Minister of Justice and the South African judiciary to make a determination and adjudication on the extradition of the Zimbabwean nationals wanted in Zimbabwe for the murder of a police colonel ...;

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- (2) bringing the international image of the Republic of South Africa into disrepute by contravening the SADC Protocols on Extradition, Mutual and Legal assistance and the United Nations' Convention against the Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, by allegedly being an accomplice or co-perpetrator on torture, murder and renditions of Zimbabwean nationals;
- (3) possibly misleading the Minister and parliament as to the lawfulness of the deportations in question and the departments involved;
- (4) allegedly committing the following criminal law offences:
- (i) kidnapping;
  - (ii) defeating the ends of justice;
  - (iii) forgery, fraud;
- as an accomplice and co-perpetrator;
- (5) allegedly, involving the Directorate for Priority Crime Investigation in illegal renditions activities.

Your co-operation in the spirit of good governance is appreciated.

Kind regards

N P T Nhleko  
Minister of Police

Date: 10/12/2014" (The underlining is presumably that of the Minister.)

- [8] On 12 December 2014 Dramat's attorney wrote a lengthy letter (the contents of which I will not quote, for the sake of brevity) to the Minister in reaction to the 9/10 December notice of Contemplated Provisional Suspension.

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I briefly summarise some of the features of this letter, which, like the 9/10 December notice, is an annexure to the founding affidavit:

The attorney has been acting for Dramat since September 2013 in the matter surrounding the so-called "Zimbabwean rendition". Correspondence had been exchanged between the attorney, the State Attorney, the National Commissioner and IPID (the Independent Police Investigation Directorate to which I will refer as "IPID").

The attorney, correctly in my view, reminded the Minister that section 17DA(2) was found to be invalid and unconstitutional by the Constitutional Court on 27 November 2014 and severed, or deleted from the SAPS Act on that date. The case referred to, which I will revisit later, is *Helen Suzman Foundation v President of the Republic of South Africa and others* (case no CCT 07/14) and *Hugh Glenister v President of the Republic of South Africa and others* (case no CCT 09/14). The attorney pointed out to the Minister that the purpose of this constitutional litigation in *Suzman* and *Glenister* was to ensure that the DPCI is adequately independent and has operational autonomy. The attorney points out to the Minister, correctly, that the main thrust was to forbid improper interference by the Minister and the National Commissioner with the Head and members of the DPCI in the exercise or performance of their powers, duties and functions. (I will refer to the *Suzman* and *Glenister* cases as "the 2014 judgment".)

The attorney also reminded the Minister that he was cited as the second respondent in the Constitutional Court in the aforesaid cases, fully represented by three advocates and that he should be aware of the orders of constitutional invalidity deleting

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section 17DA(2) and the "(2)" in section 17DA(1) from the SAPS Act. The attorney then says the following to the Minister:

"You would therefore be in contempt of the Constitutional Court, should you proceed with the contemplated provisional suspension of Lieutenant General Dramat. Clearly your advisors should from time to time look at the law and recent Constitutional Court judgments against you."

The attorney then reminds the Minister that Dramat dealt with the allegations against him with regard to the so-called Zimbabwean rendition, in a statement of 23 October 2013 which is again attached to the attorney's letter as annexure "A". The attorney also stated that he finds it alarming that it had come to the attention of Dramat that certain witnesses had been told (presumably by IPID officials) that unless they incriminate Dramat, they would be of no value to the investigator. It was also submitted in the aforesaid statement that the DPCI was at the time (and still is according to the attorney) tasked and seized with very sensitive and high profile investigations and that the timing of the then IPID investigation and the current contemplated suspension was seen as a "smear campaign" to derail any investigations or arrests that the DPCI is in the process of conducting. The attorney, correctly, refrained from listing details of the sensitive matters and the high profile individuals.

The attorney then also reminded the Minister that IPID sent an undated letter to Dramat which contained the same allegations as those referred to by the Minister in his Notice of Contemplated Suspension. Dramat was required to answer certain questions regarding the "rendition" of the Zimbabwean nationals which he did in a statement dated 11 November 2013 which is also attached to this letter of the attorney

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as annexure "B". In the statement it was specifically pointed out that Dramat never authorised or sanctioned co-operation or kidnapping of any of the Zimbabwean nationals referred to in the IPID correspondence. It was also pointed out that Dramat unequivocally denied any knowledge of any action whatsoever that he authorised or participated in which was aimed to defeat the due administration of justice. Fraud and theft allegations were equally vague and spurious and denied. The attorney pointed out to the Minister that the Notice of Contemplated Suspension takes the matter far beyond the allegations made by IPID, namely that Dramat undermined the legislative authority of the Minister of Justice and the judiciary and that he is allegedly an accomplice and co-perpetrator on torture, murder and renditions. It was recorded that Dramat was reserving his rights in this regard. It was pointed out that neither IPID, nor the National Commissioner or the NDPP complied with the request of more than a year earlier for concrete evidence in support of these allegations to be furnished to Dramat. At all times, Dramat offered his full co-operation with a *bona fide* investigation. Dramat got information that the authorities were trying to get a warrant for his arrest. It was reiterated by his attorney that Dramat would voluntarily appear before a competent court to answer to any charges. The attorney again recorded that efforts now to press on with the alleged Zimbabwean rendition complaint, more than four years after the event, amounted to nothing other than slanderous, malicious conjecture designed to derail sensitive investigations of the DPCI and/or an attempt to discredit the reputation and integrity of Dramat and the DPCI.

The attorney concludes by reminding the Minister that he does not have the power to suspend the Head of the DPCI and any efforts to continue to do so would be met with an application to this court for urgent relief.

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[Signature]

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[9] The Minister did not answer this letter. The statements, "A" and "B", attached to the letter, are broadly summarised in the letter, and the contents will not be repeated.

[10] On 23 December 2014, the Minister wrote to Dramat informing him that he was placing Dramat "on precautionary suspension with full pay and benefits" with immediate effect.

In the letter, which is difficult to read because of the quality thereof, the Minister acknowledges the fact that section 17DA(2) of the South African Police Services Act had been struck down. He argues, that he nevertheless retains the right to suspend Dramat. He argues that he is empowered to do so on a certain reading of the 2014 judgment and that he is also empowered to suspend Dramat in terms of certain provisions of the Public Service Act, 1994 ("the Public Service Act" or "the PSA") which came into operation on 3 June 1994 as well as the Public Service Handbook.

[11] On 24 December 2014, Dramat responded to the suspension notice in a long letter written to the Minister under his own hand.

I find it convenient to quote some of the paragraphs:

- "1. I have for several months reflected very carefully on the issues that have unfolded in front of me. I have consulted my legal representatives and I have been advised of my legal remedies.
2. I respectfully point out that the tactical 'backpedalling' from the initial notice and the current reliance on the Public Service Act and Public

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Service Regulations and *SMS Handbook* is a clear indication to me that no matter what steps I take to defend my position, a decision had already been made, from the outset, to remove me from my position.

4. Having seen our country enter into a democratic phase, I felt that I could contribute in a meaningful way and continue to develop the principles which I fought and for which I was imprisoned.
5. My appointment as the Head of the DPCI, I perceived at the time, was based on my credentials, my level of expertise and the fact that I respectfully believe that I have always acted with integrity in the manner in which I deal with people and investigations.
6. No doubtedly you are aware that I have recently called for certain case dockets involving very influential persons to be brought or alternatively centralised under one investigating arm and this has clearly caused massive resentment towards me.
7. I can unequivocally point out that I am not willing to compromise the principles that I have always believed in. I am not willing to be 'agreeable' or 'compliant' in so far as I would then be acting contrary to my own moral principles and, also, contrary to the position in which I was appointed.
- 10.1 The so-called 'Zimbabwean rendition investigation' is a smoke-screen. There are no facts whatsoever that indicate that at any given time I have acted illegally or unlawfully ... Most certainly there has never been any evidence whatsoever that I have, in any way, interfered with any potential witnesses or attempted to jeopardise the investigation against me during the past four years.

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- 10.2 I wish to reserve my rights to fully vindicate myself against all those who have sought to tarnish my name and reputation. I do not wish to engage with those involved in this correspondence, in so far as that is reserved for another forum, if necessary.
11. I therefore deny, with respect that the Notice of Precautionary Suspension is legal, valid or regular. In fact it is totally irregular and constitutionally invalid.
12. I am also aware that in the next two months there will be a drive to remove certain investigations that fell under my 'watch', re-allocate certain cases and that unfortunately, certain sensitive investigations may even be closed down. This is something that I have to live with.
14. I note with interest that a two month period has been set to hold an 'enquiry' (*sic*). I can honestly say that the investigation into the 'Zimbabwean rendition' case, has run for a very lengthy period of time and till to date there has been no evidence whatsoever. It is clear that I am being pushed out.
17. ... After due consideration, with specific reference to the background alluded to above, I am willing to submit a request to vacate office by applying to the National Commissioner to approve my early retirement in terms of section 35 of the Act. Quite clearly there is a pre-condition that the unlawful precautionary suspension be uplifted without me having to approach the court to do so.
18. I therefore require that we should enter into a joint consensus seeking meeting as a matter of urgency to prevent any instability within the

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DPCI. Under the above circumstances your reply is eagerly anticipated by no later than 5 January 2015."

As far as I could make out no such reply was forthcoming.

[12] On 30 December 2014, the present applicant's attorneys wrote to the Minister as follows:

- "1. We represent the Helen Suzman Foundation (our client).
2. Our client understands that Lt Gen Dramat has been placed on 'precautionary suspension' by you in your capacity as the Minister of the Police and that the suspension is for a period of sixty days from 23 December 2014. Our client also understands that no other disciplinary processes to remove Lt Gen Dramat have been instituted or followed by you or any other body at this stage.
3. As you will know, as a matter of South African law, it is imperative for the DPCI to be adequately independent from the National Executive. The suspension of the National Head strikes at the very heart of our constitutional democracy.
4. As you will also know, our client is (and has been) concerned to ensure that the rule of law is upheld in all spheres, including the essential fight against corruption and organised crime mandated by the Constitution.
5. You will doubtless agree that, in this context, it is important to ensure that any suspension of the National Head or any office-bearers in the DPCI is constitutionally compliant and lawful. It appears that the suspension was not grounded in law.

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6. To this end, our client requires you to furnish the following information in writing by no later than Wednesday, 7 January 2015, so that it may adequately protect its rights and the public interest:

- 6.1 a copy of any document which evidences or constitutes the purported suspension of Lt Gen Dramat, including any letter of suspension issued to Lt Gen Dramat;
- 6.2 the effective date of the suspension;
- 6.3 the duration of the suspension;
- 6.4 whether any of the facts in paragraph 2 above are incorrect and, if so, which facts and for what reason;
- 6.5 a copy of any documents and information on the basis of which the suspension was decided by you;
- 6.6 a copy of any reports pertaining to Lt Gen Dramat produced by the Independent Police Investigative Directorate;
- 6.7 full reasons for the suspension of the National Head;
- 6.8 details of what empowering provision you have used or invoked for the purposes of the purported suspension of the National Head;
- 6.9 what disciplinary steps have been taken by you or any other institution or body in relation to Lt Gen Dramat that relate in any way to the suspension or the grounds for such suspension;
- 6.10 a copy of any letter purportedly appointing any other person, including Major General Berning Ntlemenza, as Acting National Head of the DPCI.

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7. Should you fail to deliver the above information timeously or should the information not negate our client's concerns about the unlawfulness of the decision to suspend the National Head, our client will have no option but to assume that there was no lawful basis for such decision, to assume that the facts in paragraph 2 are correct and to exercise its legal rights in its and the public's interest on an urgent basis.

Yours faithfully"

- [13] There was no answer to this letter, so that the applicant launched its application on 9 January, two days after the dead-line it imposed expired. I have dealt with the procedural development of the case between 15 January, when it was first enrolled, and Monday 19 January.

What could be added to this chronology, is that when the Minister filed his answering affidavit, the applicant called, in terms of rule 35(12), for the opportunity to take copies of certain documents referred to in the answering affidavit including the "IPID report", certain "witness statements", "other relevant documentation", a "report" and a "file". In an answer, the Minister refused to make these copies available claiming that the applicant was shifting the goal-posts having based its application on whether the Minister had the power to suspend the National Head in the light of the 2014 judgment. The Minister also claimed that, according to IPID, the matter was still under investigation and its report, until the investigation is completed, is confidential. On this basis, the Minister offered no evidence whatsoever to show improper involvement of Dramat in the "Zimbabwean rendition" case. Dramat himself, as the only possible role player, before this court, in the affair, expressly denies any

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involvement, as appears from his two statements, dating back to 2013, furnished to the Minister by his attorney. He repeats his denial of any liability in his 24 December letter to the Minister.

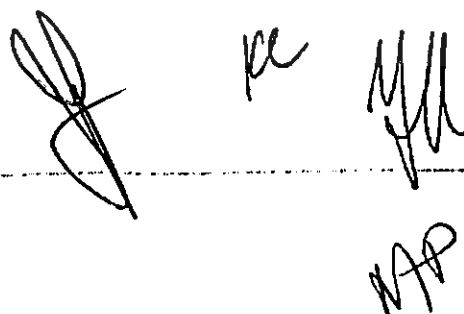
Declaratory relief sought by the applicant

[14] The relevant paragraphs of the notice of motion read as follows:

- "2. declaring that the decision of the Minister of Police, the Honourable Mr Nkosinathi Nhleko (the Minister), of 23 December 2014, to suspend Lt Gen Anwa Dramat, the National Head of the Directorate for Priority Crime Investigation (DPCI) (the suspension decision) is unlawful and setting aside the suspension decision;
3. declaring that the decision of the Minister to appoint Major-General Berning Ntsemeza as Acting National Head of the DPCI (the appointment decision) is unlawful and setting aside the appointment decision;
4. declaring that the Minister is not empowered to suspend the National Head of the DPCI other than in accordance with sections 17DA(3) and (4), read with section 17DA(5), of the South African Police Service Act, 1995;"

There is also a prayer for costs against whoever opposes the application.

Section 17DA and other provisions of the South African Police Service Act, 1995 ("the SAPS Act")

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[15] The DPCI (also popularly known as "the Hawks") is a creature of the SAPS Act. It is created in terms of section 17 which constitutes Chapter 6A of the SAPS Act. More particularly, it is created by section 17C(1) which provides:

"The Directorate for Priority Crime Investigation is hereby established as a Directorate in the Service."

The "Service" means the South African Police Service established by section 5(1) of the SAPS Act.

Section 17C(2) provides that the Directorate consists of, *inter alia*, the National Head of the Directorate at national level, "who shall manage and direct the Directorate and who shall be appointed by the Minister in concurrence with Cabinet" and subsection (2)(aA) also provides for a Deputy National Head at national level.

[16] I turn to section 17DA which goes under the heading "Removal from office of National Head of Directorate".

Before portions of this section were struck down as unconstitutional by the Constitutional Court in the 2014 judgment, and deleted from the SAPS Act with effect from the date of the order, which was 27 November 2014, it read as follows:


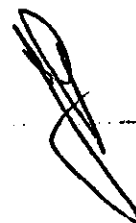
"(1) The National Head of the Directorate shall not be suspended or removed from office except in accordance with the provisions of subsections (2), (3) and (4).

(2) (a) The Minister may provisionally suspend the National Head of

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the Directorate from his or her office, pending an inquiry into his or her fitness to hold such office as the Minister deems fit and, subject to the provisions of this subsection, may thereupon remove him or her from office –

- (i) for misconduct;
  - (ii) on account of continued ill-health;
  - (iii) on account of incapacity to carry out his or her duties of office efficiently; or
  - (iv) on account thereof that he or she is no longer a fit and proper person to hold the office concerned.
- (b) The removal of the National Head of the Directorate, the reasons therefor and the representations of the National Head of the Directorate, if any, shall be communicated in writing to Parliament within fourteen days after such removal if Parliament is then in session or, if Parliament is not then in session, within fourteen days after the commencement of its next ensuing session.
- (c) The National Head of the Directorate provisionally suspended from office shall during the period of such suspension be entitled to such salary, allowance, privilege or benefit to which he or she is otherwise entitled, unless the Minister determines otherwise.
- (d) An inquiry referred to in this subsection –
- (i) shall perform its functions subject to the provisions of the Promotion of Administrative Justice Act, 2000



(Act 3 of 2000), in particular to ensure procedurally fair administrative action; and

- (ii) shall be led by a judge or retired judge: provided that the Minister shall make the appointment after consultation with the Minister of Justice and Constitutional Development and the Chief Justice.

- (c) The National Head of the Directorate shall be informed of any allegations against him or her and shall be granted an opportunity to make submissions to the inquiry upon being informed of such allegations.

- (3) (a) The National Head of the Directorate may be removed from office on the ground of misconduct, incapacity or incompetence on a finding to that effect by a Committee of the National Assembly.

- (b) The adoption by the National Assembly of a resolution calling for that person's removal from office.

- (4) A resolution of the National Assembly concerning the removal from office of the National Head of the Directorate shall be adopted with the supporting vote of at least two-thirds of the members of the National Assembly.

- (5) The Minister—

- (a) may suspend the National Head of the Directorate from office at any time after the start of the proceedings of a Committee of the National Assembly for the removal of that person; and

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- (b) shall remove the National Head of the Directorate from office upon adoption by the National Assembly of the resolution calling for the National Head of the Directorate's removal.
- (6) The Minister may allow the National Head of the Directorate, at his or her request, to vacate his or her office --
- (a) on account of continued ill-health; or
- (b) for any other reason which the Minister deems sufficient.
- (7) The request in terms of subsection (6) shall be addressed to the Minister at least six calendar months prior to the date on which the National Head of the Directorate wishes to vacate his or her office, unless the Minister grants a shorter period in a specific case."  
(Emphasis added.)

[17] It is common cause that the Constitutional Court, in the 2014 judgment, dated 27 November 2014:

- (1) declared the "(2)" in section 17DA(1) inconsistent with the Constitution and therefore invalid, and deleted it from the date of the order;
- (2) declared section 17DA(2) inconsistent with the Constitution and therefore invalid, and deleted it from the date of the order.

[18] This means:

- (1) that section 17DA(1) now reads (in peremptory language):

"The National Head of the Directorate shall not be suspended or removed from office except in accordance with the provisions of subsections (3) and (4)."

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- (2) Where section 17DA(2) has now been deleted and declared unconstitutional and invalid, the Minister no longer has the power, in terms of that subsection, to provisionally suspend the National Head and, pending an inquiry, remove him or her from office for the reasons mentioned in the relevant subsection; and
- (3) the powers of the Minister to suspend or remove the National Head are now limited to the provisions of subsection (5)(a) and (b) which renders the Minister's power to suspend and/or remove the National Head subject to the prior start of the proceedings of a Committee of the National Assembly for the removal (subsection (5)(a)) and the passing of a resolution by the National Assembly calling for the removal of the National Head by a two-thirds majority (subsection (5)(b)).

[19] From the foregoing, the following remarks are also, in my view, valid:

1. The "Contemplated Provisional Suspension" notice by the Minister to Dramat of 9/10 December 2014 is invalid because it purports to base this contemplated provisional suspension on the provisions of section 17DA(2)(a)(i) and (iv) which, by then, had already been struck down as invalid and unconstitutional and deleted from the Act.
2. The remarks by the Minister in his suspension notice to Dramat of 23 December 2014 that

"The remaining provisions of the section (my note: which would include subsections (3), (4) and (5)) deal with the suspension and removal of the Head when the process for the removal has been

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initiated by Parliament. These provisions are not applicable to the current situation."

are misplaced. It fails to take into account the peremptory provisions of section 17DA(1), as it now reads and as it read when the suspension notice was given, that "the National Head of the Directorate shall not be suspended or removed from office except in accordance with the provisions of subsections (3) and (4)".

[20] It is common cause that, when the suspension and provisional suspension notices were sent to Dramat, there had not been (and still is not) a "start of the proceedings of a Committee of the National Assembly for the removal of that person" or a resolution by the National Assembly calling for the National Head to be removed, which are the only two occurrences which can trigger the powers of the Minister to suspend or remove the National Head, depending on the circumstances.

[21] In their comprehensive and able argument, counsel for the Minister offered submissions on the interpretation of the 2014 judgment and the effect thereof on the striking down of subsection (2) which are not in harmony with the remarks I have made. I will consider those submissions when dealing with the 2014 judgment.

Helen Suzman Foundation v President of the Republic of South Africa and others; Glenister v President of the Republic of South Africa and others (CCT 07/14, CCT 09/14) [2014] ZACC 32 of 27 November 2014; "the 2014 judgment"

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[22] As I have already indicated, the Minister contends for a different conclusion following the deletion by the Constitutional Court of section 17DA(2) to the one I attempted to advance.

[23] Correctly, the Minister says the following:

"33. The contemplated suspension in section 17DA(5) is triggered by the process that is initiated by the Committee of the National Assembly for the removal from office of the Head of the DPCI on account of misconduct, incapacity or incompetence. If the Committee of the National Assembly makes a finding against the Head of the DPCI, he/she may be removed from office by the adoption of a resolution supported by a vote of at least two-thirds of the members of the National Assembly. The procedure in section 17DA(5) for the suspension of the Head of the DPCI is triggered by the commencement of the proceedings before the Committee of the National Assembly. So, the section 17DA(5) suspension is parliamentary initiated. That is the marked difference between the procedure in the repealed section 17DA(2) and the section 17DA(5)."

[24] The Minister then goes on to submit that, despite the striking down and deletion of 17DA(2), he nevertheless retains the right of suspension and removal of the Head. He does so in the following terms:

"34. In striking down section 17DA(2) the Constitutional Court did not explicitly or implicitly say that as the Minister I cannot suspend the Head of the DPCI other than in terms of section 17DA(5). To the

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contrary, the Constitutional Court affirmed my power to suspend and my power to execute an oversight role over the Head of the DPCI. If the judgment of the Constitutional Court were to be read to imply that I cannot suspend the Head of the DPCI other than in terms of section 17DA(5) then this would invariably mean that my oversight role over the Head of the DPCI has been abrogated."

[25] The Minister then goes on to advance the following interesting and, at first blush, attractive, argument:

"This would mean that I would play a meaningless oversight role to hold the Head of the DPCI accountable to the legislation applicable to him, but I cannot initiate an investigation upon receiving information pointing to serious allegations of misconduct against him, and I cannot initiate an inquiry to ascertain the veracity of such allegations nor to institute a disciplinary inquiry. This would mean that I can only fold my arms and be at the mercy of the parliamentary Committee should it decide to start the proceedings for the removal of the Head of the DPCI. It is also not clear how the parliamentary Committee would initiate the proceedings for the removal of the Head of the DPCI without an investigation relating to the alleged conduct."

[26] The Minister then goes on to advance what he considers to be the correct interpretation of the judgment in the context of the Minister's powers to suspend the Head:

"36. On a proper reading of the Constitutional Court judgment, it struck down section 17DA(2) on two grounds: first that the subsection lacks

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clarity meaning that it is convoluted; second, that the words 'as the Minister deems fit' gives the Minister the discretion to suspend the Head of the DPCI without pay which invariably compromises the job security of the Head of the DPCI and insulation from political and executive interference. I fully agree with the Constitutional Court's *ratio decidendi* on this issue. The Head of the DPCI and the DPCI must be protected from executive and political interference. He or she must be independent and perform his/her duties without fear, favour or prejudice.

37. However, in finding that section 17DA(2) is inconsistent with the provisions of job security, independence and that it lacks clarity, the Court, however, made it clear that that does not mean that I do not have the power to suspend the Head of the DPCI in the context envisaged in section 17DA(2) save for the offending provisions of the subsection which I have already dealt with above."

[27] In support of his argument, the Minister relies on what was said in paragraph [85] of the 2014 judgment:

"[85] But for 'as the Minister deems fit' and the possibility of a suspension without pay and benefits provided for in subsection (2)(c), I can find no reason to attack the bases on which this subsection empowers the Minister to suspend the National Head. These are specific, objectively verifiable and acceptable grounds for suspension and removal. Suspension without pay defies the exceedingly important presumption of innocence until proven guilty or the *audi alteram partem* rule and

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unfairly undermines the National Head's ability to challenge the validity of the suspension by withholding the salary and benefits. It irrefutably presumes wrongdoing. An inquiry may then become a dishonest process of going through the motions. Presumably, the Minister's mind would already have been made up that the National Head is guilty of what she is accused of. Personal and familial suffering that could be caused by the exercise of that Draconian power also cry out against its retention. It is the employer's duty to expedite the inquiry to avoid lengthy suspensions on pay."

(I emphasised the first portion of this paragraph in the judgment because it is also emphasised by the Minister, if I understand him correctly, as the main thrust of his argument as to how to interpret the judgment.)

[28] What the Minister fails to do, is to also scrutinise the paragraphs in the 2014 judgment following upon paragraph [85]:

"[86] The only real threat to job security is the Minister's power to remove the National Head from office in terms of section 17DA(1) and (2). These provisions are not clearly set out and therefore do not provide even a modicum of clarity. The removal process is initiated through the appointment of a judge by the Minister to head an inquiry into whether the National Head should be removed from office on any of the grounds listed in section 17DA(2)(a). Based on the recommendation of that judge, the Minister may remove the Head. Thereafter the fact of the removal, the reason therefor and the

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representations of the National Head, if any, are to be conveyed to Parliament within fourteen days of the removal.

- [87] Unlike section 12(6) of the NPA Act that empowers Parliament to reverse the removal of the NDPP or Deputy NDPP by the President, section 17DA(2)(b) does not say what it is that Parliament is required to do upon receipt of the information relating to the Minister's removal of the National Head. There is no provision made for Parliament's interference with that decision. This begs the question, what purpose does it then serve to inform Parliament? A proper reading of subsection (2) indicates that the Minister's removal of the National Head is, subject to whatever Court processes that may ensue, final. Parliament has no meaningful role to play but merely to note the decision. One would have thought that the requirements that Parliament be informed of the removal, be furnished with reasons for the removal and the representations by the National Head within fourteen days of removal, were intended to facilitate speedy intervention by Parliament before more, possibly unjustified, damage is done to the life of the National Head or the functionality of the DPCI. That intervention would ordinarily entail an assessment of the propriety of the finding of wrongdoing and the punishment meted out to the National Head, if correctly found guilty of wrongdoing.

- [88] But, not only is the section silent on what Parliament is supposed to do, it is also silent on how it is to do whatever is supposed to be done, if any, and on the time frames within which any action is to be taken. It is similar to section 17CA(3) which requires the Minister to inform

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Parliament of the appointment of the National Head within fourteen days of the appointment, but does not say what, if any, Parliament is supposed to do with that information. Evidently it is, as in this instance, merely for noting. All these are additional pointers to the lack of clarity that pervades the SAPS Act as amended. Parliament's power to intervene, as in the case in terms of section 12(6) of the NPA Act, cannot be read into this section without the Court usurping the legislative role of Parliament. There is a yawning chasm between the subsection (2) procedure and the role of Parliament set out in subsections (3) to (6).

[89] This subsection (2) removal power is inimical to job security. It enables the Minister to exercise almost untrammelled power to axe the National Head of the anti-corruption entity. The need for job security was articulated in *Glenister II* in these terms:

'At the very least the lack of specially entrenched employment security is not calculated to instil confidence in the members of the DPCI that they can carry out their investigations vigorously and fearlessly. In our view, adequate independence requires special measures entrenching their employment security to enable them to carry out their duties vigorously.'

(My note: this is a reference to *Glenister v President of the Republic of South Africa and others* 2011 3 SA 347 (CC) at paragraph [222].)

[90] Subsections (3) to (6) provide for those special measures that entrench the employment security of the National Head. They deal

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with the suspension of the National Head by the Minister, flowing from a possible removal process initiated by a Committee of the National Assembly. Although the Minister still has the power to suspend, no provision is made for suspension without salary, allowances and privileges. A recommendation by a Committee of the National Assembly for the removal of the National Head would have to enjoy the support of at least two-thirds of the members of the National Assembly to be implemented. The removal would then be carried out by the Minister.

[91] This suspension by the Minister and removal through a Parliamentary process guarantees job security and accords with the notion of sufficient independence for the anti-corruption entity the State creates. That portion of section 17DA(1) that refers to subsection (2) and subsection (2) itself are, however, inconsistent with the constitutional obligation to establish an adequately independent corruption-busting agency. They must thus be set aside. The balance of section 17DA passes constitutional muster and would thus continue to guide the suspension and removal process of the National Head." (Emphasis added.)

[29] The Minister, in his argument, has placed a particular emphasis on the last sentence of paragraph [91] which stipulates: "The balance of section 17DA passes constitutional muster and would thus continue to guide the suspension and removal process of the National Head." The Minister argues that the use of these words "is quite telling" and then submits:

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"The choice of the words in these lines is consistent with what the Court had already found in paragraph [85] that my power to suspend the Head of the DPCI do not get abrogated by the deletion of section 17DA(2)."

The Minister appears to argue that these remaining provisions of section 17DA (including (3), (4) and (5) dealing with suspension and/or removal through the parliamentary process) can be used by the Minister for "guidance" when he exercises his still existing powers of suspension in a manner other than in terms of section 17DA(5).

Astonishingly, the Minister then says the following about the "guidance" so available to him:

"The guidance I received from the remaining provisions of section 17DA is that a suspension must be with pay and the removal if it were to be considered must be done through a parliamentary process." (Emphasis added.)

It seems to me that the Minister concedes that the "guidance" is linked to the suspension or removal through a parliamentary process. This concession, if it is one, flies in the face of the Minister's argument that "... the Court however made it clear that that does not mean that I do not have the power to suspend the Head of the DPCI in the context envisaged in section 17DA(2)..."

[30] I can find no support whatsoever for the Minister's submissions and for the interpretation which he seeks to attach to the 2014 judgment:

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1. In paragraph [91] of the 2014 judgment, it is stated unequivocally that the reference to subsection (2) in 17DA(1) as well as subsection (2) itself are inconsistent with the constitutional obligation to establish an adequately independent corruption-busting agency and must be set aside. This was done with effect from the date of the order, on 27 November 2014.
2. This means that section 17DA(1) now provides, in peremptory terms, that: the National Head of the Directorate shall not be suspended or removed from office except in accordance with the provisions of subsections (3) and (4). There is no room whatsoever for the Minister's argument that he can, somehow, still suspend the Head "in the context envisaged in section 17DA(2)".
3. It follows that the "contemplated provisional suspension" of Dramat, of 9/10 December 2014, which was expressly based on the provisions of section 17DA(2), long after this subsection was deleted by the Constitutional Court, was unlawful as it flew in the face of the 2014 judgment and section 17DA(1), and therefore void *ab initio* ("van die aanvang af nietig" – Hiemstra and Gonin *Trilingual Legal Dictionary* 2<sup>nd</sup> ed page 144).
4. It follows that the suspension of Dramat by the notice of suspension of 23 December 2014, which incorporates, by reference, the contemplated provisional suspension, and which declares the provisions of section 17DA(3) and (4) to be "not applicable" and which, like the "contemplated provisional suspension" was written well after the deletion of the offending provisions on 27 November 2014, is also unlawful and void *ab initio* as it flies in the face of the 2014 judgment and the provisions of section 17DA(1).

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In *Pikoli v President of Republic of South Africa and others* 2010 1 SA 400 (GNP) at 408C-E the following is said:

"The purported exercise of public power that is not authorised by law is invalid from the outset. A declaration that executive action is invalid 'is merely descriptive of a pre-existing state of affairs'. In the interest of an orderly society, however, such action is treated as if it were valid until it is declared invalid. The Court that finds executive action not authorised by law, must declare it invalid."

See also sections 1(c) and 2 of the Constitution of the Republic of South Africa, 1996.

*Cora Hoexter Administrative Law in South Africa* 2<sup>nd</sup> ed p545-546.

*Fose v Minister of Safety & Security* 1997 3 SA 786 (CC) where the learned Judge, still dealing with the interim Constitution 200 of 1993, says the following at 834F:

"Section 4(1) makes unconstitutional conduct a nullity, even before Courts have pronounced it so."

At 834I, the learned Judge points out that it is not the declaration itself (that administrative or executive conduct is unconstitutional) that renders the conduct unconstitutional. The declaration is merely descriptive of a pre-existing state of affairs.

*Cora Hoexter, op cit*; also referred to by the learned Judge in *Pikoli*, puts it as follows on p545-546 where she deals with remedies in proceedings for judicial

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review (more with regard to the Promotion of Administrative Justice Act no 3 of 2000, or "PAJA", but I am of the view that the same remarks apply to other executive action not necessarily included in the definition of "administrative action" in PAJA. Indeed, in *Pikoll*, the court was confronted with executive action not included in the definition of administrative action, and involving the removal from office by the President of the National Director of Public Prosecutions):

"An administrative action or decision, no matter how blatantly illegal it may appear to be, continues to have effect until such time as it is pronounced invalid by the Court. At that point the decision not only ceases to have effect but may be treated as if it never existed. Invalidity thus operates with retrospective effect, both at common law and under the Constitution, as a consequence of constitutional supremacy and in accordance with the doctrine of objective invalidity. In administrative law 'setting aside' is a logical consequence of declaring the decision to be invalid, and is simply a way of saying that the decision no longer stands, or that it is void. It is one of the remedies provided for in section 8 of the PAJA."

(The learned author here refers to section 8(1)(c) of PAJA.) At 547, the learned author also states: "An invalid act, being a nullity, cannot be ratified, 'validated' or amended." I do not refer to all the authorities listed in the footnotes.

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Mr Mokhari, in his diligent address, and on the subject of the unlawful act being treated as valid until it is declared invalid, also referred me to the well-known case of *Oudekraal Estates (Pty) Ltd v City of Cape Town and others* 2004 6 SA 222 (SCA) where the following is said at 242B-C:

"The proper functioning of a modern State would be considerably compromised if all administrative acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question. No doubt it is for this reason that our law has always recognised that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside."

It is clear, as I pointed out, that this principle is recognised both in *Pikoli*, and by *Cora Hoexter*. However, where the declaration of invalidity operates with retrospective effect, and has the effect of the unlawful act being treated as if it never existed, it would seem to me that all actions taken by the Minister following the unlawful suspension will be tainted and of no consequence if I were to declare the suspension to be unlawful and invalid.

- [31] As to the reference by *Cora Hoexter* to PAJA, Mr Mokhari also reminded me of the provisions of section 8 of that Act. If I understood him correctly, he argued that from the wording of paragraph 5.1 of the founding affidavit ("to review and set aside the decisions of the Minister ..."), it is plain that this is an application for review in terms of PAJA, so that the remedy sought falls under section 8(c) of that Act which reads as follows:



It seems to me that one of the leading cases on the subject is *Fedsure Life Assurance Ltd and others v Greater Johannesburg Transitional Metropolitan Council and others* 1999 1 SA 374 (CC) where the following is said at 400D-F:

"It seems central to the conception of our constitutional order that the Legislature and Executive in every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law. At least in this sense, then, the principle of legality is implied within the terms of the interim Constitution. Whether the principle of the rule of law has greater content than the principle of legality is not necessary for us to decide here. We need merely hold that fundamental to the interim Constitution is a principle of legality."

In this case, I have found, that the Minister purported to exercise a power and perform a function beyond that conferred upon him by law, following the order in the 2014 judgment.

*Cora Hoexter* distinguishes between the application of the principle of legality and the PAJA route. At 122 she says:

"But legality also has a wider meaning that goes *beyond* administrative action, and this is probably the more common usage of the term today. Here it refers to a broad *constitutional* principle of legality that governs the use of *all* public power rather than the narrower realm of administrative action. This principle of legality (or 'legality and rationality') is an aspect of the rule of law, a concept implicit in the interim Constitution and the founding value of our constitutional order in terms of section 1(c) of the 1996 Constitution. The

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fundamental idea it expresses is that 'the exercise of public power is only legitimate where lawful'."

For these reasons, I am of the view that it is appropriate to attack the actions of the Minister on the strength of the principle of legality, rather than in terms of PAJA. It should also be borne in mind that the executive powers or functions of the National Executive, or some of them referred to in the definition of "administrative action" in PAJA, are excluded from the operation of that Act. One of the actions excluded from the PAJA definition is contained in the provisions of section 92(3) of the Constitution which reads:

"Members of the Cabinet must --

(a) act in accordance with the Constitution ..."

[32] I turn to the position of the third respondent.

The position of the third respondent, Major-General Bering Ntsemeza ("the third respondent")

[33] In the founding affidavit, the applicant alleges that an Acting National Head (here purportedly the third respondent) cannot be appointed if Dramat was not lawfully suspended. The applicant argues that in the circumstances the appointment decision of the third respondent must suffer the same fate as the suspension decision of Dramat.

[34] This allegation is not dealt with in the opposing affidavit. The Minister only offers a blanket denial of everything in the founding papers inconsistent with his version in the opposing affidavit.

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[35] I have pointed out that section 17C of the SAPS Act provides for the establishment of the DPCI and provides that the Directorate will, *inter alia*, consist of a Deputy National Head at national level.

[36] The procedure involving the appointment of the Deputy National Head as Acting National Head is governed by the provisions of section 17CA(12). This subsection reads as follows:

- "(12)
- (a) Whenever the National Head of the Directorate is absent or unable to perform his or her functions, the Minister shall appoint the Deputy National Head of the Directorate as the Acting National Head of the Directorate.
  - (b) Whenever the office of the National Head of the Directorate is vacant or the National Head of the Directorate is for any reason unable to take up the appointment contemplated in subsection (1), the Minister shall appoint the Deputy National Head of the Directorate as the Acting National Head of the Directorate.
  - (c) If both the National Head of the Directorate and the Deputy National Head of the Directorate are absent the Minister shall appoint a suitably qualified and experienced person as the Acting National Head of the Directorate.

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- (d) Whenever the Deputy National Head of the Directorate is absent or unable to perform his or her functions, the National Head of the Directorate shall appoint a suitably qualified and experienced person as the Acting Deputy National Head of the Directorate.
- (e) Whenever the office of the Deputy National Head of the Directorate is vacant the Head of the Directorate shall appoint a suitably qualified person as the Acting Deputy National Head of the Directorate."

[37] In the Minister's heads of argument, it is stated that the Minister appointed the third respondent as Acting National Head in terms of subsection (12)(c). It is stated that the Minister could not appoint the Deputy National Head of the DPCI because the DPCI does not have a Deputy National Head currently. Under these circumstances, it is questionable whether the Minister complied with the provisions. Subsection (12)(e) provides that if the office of the Deputy National Head is vacant (like here) the Head of the Directorate shall appoint a suitably qualified person as the Acting Deputy National Head, and not the Minister. It is also questionable whether subsection (12)(c) was applicable because that foreshadows a situation where both the National Head and the Deputy National Head "are absent". It may be arguable that such a state of affairs does not apply to the present circumstances. Nevertheless, I make no formal pronouncement on this, as the issue was not pressed before me.



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[38] In prayer 3 of the notice of motion, the applicant seeks declaratory relief to the effect that the appointment of the third respondent by the Minister as Acting National Head of the DPCI is unlawful and also for the setting aside of that appointment decision.

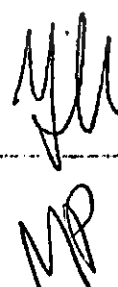
[39] It was argued on behalf of the Minister that the relief sought in prayer 3 would not necessarily follow even if prayer 2 was granted. The relief sought in prayer 2 is a declaration that the decision of the Minister to suspend Dramat as the National Head is unlawful and the setting aside of that suspension decision is also sought.

It was argued on behalf of the Minister that the granting of prayer 3, following upon the granting of prayer 2, will only be a foregone conclusion if further relief is granted to the applicant to the effect that Dramat should be reinstated in his position, something not expressly requested in the notice of motion.

In this regard, I was referred by Mr Mokhari to the case of *Transnet Ltd and others v Chirwa* 2007 2 SA 198 (SCA) where it is stated that the process by which the employee was dismissed was tainted through bias, and was correctly set aside in terms of section 6(2)(a)(iii) of PAJA. It was held that where the learned Judge *a quo*, having set aside the dismissal by the employer, also granted retrospective reinstatement, he was wrong in taking the latter step. It was held that in administrative law the subject is usually entitled only to have the decision at issue set aside and the matter remitted for a fresh decision. It is on this basis, if I understood the argument correctly, that it was argued that reinstatement of Dramat will not follow, even upon granting of the relief in prayer 2 namely a declarator to the effect that the suspension was invalid and unlawful. It was further argued that, even upon the granting of prayer 2, and the



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setting aside of the suspension of Dramat as unlawful, the Minister is still obliged "in the absence of the reinstatement of Dramat" to ensure that the DPCI has a National Head, which the Minister did by appointing the third respondent in compliance with section 17CA(12)(c).

In his replying address, Mr Unterhalter confirmed that reinstatement of Dramat was not specifically sought and need not be granted in those terms. He argued, correctly, that this was not a PAJA application, as I have already pointed out so that the *dicta* in *Chirwa* and, for that matter, the provisions of the Labour Relations Act are not applicable. This is not a case of Dramat approaching the court as an aggrieved employee. The applicant is not acting on behalf of Dramat but as a non-governmental organisation with the objective, *inter alia*, to defend the values that underpin our liberal constitutional democracy and to promote respect for human rights. He pointed out that the applicant approaches the court, firstly, in its own interest. It is an organisation that is primarily concerned with the principles of democracy and constitutionalism, as well as the rule of law. These are all implicated by the unlawful decisions of the Minister to suspend Dramat and to appoint the third respondent. It was argued that, in addition to his unlawful actions, the Minister has failed in his constitutional duty to protect the independence of the DPCI and uphold the rule of law in South Africa. It was argued, secondly, that the applicant also approaches the court in the public interest. All South Africans have an interest in the rule of law, the requirements for a properly functioning constitutional democracy and, in particular, that urgent steps be taken to root out corruption. Counsel confirmed, correctly in my view, that this is a challenge based on the principle of legality, and not a PAJA application.

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[40] I return briefly to the argument raised in the founding papers (not specifically challenged in the opposing affidavit) that the third respondent cannot be appointed if Dramat was not lawfully suspended and that the appointment decision of the third respondent must suffer the same fate as the suspension decision of Dramat.

In *Seale v Van Rooyen NO and others, Provincial Government, North West Province v Van Rooyen NO and others* 2008 4 SA 43 (SCA) the following is said at 50C-D:

"I think it is clear from *Oudekraal*, and it must in my view follow, that if the first act is set aside, a second act that depends for its validity on the first act must be invalid as the legal foundation for its performance was non-existent."

In commenting on this decision, *Cora Hoexter*, at 549-550, says, after quoting the relevant passage from *Seale*:

"In other words, as *Oudekraal* itself makes clear, the factual existence of an act is capable of supporting subsequent acts only as long as the first act is not set aside. In this instance a decision to grant a servitude had indeed been set aside, and the subsequent registration of the servitude was therefore of no force and effect."

[41] In the circumstances, I have concluded that the position is as follows, and I find accordingly:

1. the purported suspension of Dramat was not authorised by law, unconstitutional and invalid from the outset – *Pikoli* at 408C-D;

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2. the appointment of the third respondent as Acting National Head depends for its validity on the suspension of Dramat and is, consequently, invalid as the legal foundation for such an appointment was non-existent – *Seale* at 50C-D;
3. where the suspension of Dramat was invalid and a nullity from the outset, he was, in law, never suspended, so that there is no basis for ordering his reinstatement;
4. where the appointment of the third respondent as Acting National Head depended for its validity on the suspension of Dramat, which was invalid and a nullity, the appointment of the third respondent is also invalid as the legal foundation therefor was non-existent. Such appointment, therefore, also falls to be declared invalid, and, inasmuch as it may be necessary, set aside.

Other legislation and provisions relied upon by the Minister in support of his decision to suspend Dramat

[42] In the face of the striking down and deletion by the Constitutional Court of section 17DA(2) of the SAPS Act, which the Minister argues, as I have illustrated, did not deprive him of his powers to suspend and remove Dramat, the Minister also, in the purported suspension notice of 23 December 2014, suggested that he is empowered to suspend Dramat by the provisions of the Public Service Act, Proclamation no 103 of 1994, and the so-called *SMS Handbook*, and more particularly chapter 7 thereof.

[43] In section 1 of the Public Service Act ("the PSA") "member of the services" is defined as meaning a member of –

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- (b) the South African Police Service appointed, or deemed to have been appointed, in terms of the South African Police Service Act, 1995 (Act 68 of 1995); or
- (c) ..."

Section 2(2) of the PSA provides:

"(2) Where members of the services, educators or members of the Intelligence Services are not excluded from the provisions of this Act, those provisions shall, subject to subsection (2A), apply only in so far as they are not contrary to the laws governing their employment."  
(Emphasis added.)

The provisions in subsection (2A) are not applicable for present purposes.

[44] As already pointed out, chapter 6A of the SAPS Act (containing sections 17A to 17L) deals with the DPCI, which is also established in terms of section 17C(1). It also, in section 17CA contains detailed provisions relating to the appointment, remuneration and conditions of service of those comprising the DPCI. I have quoted, at some length, from some of the provisions of the SAPS Act. In short, the provisions of the SAPS Act fully govern the employment of members of the DPCI. This includes 17DA dealing with the removal from office of the National Head of the Directorate. Consequently, any conditions or provisions in the PSA, not in harmony with what is enacted in the SAPS Act, will not apply to Dramat. The argument of the Minister, in this regard, can therefore not be upheld.



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[45] It was pointed out by counsel for the applicant, correctly in my view, that the *Senior Management Service Handbook*, published in 2003 ("*SMS Handbook*") is delegated legislation under the PSA and would therefore also not be applicable to the suspension and/or removal of the Head of the DPCI as this is governed, as pointed out, by section 17DA of the SAPS Act.

[46] In any event, if one has regard to chapter 7 of the *SMS Handbook*, on which the Minister relies, the provisions of paragraph 2.3 thereof under the heading "Scope of application" read as follows:

- "(1) This Code and Procedure applies to the employer and all members. It does not, however, apply to the employer and members covered by a disciplinary Code and Procedure –
- (a) ...
  - (b) contained in legislation or regulations."

The disciplinary procedure in the present case, specifically the suspension and/or removal of the National Head of the DPCI, is covered by the SASP Act so that chapter 7 of the *SMS Handbook* does not apply to Dramat.

It was also argued on behalf of the applicant that the *SMS Handbook* merely confirms that which the SAPS Act makes abundantly clear. Section 17DA(1) of the SAPS Act unambiguously provides, as already mentioned, that the Head of the DPCI shall not be suspended or removed from office except in accordance with the provisions of subsection (3) and (4). Peremptory language in a statute must, in the absence of strong indications to the contrary, be interpreted as compulsory and not merely

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directory. Not only are there no such contrary indications, but all the indications are that it should be interpreted to exclude any other mechanisms for suspension. It follows that the Minister's attempted reliance on any other legislation to justify his actions is misplaced.

Other arguments offered on behalf of the Minister

[47] I have dealt with most of the arguments presented on behalf of the Minister.

[48] An argument advanced on behalf of the Minister, which I have not yet mentioned, was raised for the first time during the proceedings before me. It has to do with a compromise or *transactio*.

In short, it has to do with Dramat's letter to the Minister of 24 December 2014, extracts of which I have quoted. The argument seems to be based on Dramat's utterance that he is willing to submit a request to vacate his office by applying for approval of early retirement but subject to the precondition that the unlawful precautionary suspension be uplifted without Dramat having to approach the court to do so.

[49] The argument, if I understood it correctly, appears to be that these utterances by Dramat constitute a compromise or an agreement not to litigate so that the applicant is debarred from proceeding with this application.

[50] I was referred to the case of *Gollach and Gomperts (1967) (Pty) Ltd v Universal Mills and Produce Co (Pty) Ltd and others* 1978 1 SA 914 (A). In the judgment it was

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stated, at 921B-C that a *transactio* is an agreement between litigants for the settlement of a matter in dispute and the purpose thereof is not only to put an end to existing litigation but also to prevent or avoid litigation.

Inasmuch as such a *transactio* may have been binding on the applicant, which it clearly is not, there is no evidence whatsoever of such an agreement having been entered into between the Minister and Dramat. Indeed, in his opposing affidavit, dated 14 January 2015, the Minister says that he is in the process of arranging a meeting with Dramat.

[51] In any event, as Mr Unterhalter correctly argued, no agreement between Dramat and the Minister, if there were to be one, can act as a bar to the applicant proceeding with the present application. The applicant, as stated, litigates in its own interest and in the public interest in an effort to uphold the principles of democracy and constitutionalism, as well as the rule of law. The application is aimed at attacking the constitutionality and validity of the Minister's actions.

[52] In the circumstances, I see no merit in the Minister's argument based on the alleged compromise or *transactio*.

The applicant's *locus standi*/standing to launch this application

[53] In the opposing affidavit, the Minister argues that this relief is sought by the applicant "on behalf of the second respondent" in circumstances where the second respondent has not authorised the applicant to bring the application on his behalf neither has he filed an affidavit supporting the application. It is argued that the applicant has no right

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in law to bring an application on behalf of the second respondent for his reinstatement or the upliftment of his suspension when there is no evidence in the founding papers to the effect that the second respondent seeks to challenge the suspension in court. It is argued that the applicant seeks to be the guardian of the second respondent when the latter has the ability and capacity to act on his own behalf and to bring an application himself, if he so wishes.

[54] The applicant's assertion that it brings the application in the public interest is, so the Minister submits, a red herring because the applicant cannot act in the public interest when the aggrieved party is present and available to act on his own. It is argued that the applicant cannot rely on the provisions of section 38 of the Constitution to establish the necessary *locus standi* to launch this application. The applicant is required, so the argument goes, to demonstrate in the founding papers that Dramat is unable to act on his own and for that reason it was in the public interest that the applicant should so act. Consequently, the applicant does not have the necessary legal standing to bring this application.

[55] In response to this argument, it was pointed out on behalf of the applicant that the latter does not contend that it seeks relief "on behalf of the second respondent". This is not a requirement under the law on own-interest standing. Nor is it a requirement that the applicant must demonstrate that Dramat "supports the application". It is irrelevant whether Dramat is "present and available to act on his own". This fact is irrelevant to the objective legal question as to whether or not the Minister acted in accordance with the law in his attempts to remove Dramat from office.

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[56] Counsel for the applicant pointed out that their client relies on own-interest and public interest standing, *inter alia* as provided for in sections 38(a) and (d) of the Constitution.

Section 38 reads as follows:

"38. Enforcement of rights. - Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are --

- (a) anyone acting in their own interest;
- (b) anyone acting on behalf of another person who cannot act in their own name;
- (c) anyone acting as a member of, or in the interest of, a group or class of persons;
- (d) anyone acting in the public interest, and
- (e) an association acting in the interest of its members."

(Emphasis added.)

[57] I was reminded by counsel for the applicant that their client brings this application, firstly, in its own interest. It was submitted that it is trite that our law accords generous rules for standing which permit applicants to seek relief either on their own behalf or on behalf of others. It is also trite, so it was submitted, that constitutional standing is broader than traditional common law standing. See *Giant Concerts CC v Renaldo Investments (Pty) Ltd and others* 2013(3) BCLR 251 (CC).

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It was further argued that even if the applicant's own interest standing is questionable (which the applicant denies) this may not prohibit a court from hearing the matter, if the interests of justice so demand. CAMERON J said in *Glant Concerts*,

"There may be cases where the interests of justice or the public interest might compel a court to scrutinise action even if the applicant's standing is questionable. When public interest cries out for relief, an applicant should not fail merely for acting in his or her own interest."

[58] Counsel submitted that the applicant has sufficiently demonstrated that as an organisation which is primarily concerned with the principles of democracy and constitutionalism, as well as the rule of law, its rights and interests are affected by the unlawful decisions of the Minister to suspend Dramat and to appoint the third respondent. This is a matter of such grave importance that it is undoubtedly in the interest of justice for the applicant to invoke section 38(a) of the Constitution. This is particularly so in the context of the applicant's involvement in ensuring that the DPCI is properly insulated from political interference and safeguarding the DPCI's independence, through its interventions as an *amicus curiae* in *Glenister II* and as an applicant in the 2014 judgment. In neither of those cases the *locus standi* of the applicant was attacked. It is difficult to see how an objection to the *locus standi* can be upheld in this particular matter under these circumstances. After all, the present matter flows from the 2014 judgment for reasons which have already been explained.

[59] As to public interest standing, which also involves the 2014 judgment, section 38(d) of the Constitution allows a party to bring constitutional challenges "in the public

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interest". It has been held repeatedly that the court should adopt a "generous" or "broad" approach to standing in these matters. CAMERON J held in *Beukes v Krugersdorp Transitional Local Council* 1996 3 SA 467 (W) at 474 that such a generous approach is not limited to the Constitutional Court, but should be adopted by "all courts that are called upon to adjudicate constitutional claims" and the generous nature of the test applies both in respect of who qualifies as having standing and how that standing may be evidenced.

[60] It was also argued that the conduct or views of Dramat do not in any way affect the public interest in upholding the rule of law and dealing with blatantly unlawful acts by the National Executive in respect of a key public institution. In any event, so it was further argued, it is clear from Dramat's letter of 24 December 2014 that the offer (of taking early retirement) was made under duress and because Dramat is disillusioned with the Minister's inability to act lawfully and with attempts to subvert his office and authority.


[61] In all the circumstances, I am satisfied that the applicant has made out a proper case for legal standing and that the attack on the applicant's standing is ill-founded. I add, for the sake of clarity, that I was specifically informed by counsel for the Minister during the proceedings that the issue of standing was not raised as a point *in limine* for immediate decision but that it had to be decided as part of the main judgment.

#### Conclusions

[62]. I have already set out my conclusions, particularly when dealing with the position of the third respondent and other subjects.

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4. The Minister is ordered to pay the costs of the applicant, which will include the costs of the proceedings of 15 January 2015 and the costs of two counsel.



W R C PRINSLOO  
JUDGE OF THE GAUTENG DIVISION, PRETORIA

1054/2015

HEARD ON: 15 & 19 JANUARY 2015  
FOR THE APPLICANT: D UNTERHALTER SC ASSISTED BY M DU PLESSIS  
INSTRUCTED BY: WEBBER WENTZEL  
FOR THE 1ST RESPONDENT: W MOKHARI SC ASSISTED BY M<sup>rs</sup> T SEBOKO  
INSTRUCTED BY: HOGAN LOVELLS (SOUTH AFRICA) INC AS ROUTLEDGE  
MODISE INC

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MAP




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# What's the story behind Hawks chief Anwa Dramat's suspension?

Posted 01 February 2015

Written by Ciaran Ryan

Category Corruption

**What's behind the Police Minister's suspension of Hawks chief Anwa Dramat? Government claims it has to do with the illegal rendition of four Zimbabweans, two of whom subsequently died in terrible circumstances. Dramat and the Democratic Alliance it was because he was investigating high profile corruption. Maybe there is more to this story than meets the eye.**



The proximate cause of Hawks chief Anwa Dramat's suspension by Police Minister Nkosinathi Nhleko? Dramat's decision to illegally rendition four Zimbabweans to their home country, where two of them subsequently died. DA leader Helen Zille intimated in a letter last week that the real reason for the suspension was something more sinister: Dramat was investigating high

level corruption and was becoming an inconvenience to those with something to hide. Dramat himself has argued that the accusations of illegal renditions is just cover for his investigations into high level corruption.

The Helen Suzman Foundation challenged the suspension this week in the North Gauteng High Court, citing a Constitutional Court ruling in November last week prohibiting such a unilateral suspension. The North Gauteng High Court ruled that the police could not unilaterally suspend the Hawks boss. The ANC stood behind the Police Minister's decision to suspend Dramat on full pay, but refused to reinstate him.

Democracy watchers in SA see a replay of the Scorpions demise in 2009. The Scorpions had a conviction rate of between 82% and 94%, and had secured 617 convictions in 2006, just before it was disbanded. It was replaced by the Hawks, which has been unable to match this work rate. Since inception, the Hawks have been tainted by suspicions of political interference. Where the Scorpions were seen as fearless in pursuing corrupt senior figures, the Hawks appear to have been less enthusiastic in chasing down top political figures suspected of involvement in corrupt activities.

SAPA reports that in November last year, in a separate case dealing with the Hawks's independence from the national executive, the Constitutional Court deleted a section of legislation dealing with the process through which the head of the Hawks could be suspended.

Criticising the "untrammelled power" given to the police minister, instead the court ruled that the police minister could only suspend the head once a parliamentary committee had conducted an investigation - an action that was not taken in the case of Dramat.

The Scorpions had been far too effective in chasing down corruption for some in power. It will be remembered that its arms deal investigation resulted in the conviction of Zuma's former financial adviser, Schabir Shaik, on fraud and corruption charges. It also put ANC big-wig Tony Yengeni behind bars for accepting a hefty discount on a luxury vehicle as a pay-off linked to the arms deal. The Scorpions were far too successful for their own good.

This brings us back to Dramat's suspension. In 2011, the Constitutional Court ruled that sections of the Acts that disbanded the Scorpions and created the Hawks were inconsistent with the Constitution. It gave Parliament 18 months to rectify the legislation.



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Let's face this one fact: anyone heading up a police investigations unit is prone to undue influence. Case in point is the late SA Police Commissioner Jackie Selebi who was convicted in 2010 of having a corrupt relationship with convicted drug dealer Glenn Agliotti. Selebi's conviction pointed to the type of influence to which senior police officials are exposed. The wife of former head of police intelligence, General Joey Mabasa, ran a gold exchange business in Bedfordview, Johannesburg, with the wife of jailed Czech gang leader, Radovan Krejcir. When the heat got too much, Mabasa was let go with a R3 million golden handshake. President Jacob Zuma has filled the country's top security posts with pals, which no doubt helps to keep the attention off his past dubious dealings (though it did not help him much over the Nkandla scandal, involving some R230 million in public money going to his private estate). There is an awful lot to hide for some in the top echelons of government, even if one discounts the infamous arms deal.

So what's Dramat's story? Is it really about the illegal rendition of four Zimbabweans, or the high profile cases he was investigating? We have no reason to doubt his integrity (we note his daughter works for Africa's largest law firm, ENS, which has been involved in several controversial cases). Was he starting to close in on some influential and corrupt officials, or did he avoid investigating someone he should have? Or is it really about the renditioned Zimbabweans?

Mail & Guardian gives a clue as to what may be the real motivation (adding that Dramat fears for his life if he returns to work):

**“** In his December 24 letter to Police Minister Nkosinathi Nhleko following his purported suspension, Dramat wrote: "No doubt you are aware that I have recently called for certain case dockets involving very influential persons to be brought or alternatively centralised under one investigating arm and this has clearly caused massive resentment towards me."

New claims have emerged suggesting the controversial security upgrade at President Jacob Zuma's Nkandla homestead was at the apex of investigations Dramat perceived as highly sensitive.

AmaBhungane has been told by a source familiar with the matter that in December 2014 Dramat called for the Nkandla dockets - currently under the control of the divisional commissioner for detective services Vinesh Moonoo - to be transferred to the Hawks.

The South African Police Service has never denied this allegation, merely stating that national commissioner Riah Phiyega and Dramat never discussed the Nkandla investigation.

A Constitutional Court ruling two weeks earlier made it clear that Dramat alone has the authority to decide which cases the Hawks should take on.

The source said that following his suspension Dramat told colleagues that his first notice of the intention to suspend him arrived barely two days after he asked for the transfer of the Nkandla dockets.

In any event, Dramat has won the latest round in this legal battle which will no doubt go on a while longer, as this story from Business Day makes clear:

**“** Parliament's police committee decided unanimously on Friday to ask guidance from Speaker of the National Assembly Baleka Mbete as to whether it was the right committee to consider a request by Police Minister Nkosinathi Nhleko for an investigation into the removal of Lt-Gen Dramat.

Lt-Gen Dramat was suspended in December by Mr Nhleko over an allegation that he was involved in unlawful renditions. But Lt-Gen Dramat has disputed these reasons, calling them a smokescreen, and saying that there was resentment against him because of some of the high-profile investigations he had been overseeing.

The Helen Suzman Foundation's counsel, David Unterhalter SC, said there were "exceptional circumstances" in the case that warranted an order allowing Lt-Gen Dramat to return to work. He added that the minister had not made any argument about why his return would be harmful.

But counsel for the minister, William Mokhari SC, said the earlier court order did not refer to the re-instatement of Lt-Gen Dramat, it had only declared that the suspension was unlawful. The court could not be asked to enforce something it had not earlier ordered, argued Mr Mokhari.

MP

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*He said the foundation had to "live with the consequences" of the order it had sought originally.*

Winning the legal battle is one thing, but Dramat may as well chalk this up to a moral victory. He is unlikely ever to serve in government again. The damage he has inflicted on the ruling party at this stage is unlikely to be forgiven. The government's security portfolio is again in a shambles and the message is clear: the fight against corruption is confined to those who don't wield any real power. Keep your nose out of our affairs.

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# DAILY MAVERICK

Opinionista Terry Crawford-Browne

## Arms deal: The sordid saga so far

- Terry Crawford-Browne



Terry Crawford-Browne



3/12/2015

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Terry Crawford-Browne represented the Anglican Church during the 1996-1998 Parliamentary Defence Review, and in the public interest is the applicant in case 103/10 now before the Constitutional Court.

- 11 Aug 2011 08:53 (South Africa)



Like a cancerous tumour in the national conscience, the Arms Deal Saga (involving more than R1.5 billion in alleged bribes), instead of going into remission, is growing malignantly. On 20 September the Constitutional Court will hear an application for a full judicial enquiry into the affair – and South Africans will hold their collective breath that the tumour can successfully be excised.

Lieutenant General Anwar Dramat, head of the directorate for priority crime investigation –aka “the Hawks” - in September 2010 told the Parliamentary Standing Committee on Public Accounts (Scopa) the Hawks had inherited from the Scorpions 460 boxes and 4.7 million computer pages of evidence against BAE.

I sat directly behind Dramat, and took detailed notes of the proceedings. He announced the BAE case number as Brooklyn CAS 916/11/2009. To the astonishment and anger of Parliamentarians, Dramat then declared that with only one officer assigned to the case it would take years to analyse so much evidence.

Parliamentarians voiced their concerns about “foot-dragging,” and asked why there was no political will to deal with the matter more urgently. Menzi Simelane, the director of public prosecutions, responded: “The matter will be dealt with in accordance with the law, and not to suit some political parties. I will not rush the matter, and it will be given the appropriate and normal way of doing business.”

Dramat’s office announced two weeks later that the Hawks had abandoned the arms deal investigations. Consequently, in early October, I filed an application in the public interest with the Constitutional Court requesting it to overrule President Jacob Zuma’s continuing refusal to appoint a judicial commission of inquiry into the arms deal.

The basis of my application was, given such massive volumes of evidence against BAE, it was rational, and unconstitutional, for the President to continue to block demands from many quarters for a judicial inquiry. Archbishop Njongonkulu Ndungane first called for such an investigation back in August 1999, before the so-called De Lille dossier that ignited the arms deal scandal made its appearance.

A six-page memorandum by Dramat’s deputy, Major General Hans Meiring in September 2010 had motivated why the Hawks should abandon their arms deal investigations. It pleaded that the right to a speedy trial might have been compromised by the passage of time since the arms deal took place in the 1990s, and that companies, witnesses and evidence were no longer available.

In addition, it declared that a proper investigation would be resource-intensive, some suspects had died and that parallel foreign investigations had been closed. Meiring’s suppositions were patently false.

The beneficiaries of the BAE bribes detailed in 160 pages of affidavits from the Scorpions and the British serious fraud office are, with one exception, still alive and resident in South Africa for most or at least part of the year.

In addition, investigations in the US and Sweden against BAE were still continuing. US authorities in February 2010 fined BAE \$400 million for laundering bribes through the American banking system

plus an additional \$79 million in May 2011 for 2,591 violations of American arms export regulations.

My case went to the Constitutional Court in May 2011. In preliminary exchanges the President's counsel Muromo Moerane had refused to deal with the substance of the matter. He tried to bludgeon the 11 judges with legal point-taking, and insisted there was no presidential obligation to appoint a judicial commission of inquiry.

When the legal technicalities ran dry, a visibly irritated Chief Justice Sandile Ngcobo challenged Moerane to "an election", either to proceed with the substance on the basis of evidence I had submitted or, alternatively, request a postponement.

A postponement was granted until 20 September 2011 against an instruction from the Court that I should supplement my papers by 15 June and, in turn, that the President would respond by 1 August. We used that opportunity to file an additional 1,500 pages of evidence into the Court record.

Meanwhile, Swedish TV4's "Kalle Fakta" ("Cold Facts") programme in late May 2011 aired a 40-minute documentary detailing how bribes were paid to Fana Hlongwane through an SAAB subsidiary named SANIP (Pty) Ltd. SAAB's chief executive officer, Håkan Bushke confirmed three weeks later that BAE had fraudulently misused SAAB's accounts to pay bribes of R24 million to Hlongwane.

Hlongwane was one of former defence minister Joe Modise's advisors, and is a prime beneficiary of BAE's bribes. The affidavits also reveal how British lawyers close to former British prime minister Margaret Thatcher had set up SANIP to supervise BAE's offset obligations under the arms deal, but, in reality, simply a vehicle for bribery payments.

Allegations of BAE's use of Swedish institutions to launder bribes to ANC politicians are not new. Whispers swept through the corridors of Parliament in late 1998 that Tony Yengeni was a recipient of a £1 million "first success fee" for his assistance in awarding the arms deal warplane contracts to BAE.

In June 1998 I sat directly across the table from Yengeni when he hosted a Parliamentary breakfast for the visiting Swedish defence minister Bjorn von Sydow. In response to Von Sydow's speech, Yengeni declared that the decision on what equipment South Africa would buy would "depend upon the generosity of the offsets". His body language screamed: "How big are the bribes?"

Von Sydow replied that he had "got the message," but the decision was not his to make. He then repeated: "I have got the message, and will take that message back with me to Sweden."

Numsa shop stewards in December 1998 informed me that a further R30 million in BAE bribes for ANC politicians ahead of the June 1999 elections was being transferred via Sanco. The bribes were being routed through two Swedish trade unions and would be described as funding for an industrial training school.

Swedish journalists confirmed the payments. Through Campaign Against Arms Trade (CAAT) in London, I asked the British government to investigate. Scotland Yard was appointed to the task. I learnt eventually that it was then not illegal in British law to bribe foreigners, and therefore there was no crime to investigate. (It became illegal in 2002, but the British government remains extremely lax in prosecuting briber companies, especially BAE).

Swedish prime minister Goran Persson brought a 700-person trade delegation to South Africa in November 1999. His prime objective was to lobby for the BAE/Saab Gripen fighter aircraft contracts. Persson's "international advisor" Roger Hallhag was grilled at a civil society seminar at the Centre for the Book in Cape Town where he admitted that offsets are internationally notorious for corruption. He compounded his blunder by pleading that "lower standards apply in the third world".

MP

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British minister Peter Hain insisted to me in January and February 2000, both in writing and face-to-face when he visited Cape Town, that there was absolutely no evidence of corruption in the BAE contracts.

His cabinet colleague, the secretary for trade and industry, Patricia Hewitt finally admitted in the British parliament in June 2003 that BAE had paid "commissions" (a euphemism for bribes) to secure its contracts with South Africa, but, she pleaded, "they were within reasonable limits".

Prime minister Tony Blair in 2006 quashed British serious fraud investigations into allegations of massive bribery payments by BAE to Saudi Arabian princes. He claimed the investigations violated British national security.

CAAT took the British government to court in London and won its case. On appeal to the House of Lords, the "law lords" overruled the court, and decided that the government holds the prerogative to determine what does and does not constitute "national security".

The recent announcement that the Hawks have reopened their investigations into the arms deal because of the evidence flowing from the Swedish TV4 programme is, frankly, a "joke". There is no shortage of evidence already in their possession, including the affidavits which detail why and how BAE paid bribes of £115 million (R1.5 billion), to whom and into which bank accounts. What is necessary is not further investigation, but prosecution.

In terms of the "remedies in case of bribes" clauses in the supply contracts, the government has the right summarily to cancel the contracts and to claim compensation. Cancelling the BAE and BAE/Saab contracts could recover R35 billion for South African taxpayers, as well as save future expenditures on aircraft for which the country has neither the pilots to fly them nor mechanics to maintain them.

Most importantly, and unlike England, post-apartheid South Africa is a constitutional democracy. Section 2 of the Constitution stipulates: "This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled."

In short, not even the President is above the law. Back in 2001 the Institute for a Democratic SA described the arms deal scandal as the "litmus test of South Africa's commitment to democracy and good governance".

This is the heart of my case before the Constitutional Court on 20 September 2011. Or will our much-lauded Constitution become yet another casualty of the arms deal debacle? **DM**



X

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Terry Crawford-Browne

Handwritten signature and initials: A large stylized signature and the letters 'MP' below it.



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## Zille comments irresponsible: Presidency

2015-01-22 05:00

Johannesburg - Western Cape Premier Helen Zille's comments that Hawks head Anwa Dramat was suspended because he investigated high-level corruption is mischievous and irresponsible, the presidency said on Wednesday.

The presidency said it wished to raise a serious concern about continued utterances by Zille.

"The SAPS [SA Police Service] has indicated a few times that Mr Dramat was not investigating anything related to the residence [President Jacob Zuma's Nkandla residence]," the presidency said in a statement.

"The ongoing comments by Premier Zille, which are designed to drag the President into an employer-employee matter at SAPS are incorrect, mischievous and irresponsible."

However, Zille told Sapa that all the evidence pointed to the fact that Dramat was sidelined because of his investigation into corruption.

"President Jacob Zuma will not tolerate any institutional state doing its job of uncovering corruption," she said.

"I stand by that statement as all the circumstantial evidence points to that and Jacob Zuma brought no evidence to the contrary."

In her weekly newsletter, Zille said available information seems to suggest that Dramat was suspended because he investigated high-level corruption.

"Dramat's mistake was that his forensic investigations came too close to Zuma Inc - the president [Jacob Zuma], his family and their network of patronage," Zille claimed.

### Complex

She reached this conclusion using the "duck test": "If something looks like a duck, swims like a duck and quacks like a duck, then it is probably a duck," she said.

"Of course, the 'duck' in this case refers to a purge of anyone who gets too close to investigating corruption in Zuma's network."

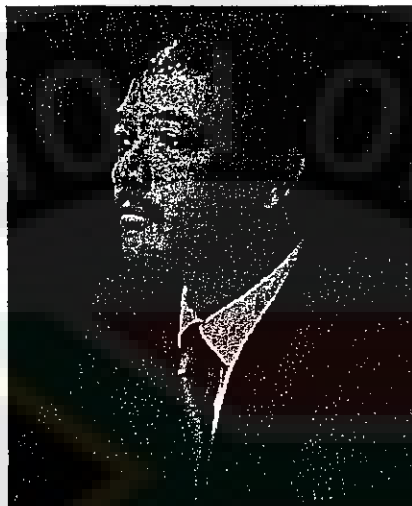
She conceded, however, that "this is a very complex case".

Zille said Zuma closed the Hawks' predecessors, the Scorpions, while he was awaiting charges of fraud and corruption, which were subsequently withdrawn; Dramat was suspended in December even though the Constitutional Court ruled in November that a clause giving the police minister the power to do this was unconstitutional.

The DA knew, on the grounds of a meeting between Dramat's lawyers and Robert McBride, head of the Independent Police Investigating Directorate (Ipid), that Dramat was cleared of alleged involvement in ransoms to Zimbabwe.

"After the Constitutional Court ruling in November, Dramat asked for the Nkandla file to be handed over to the Hawks for investigation.

"... SA Police Service did not comply, and shortly after this Dramat was suspended by [Police Minister Nkosinathi Nhleko]."



Anwa Dramat was announced head of the Directorate of Priority Crime Investigation - the new crime-fighting unit that will replace the Scorpions (Verashni Pillay, News24)

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## Timing

Zille questioned the timing of Dramat's suspension, given that her party understood the lipid probe clearing him was concluded nine months previously.

His replacement, Major General Benny Ntseze's target appeared to be Lieutenant General Johan Booysen, head of the Hawks in KwaZulu-Natal, because he started investigating influential people linked to Zuma, she said.

On Monday the High Court in Pretoria heard an application by the Helen Suzman Foundation for Nhleko's decision to suspend Dramat to be set aside. Judgment was reserved.

Nhleko's spokesperson, Musa Zondi, told reporters that the minister was prepared to meet Dramat to iron out issues.

"There is no witch-hunt. Once you take that out, anything is possible. The minister has an open mind," he said.

- SAPA

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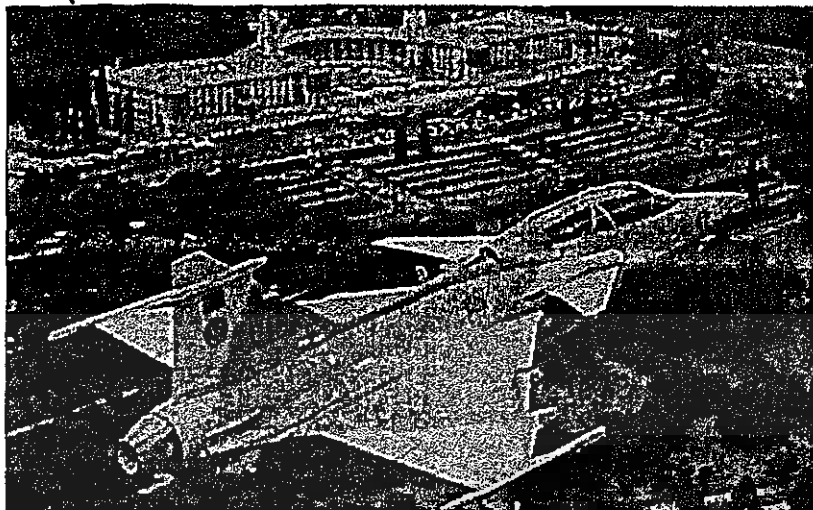
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Hawks reveal Arms deal bombshell - Times LIVE



Gripen jet fighter over the Union Buildings. File picture.  
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The Hawks have taken the first step towards re-opening the multibillion-rand arms deal probe - which could expose those who took bribes to prosecution.

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The head of the Directorate for Priority Crime Investigations, Anwar Dramat, wrote to the Standing Committee on Public Accounts (Scopa) on Wednesday informing it of the Hawks' intention to speak to European investigators to establish whether or not criminal charges should be brought against any South Africans.

The Hawks controversially dropped the probe into the arms deal in September last year, arguing that prospects of successful prosecutions were slim.

In a letter to Scopa chairman Themba Godi, Dramat says the Hawks are following up on last month's admission by Swedish defence group Saab that its former British partner, BAE Systems, paid R24-million in bribes to secure a South African contract for 26 JAS Gripen fighter jets. All told, BAE systems spent R1-billion on what it called "commissions" in the deal.

Dramat writes: "I have already instructed two officials ... to approach the relevant authorities in both Sweden (National Anti-Corruption Unit) and the UK (Serious Fraud Office). Subject to approval by these authorities, (we) will assess the available information with a view to determine whether there is information which points to crime/s in South Africa ... whether it could be converted into relevant evidence by means of formal mutual legal assistance processes. It is also important to determine from the mentioned authorities what their investigations have revealed and whether the information obtained by them can be shared with the (Hawks)."

He could not predict how long the investigation might take.

Godi confirmed receiving Dramat's letter, saying: "It's a brave and correct decision ... unless justice is being done and is seen as being done on this matter, it's going to continue to cast a cold shadow over the political landscape of the country."

DA spokesman on defence David Maynier welcomed the development, saying: "The Hawks have effectively re-opened the investigation into the arms deal."

Despite several attempts, the Presidency yesterday failed to comment on the development.

Investigations by the UK Serious Fraud Office into BAE's dealings revealed that the arms manufacturer's R1-billion in "commissions" in the South African deal dated back to 1992.

They claimed that among the beneficiaries was FTNSA Consulting, a company linked to former First National Bank chairman Basil Henson.

Businessman Fana Hlongwane, a one-time adviser of former minister of defence Joe Modise, allegedly received handsome "commissions" amounting to millions from BAE. Hlongwane also worked as a consultant for the arms manufacturer.

News of the Hawks' move came as a court battle continued in the High Court in Pretoria over the financial dealings of prominent South Africans - including some connected to the arms deal - via Ansbacher Bank.

The Sunday Times can reveal that senior ANC national executive committee member and former spy boss Billy Maselina met former FirstRand CEO Paul Hennis in 2009 to try to broker an out-of-court settlement in a 10-year-old case involving FirstRand and the International Tax Law Institute (ITLI).

ITLI founder, international tax guru Barry Spitz, wants FirstRand to open Ansbacher's books on about 500 of its prestigious clients, including Henson. If this happens, South Africa could find out how much and whether senior ANC leaders received payments related to the arms deal.

The meeting, facilitated by former Denel CEO John Lamola, was held at the Saxon Hotel in Johannesburg in May 2009, a few weeks after President Jacob Zuma was sworn into

office.

Masetlha confirmed that he had held meetings with both parties in the dispute, but claimed he was acting as a "concerned citizen", not on the ANC's behalf. He said the case could have economic implications for the country.

"Both sides were interested in my intervention to say ... what should they do in order to avoid a fallout which might ... in our interest as a country ... create a hell of a lot of problems for all of us.

"I am not scared of the arms deal. That dirty linen is neither here nor there. I must say now, as a member of the ANC NEC, that I am not scared of anything on that thing because we are going to shock you in terms of how we are going to deal with it," said Masetlha, without elaborating. However, he did note that the party wanted to avoid having the matter reach court.

Spitz contradicted Masetlha, saying the ITLI had drafted the proposed settlement "with the approval of the ANC", and the ruling party had requested the settlement be kept confidential.

"This was requested by the ANC, which obviously has its reasons for wanting it," he said.

Spitz added that the information sought from FirstRand was of interest to a "vast number of other persons and agencies ... political, financial and corporate, both in South Africa and abroad".

The Sunday Times has seen the proposed settlement document, which Masetlha signed in his capacity as "political head of the ANC Policy Institute".

In it, Masetlha undertook to "personally ensure the destruction of all the confidential information held by the ITLI and/or its privy parties ... and will further, to the extent possible, ensure that no confidential information is retained in any location open to the public, but not under their control".

But Harris, in a letter to Lamola, rejected this proposal, saying: "This is a very complex case and any involvement of outside parties other than our lawyers is not the proper process."

FirstRand spokesman Sam Moss confirmed the meeting between Harris and Masetlha.

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48

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Editor's Choice

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Zuma barbs at reception for heroes (http://www.timeslive.co.za/thetimes/2015/03/02/zuma-barbs-at-reception-for-heroes)



(http://www.timeslive.co.za/politics/2016/03/01/con-relatives-back-israel-boycott) Politics

[con relatives back israel] boycott (http://www.timeslive.co.za/politics/2016/03/01/con-relatives-back-israel-boycott)



(http://www.timeslive.co.za/politics/2015/03/01/ramaphosa-concludes-lesotho-visit) Politics

Ramaphosa concludes Lesotho visit (http://www.timeslive.co.za/politics/2015/03/01/ramaphosa-concludes-lesotho-visit)



(http://www.timeslive.co.za/politics/2015/03/01/zuma-stands-by-claim-that-black-ownership-of-lee-is-only-three-percent) Politics

"RM 8"

360



**MINISTRY OF POLICE  
REPUBLIC OF SOUTH AFRICA**

Private Bag X463 PRETORIA 0001, Telephone (012) 353 2300, Fax (012) 353 2819/20, Private Bag X3090 CAPE TOWN 8000, Tel (021) 467 7021, Fax (021) 467 7033

Mr Francois Beukman  
Chairperson of the Portfolio Committee on Police  
National Parliament  
PO Box 15  
Cape Town  
8000

Dear Chairperson

**INITIATION OF PROCEEDINGS FOR THE REMOVAL OF THE HEAD OF THE  
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION BY THE COMMITTEE OF  
THE NATIONAL ASSEMBLY AS CONTEMPLATED IN SECTION 17DA(3)(4) READ  
WITH SECTION 17DA(5) OF THE SOUTH AFRICAN POLICE SERVICE ACT, 1995 AS  
AMENDED**

1. On 23 December 2014, I placed the Head of the DPCI, Lieutenant General Dramat on precautionary suspension with full pay and benefits after serious allegations of misconduct by Lieutenant General Dramat ("Dramat") were brought to my attention. I had placed him on precautionary suspension in terms of the Public Service Act, the Public Service Regulations, read with the Senior Management Handbook, after it was brought to my attention that I could not place him on suspension pursuant to the provisions of section 17DA(2) because same had been struck down by the Constitutional Court on 27 November 2014 in the matter of *Helen Suzman Foundation vs President of the Republic of South Africa and others* (Case No: CCY07/14) and *Hugh Glenister vs President of the Republic of South Africa and others* (Case No: CCT09/14) and deleted from the SAPS Act.
2. On 9 January 2015, the Helen Suzman Foundation ("HSF") launched an urgent application in the High Court, Gauteng Division, Pretoria, seeking to review and set aside my decision to suspend Dramat, declaring the suspension invalid, unconstitutional and unlawful on grounds that I no power to suspend Dramat in light of the deletion of section 17DA(2) from the SAPS Act by the Constitutional Court. The urgent application was heard on 15 January 2015 and postponed to 19 January 2015 for argument. Judgement on the matter was handed down on 23 January 2015.

MP

The Court had declared Dramat's suspension invalid and had set it aside. It also declared the appointment of Major-General Ntlemeza as Acting Head of the DPCI invalid and set it aside. I have since lodged an application for leave to appeal against the judgment and the orders made because I believe that another Court may come to a different conclusion. I do not wish to canvass the merits of the matter because it is currently subjudice. I will await the outcome of the appeal processes. Whilst I believe that I have the power to suspend the Head of the DPCI in the manner I did due to the oversight role I am constitutionally and statutorily required to play to hold the Head of the DPCI accountable, I am saddened by the fact that the serious allegations that are made against the Head of the DPCI have been obfuscated and obscured by the legal wrangling on whether or not I have the power to suspend him.

3. Until this legal issue is resolved on appeal, which is likely to take months, my hands to institute disciplinary proceedings against the Head of the DPCI remain tied.
4. It will not be in the interest of the DPCI, its Head and of the SAPS and the country as a whole for such serious allegations to linger too long against Dramat without steps being taken to deal with them. To this end, I request you as the Chairperson of the Portfolio Committee, to take steps in terms of section 17DA(3)(4) read with section 17DA(5) to initiate a parliamentary process for the removal of the Head of the DPCI on grounds of misconduct and that he is not fit and proper to hold that office.
5. The allegations that have been made against Dramat relate to the illegal rendition of Zimbabwean nationals who were unlawfully arrested by the members of the DPCI in Diepsloot, Johannesburg, and under falsified Home Affairs deportation documents, they were extradited to Zimbabwe through Beit Bridge border gate and handed over to the Zimbabwean police who tortured them. Two of these Zimbabwean nationals were ultimately killed by the Zimbabwean police. Witness statements and other potential witnesses place Dramat and Sibiya at the centre of these unlawful renditions, and that they occurred with Dramat's knowledge and approval. After the mission of handover of these Zimbabwean nationals to the Zimbabwean police was completed, the allegation is that Dramat addressed the DPCI officers who carried the operation and he thanked them for the job well done, and informed them that they should keep it a secret. There can be no doubt that if indeed these renditions occurred in the manner described or any other manner unlawful and in contravention of the South African laws and its international obligations, Dramat as the Head should be held responsible and therefore liable for these atrocious acts.
6. This is in keeping with the principle of accountability which our constitution and statutes impose on senior officials and executives. Although the alleged incident occurred in 2010, DPCI had taken no steps to investigate and bring to book the perpetrators.

MP

7. The evidence will be made available to you should you require it which will include the witnesses statements; records, and including the IPID report. In reading the witness statements; other records, and including the IPID report itself, you will without doubt realise that the conclusion of the IPID report is not supported by the very analysis of the evidence in the report and the statements themselves. It may even give one the impression that the conclusion was altered without the body of the report being altered to justify the conclusion.
8. All the discrepancies, and the seriousness of the allegations call for the Parliamentary Portfolio Committee to initiate proceedings in terms of section 17DA(3)(4)(5) and call upon Dramat to answer to these allegations before the Portfolio Committee without delay.

 Yours faithfully

Mr NPT Nhleko  
Minister of Police

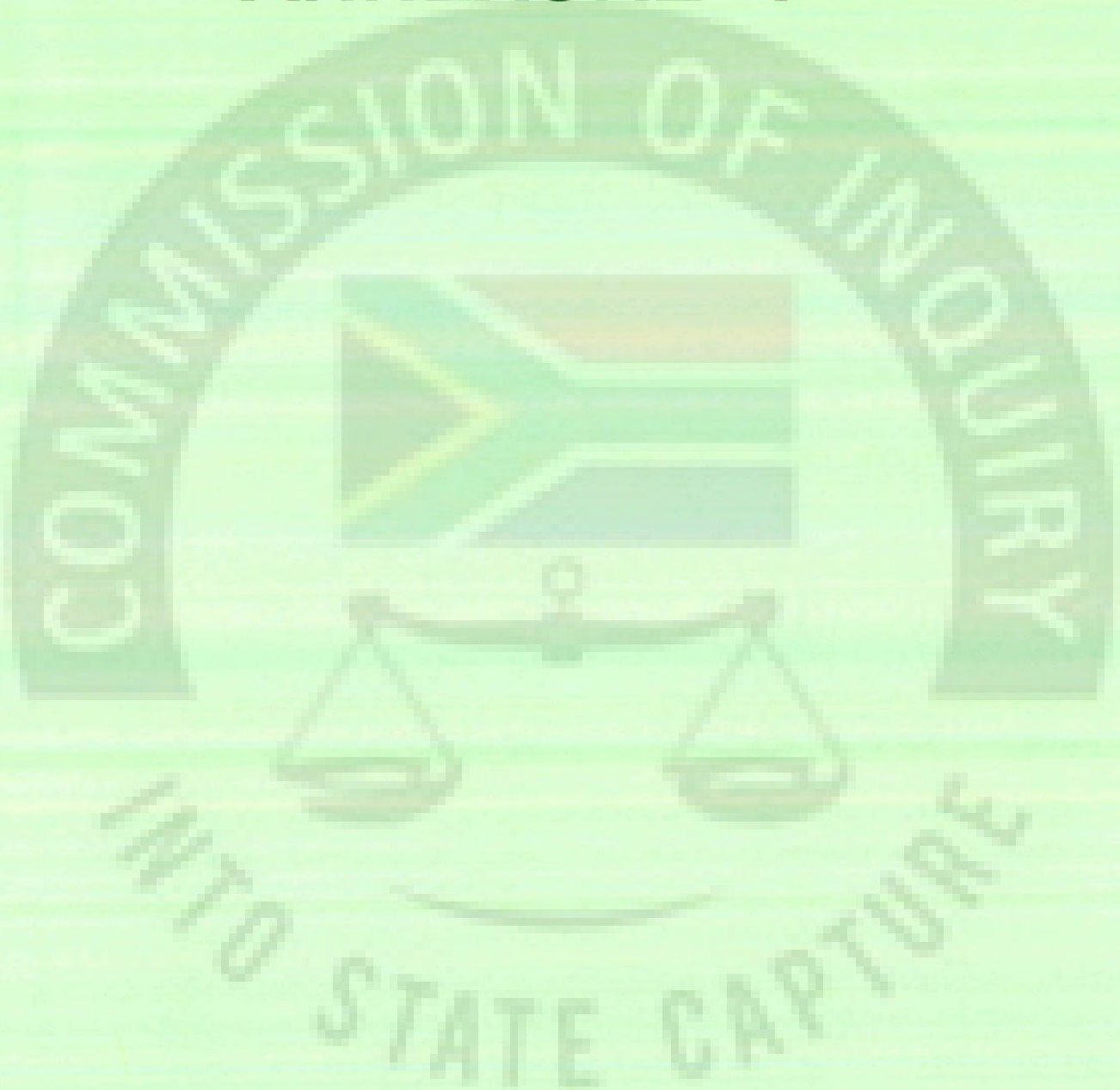
Date:



  
MP



## ANNEXURE “F”





"RMB.F"

RJM-0506

RM 9

363



MINISTRY OF POLICE  
REPUBLIC OF SOUTH AFRICA

Private Bag X483 PRETORIA 0001, Tel: (012) 393 2800, Fax: (012) 393 2819/20 • Private Bag X9080 CAPE TOWN 8000, Tel: (021) 467 7021, Fax: (021) 467 7033

To : Mr Sandile July  
Werksmans Attorneys  
Sandton

From : The Minister of Police

Date : 23 February 2015

Ref : INV/1/02/2015

Dear Mr July

Re: YOUR APPOINTMENT TO CONDUCT AN INVESTIGATION ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT; MAJOR GENERAL SHADRACK SIBIYA; AND OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES INVESTIGATION ("DPCI") IN THE ILLEGAL RENDITION OF THE ZIMBABWEAN NATIONALS IN 2010

1. Serious allegations of misconduct and possible criminal acts have been made against the Head of the Directorate for Priority Crime Investigations ("DPCI"), Lieutenant-General Dramat; the Provincial Head of DPCI, Gauteng, Major-General Shadrack Sibiya, and other members of the DPCI. It has been reported

MP

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In the media and elsewhere that these members of the DPCI have authorised, and participated in the illegal rendition of Zimbabwean nationals, i.e. Shepard Chuma; Maqhawe Sibanda; Prichard Chuma; Johnson Ndoni; Gugu Dube and Bongani Moyo.

2. Mr I H Khuba, who was the Provincial Head of Independent Police Investigative Directorate, Limpopo at the time, led a task team that was commissioned to conduct an investigation into these allegations. Mr Khuba and his team conducted an extensive investigation and produced a report which was signed by Mr Khuba on page 35 of the report with the following recommendations:

"1) Based on the available evidence the Independent Police Investigative Directorate recommends that Lieutenant-General Dramat, Major-General Sibiya, Lieutenant Colonel M Majuleke, constable Radebe, Captain S E Nkosi and Warrant Officer Makoe be charged criminally for:

- 1.1 kidnapping;
- 1.2 defeating the end of justice;
- 1.3 assault and theft (only applicable to Captain M L Majuleke, Warrant Officer Makoe, Constable P M Radebe and Captain S E Nkosi)."

3. The above mentioned report was submitted to the National Prosecuting Authority ("NPA") for a decision to prosecute. No decision was taken by the NPA to date. After Mr Khuba had submitted his report, another report surfaced, also signed by Mr Khuba. The said report is dated at the bottom by Mr M Sesoko and Mr R J McBride 9 April 2014. In this report the recommendation had been changed to the following:

"Based on the available evidence, the Independent Police Investigative Directorate recommends that no charges should be brought against Lieutenant-General Dramat and Major-General Sibiya. The investigation established that there is no prima facie case against them. However with regard to Lieutenant



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*Colonel M Maluleke, there is a prima facie case to sustain charges of kidnaping and defeating the ends of justice."*

4. In the report which purports to exonerate Lieutenant-General Dramat and Major-General Sibiya, there is also no longer any mention of Constable Radebe; Captain Nkosi and Warrant Officer Makoe and whether they have been exonerated as well or not.
5. Your terms of reference in the investigation are the following:
  - 5.1 who and under what circumstances was the original report altered or how the second report came about with both reports signed by the same person; i.e. Mr Khuba;
  - 5.2 whether any misconduct or offence has been committed and if so by whom?;
  - 5.3 whether there is prima facie evidence of misconduct and criminal liability by Lieutenant-General Dramat; Major-General Sibiya; and any other officers mentioned in the original report;
  - 5.4 the circumstances under which the report and the docket handed in the NPA and what happened to the docket whilst in the NPA's possession;
  - 5.5 Any other matter that might come to your attention during the investigation which is relevant to your conclusions and findings.
6. In your investigation, you will interview the relevant witnesses at your own discretion and have access to all relevant documentation including the two reports, the docket and witness statements made so far.



MP

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

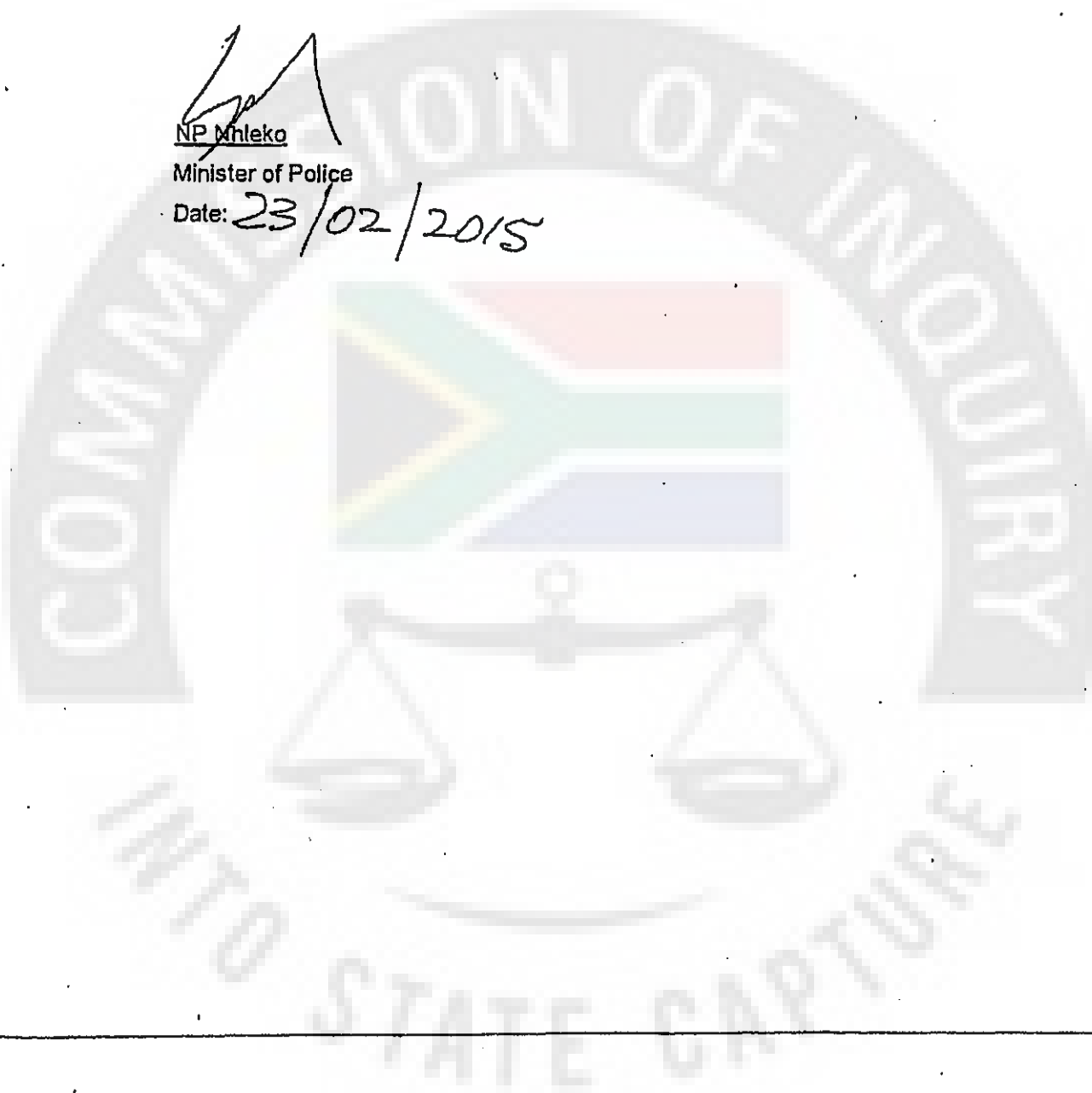
Yours faithfully,



NP Mhleko

Minister of Police

Date: 23/02/2015



09/01/2015 10:42 NBCE)

(FAX)0123357180

P.001/007

"pm 10.1"

367

**Londiwe Gqawru**

**From:** Londiwe Gqawru  
**Sent:** Friday, January 09, 2015 10:07 AM  
**To:** 'vmacka@lpd.gov.za'  
**Cc:** Victor Nkhwashi  
**Subject:** APPLICATION IN TERMS OF SECTION 11 // MAJOR GENERAL SIBIYA  
**Attachments:** MAJOR GENERAL SIBIYA 001.BMP; MAJOR GENERAL SIBIYA 002.BMP; MAJOR GENERAL SIBIYA 003.BMP; MAJOR GENERAL SIBIYA 004.BMP; MAJOR GENERAL SIBIYA 005.BMP; MAJOR GENERAL SIBIYA 006.BMP

Morning Sir

Herewith please see attached for your urgent attention and perusal.

Regards



**VICTOR NKHWASHU**  
**ATTORNEYS**

**LONDIWE GQWARU**  
**OFFICE ADMINISTRATOR**

OFFICE 504, 5TH FLOOR, SCHREINER CHAMBERS, 94 PR  
PO BOX 8882, JOHANNESBURG, 2000  
T: +27 11 333 0229 | F: +27 11 336 9717 / 0865 958  
E: INFO@VNATTORNEYS.CO.ZA | WWW.VNATTORNEYS.CO.

MP

09/01/2015 10:42NSCEI

(FAX)0123357180

P.002/007

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**VICTOR NKHWASHU  
ATTORNEYS**

OFFICE 804  
5TH FLOOR  
SCHREINER CHAMBERS  
84 PRITCHARD STREET  
EDD1

PO BOX 8082  
JOHANNESBURG  
2008

T: +27 11 555 0329  
F: +27 11 555 0717  
FAX TO EMAIL: 0853 959 173

HOMES@VATTORNEYS.CO.ZA  
INFO@VATTORNEYS.CO.ZA

OUR REF: MR V Nkhwashu/lg

09 JANUARY 2015

YOUR REF: 1/P/109/2015 VM

IPID

114 MADIBA STREET  
CITY FORUM BUILDING

ATTENTION: MR V. MAOKA

ACTING DIRECTOR; LITIGATION ADVISORY  
SERVICES

PER EMAIL: [vmaoka@lpld.gov.za](mailto:vmaoka@lpld.gov.za)

Dear Sir/ Madam

**RE: APPLICATION IN TERMS OF SECTION 11, READ  
WITH SECTION 18 OF THE PROMOTION OF ACCESS  
TO INFORMATION ACT, ACT 2 OF 2000:  
OUR CLIENT: MAJOR GENERAL SIBIYA**

1. We refer to the above matter as well as your letter received by us on 08 January 2015.
2. Please find attached the completed J750 form for your urgent attention.
3. Kindly acknowledge receipt hereof and advise of your decision herein.

Yours Faithfully

VICTOR NKHWASHU ATTORNEYS

MP



09/01/2015 10:43 NBCEI

(FAX)0123357180

P.003/007

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J780

REPUBLIC OF SOUTH AFRICA

**FORM A**  
**REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY**  
 (Section 18(1) of the Promotion of Access to Information Act, 2000  
 (Act No. 2 of 2000)  
 (Regulation 5)

**FOR DEPARTMENTAL USE**

Reference number: .....

Request received by ..... (state rank,  
 name and surname of information officer/deputy information officer on ..... (date)  
 at ..... (place).

Request fee (if any): R.....

Deposit (if any): R.....

Access fee: R.....

SIGNATURE OF INFORMATION OFFICER / DEPUTY INFORMATION OFFICER

**A. Particulars of public body**  
 The Information Officer / Deputy Information Officer:

The Executive Director (Information Officer)  
 Independent Police Investigative Directorate (IPID)  
 Private Bag X941  
 PRETORIA  
 0001

Telephone Number: (012) 399 0053  
 Fax Number: (012) 399 0144  
 E-Mail: [vmabka@ipid.gov.za](mailto:vmabka@ipid.gov.za)  
 Website: [www.ipid.gov.za](http://www.ipid.gov.za)

FORM A. REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

09/01/2015 10:43 NBCEI

(FAX)0123357180

P.004/007

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**B Particulars of person requesting access to the record**

- (a) The particulars of the person who requests access to the record must be given below.  
 (b) The address and/or fax number in the Republic to which the information is to be sent, must be given.  
 (c) Proof of the capacity in which the request is made, if applicable, must be attached.

Full names and surname: VICTOR N KATUNAKHUIdentity number: 71403305307083Postal address: P.O. 94 Pritchard Street, JHB, 2001Telephone number: (011) 333-0229 Fax number: (011) 336 9717E-mail address: Victor@Nattorneys.co.za

Capacity in which request is made, when made on behalf of another person:

Attorneys on behalf of Mrs S Sibiyi**C. Particulars of person on whose behalf request is made**

This section must be completed ONLY if a request for information is made on behalf of another person.

Full names and surname: Shadrack SibiyiIdentity number: 6712165441084**D. Particulars of record**

- (a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.  
 (b) If the provided space is inadequate, please continue on a separate folio and attach it to this form. The requester must sign all the additional folios.

**1 Description of record or relevant part of the record:**

Please refer to our letter dated  
07 January 2015

*[Handwritten signature]*  
*MP*

09/01/2015 10:44 NBCEI

{FAX}0123357160

P.005/007

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## 2 Reference number, if available:

*not yet advised*

## 3 Any further particulars of record:

## E. Fees

- (a) A request for access to a record, other than record containing personal information about yourself, will be processed only after a request fee has been paid.
- (b) You will be notified of the amount required to be paid as the request fee.
- (c) The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.
- (d) If you qualify for exemption of the payment of any fee, please state the reason for exemption.

## Reason for exemption from payment of fees:

*Our client is a government official and is entitled to copies. If fees are applicable please advise the amount thereof.*

MP

09/01/2015 10:45:18CEI

(FAX)0123357180

P.006/007

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## F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 below, state your disability and indicate in which form the record is required.

Disability:	Form in which record is required:
-------------	-----------------------------------

Mark the appropriate box with an X.

## NOTES:

- (a) Compliance with your request for access in the specified form may depend on the form in which the record is available.  
 (b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.  
 (c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.

## 1. If the record is in written or printed form:

<input checked="" type="checkbox"/> copy of record*	<input type="checkbox"/> inspection of record
---	---

## 2. If record consists of visual images -

(this includes photographs, slides, video recordings, computer-generated images, sketches, etc.)

<input type="checkbox"/> view the images	<input checked="" type="checkbox"/> copy of the images*	<input type="checkbox"/> transcription of the images*
--	---	---

## 3. If record consists of recorded words or information which can be reproduced in sound:

<input type="checkbox"/> listen to the soundtrack (audio cassette)	<input checked="" type="checkbox"/> transcription of soundtrack* (written or printed document)
--	--

## 4. If record is held on computer or in an electronic or machine-readable form:

<input checked="" type="checkbox"/> printed copy of record*	<input type="checkbox"/> printed copy of information derived from the record*	<input type="checkbox"/> copy in computer readable form* (floppy or compact disc)
---	---	---

If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? Postage is payable.	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>
---	---	-----------------------------

Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.

In which language would you prefer the record?	English
--	---------

## G. Notice of decision regarding request for access

You will be notified whether your request has been approved / denied. If you wish to be informed in another manner please specify the manner and provide the necessary particulars to enable compliance with your request.

FORM 1, REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY

MP

MP

09/01/2015 10:45 NBCEI

(FAX)0123357160

P.007/007

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How would you prefer to be informed of the decision regarding your request for access to the record?	
Email: Victor @ N Attorney	Fax: (011) 336 9 717

Jco'za

Signed at Johannesburg on 09th day of January year 2015

SIGNATURE OF REQUESTER /  
PERSON ON WHOSE BEHALF REQUEST IS MADE

FORM A, REQUEST FOR ACCESS TO RECORD OF PAST OR FUTURE EVENT

5

JP

MP

Re: APPLICATION IN TERMS SECTION 11 r/w SECTION 18 OF THE PAIA: MAJOR GENERAL SIBIYA

Victor Nkhwashu

to:

VMaoka@ipid.gov.za

01/08/2015 06:40 PM

Show Details

History: This message has been forwarded.

Mr Maoka

We acknowledge receipt of your letter under reply.

We are attending to the completion thereof and we shall transmit same by return of email to your good selves.

We trust that this email finds you well

Victor NKhwashu

(C) 0824069150

(T) 011 333-0229

(e) [Victor@vnattorneys.co.za](mailto:Victor@vnattorneys.co.za)

On 08 Jan 2015, at 2:26 PM, "VMaoka@ipid.gov.za" <[VMaoka@ipid.gov.za](mailto:VMaoka@ipid.gov.za)> wrote:

Good day

Herewith attached please find important correspondence with regard to the matter above.

With kind regards

Mr Viceroy Maoka

Acting Director

Legal and Litigation Advisory Services

Independent Police Investigative Directorate

114 Madiba Street

Pretoria

Tel: +27 12 399 0057

Fax: 086 721 6590

Mobile: +27 83 513 3086

E-mail: [vmaoka@ipid.gov.za](mailto:vmaoka@ipid.gov.za)

Web: [www.ipid.gov.za](http://www.ipid.gov.za)

<mime-attachment.gif>

"Policing the Police for a safer South Africa"

<MR V NKHWASHU LG.pdf>



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**APPLICATION IN TERMS SECTION 11 r/w SECTION 18 OF THE PAIA:****MAJOR GENERAL SIBIYA**

Viceroy Maoka to. victor

Cc: Tshepho Kanyane, Innocent Khuba, Matthews Sesoko

01/08/2015 02:00 PM

Good day

Herewith attached please find important correspondence with regard to the matter above.



MR V NKHWASHU LG.pdf

With kind regards

Mr Viceroy Maoka  
Acting Director  
Legal and Litigation Advisory Services  
Independent Police Investigative Directorate  
114 Madiba Street  
Pretoria  
Tel: +27 12 399 0057  
Fax: 086 721 6590  
Mobile: +27 83 513 3086  
E-mail: vmaoka@ipid.gov.za  
Web: www.ipid.gov.za

"Policing the Police for a safer South Africa"

"Rm 10.3"

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ipid

Department:  
Independent Police Investigative Directorate  
REPUBLIC OF SOUTH AFRICA

Private Bag X941, Pretoria, 0001, 114 Vermeulen Street (Madiba Street), City Forum Building, Pretoria  
Tel: (012) 399 0000 Fax: 012 399 0087

Your Ref.: MR V Nkhweshu/ig  
Our Ref.: 1/P/109/2015 VM  
Enquiries: Maoka PVH  
E-mail: [vmaoka@ipid.gov.za](mailto:vmaoka@ipid.gov.za)  
Tel: 012 399 0057  
Date: 2015/01/09

**VICTOR NKWASHU ATTORNEYS**

P. O. Box 8882

ANNESBURG

2000

**PER E-MAIL: [victor@vnattorneys.co.za](mailto:victor@vnattorneys.co.za)**

Dear Sirs/Madame

**APPLICATION IN TERMS OF SECTION 11, READ WITH SECTION 18 OF THE PROMOTION OF ACCESS TO INFORMATION ACT, ACT 2 OF 2000: YOUR CLIENT MAJOR GENERAL SIBIYA**

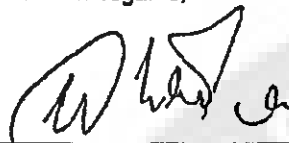
The above matter and our evenly dated letter of the 8 January 2019 refer.

1. By direction of the Information Officer and the Executive Director of the IPID, Mr. RJ McBride we acknowledge receipt of your letter together with form J760 dated the 9 January 2015 sent by e-mail, in the matter above.
2. We also confirm the telephonic conversation between your Mr. Nkhweshu and the writer hereof.
3. In response to your request, it suffices that we confirm that it is correct that we conducted an investigation arising from allegations of rendition against your client, Major General Sibiyi and others. Further, it is correct that a report was prepared and submitted to the NPA.
4. Unfortunately, due the nature of the report and the continuing investigations it is not possible to provide you with the report because it may compromise the current continuing investigations. However, considering the urgency of your request, in order for us to furnish you with the record as per your request the exercise may be futile.



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5. However, this office confirms that the IPID did not recommend for the suspension neither did the IPID recommend for the prosecution of Major General Sibya in its report to the NPA, based on the information and the evidence gathered during the investigation conducted by the IPID.
6. We trust you find the above in order.

With kind regards,



MR. VICEROY MAOKA  
ACTING DIRECTOR  
LITIGATION ADVISORY SERVICES



"PM 10.4"

378



ipid

Department:  
Independent Police Investigative Directorate  
REPUBLIC OF SOUTH AFRICA

Private Bag X941, Pretoria, 0001, 114 Vermeulen Street (Madiba Street), City Forum Building, Pretoria  
Tel: (012) 399 0000 Fax: 012 399 0087

Your Ref.: MR V Nkhwashi/g  
Our Ref.: 1/P/109/2015 VM  
Enquiries: Maoka PVH  
E-mail: [vmaoka@ipid.gov.za](mailto:vmaoka@ipid.gov.za)  
Tel: 012 399 0057  
Date: 2014/09/04

**VICTOR NKWASHU ATTORNEYS****JOHANNESBURG****PER E-MAIL: [victor@vnattorneys.co.za](mailto:victor@vnattorneys.co.za)**

Dear Sirs/Madame

**APPLICATION IN TERMS OF SECTION 11, READ WITH SECTION 18 OF THE PROMOTION OF ACCESS TO INFORMATION ACT, ACT 2 OF 2000: YOUR CLIENT MAJOR GENERAL SIBIYA**

The above matter refers.

1. By direction of the Information Officer and the Executive Director of the IPID, Mr. RJ McBride we acknowledge receipt of your request for access to information dated the 7 January 2015, in the matter above.
2. Attached herewith is an application form J750, in terms of section 18(1) of Act 2 of 2002 that you must complete and send to writer hereof, in order for the IPID to consider and respond to your request.
3. We trust you find the above in order.

With kind regards,

**MR. VICEROY MAOKA**  
**ACTING DIRECTOR: LITIGATION ADVISORY SERVICES**

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**VICTOR NKHWASHU  
ATTORNEYS**

OFFICE 804  
5TH FLOOR  
SCHAEFER CHAMBERS  
84 PRITCHARD STREET  
2001

PO BOX 8882  
JOHANNESBURG  
2000

T: +27 11 583 0829  
F: +27 11 596 9717  
FAX TO EMAIL: 0866 858 172

NONREPLYNATTORNEYS.CO.ZA  
INFO@NATTORNEYS.CO.ZA

OUR REF: MR V Nkhwashu/g

07 JANUARY 2015

YOUR REF:

Mr Robert McBride  
Executive Director  
Independent Police Investigative Directorate  
City Forum Building  
114 Mediba Street  
PRETORIA  
0001

Per e-mail [RMcBride@ipid.gov.za](mailto:RMcBride@ipid.gov.za)

Dear Sirs,

RE: Application in terms of Section 11, read with Section 18 of  
the Promotion of Access to Information Act, Act 2 of 2000

We represent Major General Sibya, commander of the  
Directorate of Priority Crimes Investigation unit in Gauteng.

He has been served with a formal notice of intention to suspend  
him, pending an investigation into allegations of involvement in  
so-called 'renditioning' of persons to Zimbabwe.

We understand that the Independent Police Investigative  
Directorate 'IPID' carried out an investigation into Major General  
Sibya's alleged involvement in such alleged conduct. We record  
that when our client was interviewed in connection with such  
investigation, he was specifically asked to advise as to whom he  
thought might want to 'frame' him for such alleged offence. Our  
client is of the opinion that, since he has now been served with a

Handwritten signatures: A stylized 'V' and 'A' (likely Victor Nkhwashu) and 'MP'.

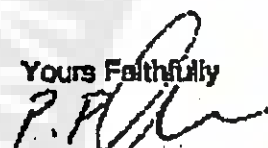
notice of intention to suspend, that there may be hidden agenda's at work which may infringe on his constitutional rights. 380

We understand that, flowing from that investigation, a report was prepared and submitted to the NPA. We also understand that such report exonerated our client's involvement therein.

We therefore formally (and urgently) request you to accept this letter as a formal request to supply (in terms of Section 11 read with Section 18 of the Promotion of Access to Information Act, Act 2 of 2000) at your earliest convenience, a copy of the executive summary of the report submitted to the NPA.

We thank you in advance and can confirm that we will accept an e-mailed response at [victor@vnlaw.co.za](mailto:victor@vnlaw.co.za). As he must prepare and submit his response immediately, we would be grateful if you could let us have the response within 24 hours.

Yours Faithfully

  
VICTOR NKHWASHU ATTORNEYS





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J750

REPUBLIC OF SOUTH AFRICA

**FORM A**  
**REQUEST FOR ACCESS TO RECORD OF PUBLIC BODY**  
 (Section 18(1) of the Promotion of Access to Information Act, 2000  
 (Act No. 2 of 2000)  
 (Regulation 6])

**FOR DEPARTMENTAL USE**

Reference number: .....

Request received by ..... (state rank,  
 name and surname of information officer/deputy information officer on ..... (date)  
 at ..... (place)

Request fee (if any): R.....

Deposit (if any): R.....

Access fee: R.....

**SIGNATURE OF INFORMATION OFFICER / DEPUTY INFORMATION OFFICER****A. Particulars of public body**

The Information Officer / Deputy Information Officer:

The Executive Director (Information Officer)  
 Independent Police Investigative Directorate (IPID)  
 Private Bag X941  
 PRETORIA  
 0001

Telephone Number: (012) 399 0053

Fax Number: (012) 399 0144

E-Mail: [vmaoka@ipid.gov.za](mailto:vmaoka@ipid.gov.za)Website: [www.ipid.gov.za](http://www.ipid.gov.za)

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## B Particulars of person requesting access to the record

- (a) The particulars of the person who requests access in the record must be given below.
- (b) The address and/or fax number in the Republic to which the information is to be sent, must be given.
- (c) Proof of the capacity in which the request is made, if applicable, must be attached.

Full names and surname: JOHN FRED RILEY RILEY INC.

**Identity number:**

Postal address: 212. ROSEHED AVENUE, LYNNBERG, 7800

Telephone number (021) 797-7116 Fax number (021) 797-1499

E-mail address: john@jfrlaw.co.za

**Capacity in which request is made, when made on behalf of another person:**

Attorney of record for Lt. General Anwar Dramat

**C. Particulars of person on whose behalf request is made**

This section must be completed **ONLY** if a request for information is made on behalf of another person.

Full names and surname: Lt. General Anwar Hameed

Identity number: 6807165244090

**D. Particulars of record**

- (a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.
- (b) If the provided space is inadequate, please continue on a separate folio and attach it to this form. The requester must sign all the additional folios.

1 Description of record or relevant part of the record:

Docket, IPID report<sup>\*\*</sup> & Recommendations re

Deepstoot CAS 390/7/2012 / Lt-General Anwa Diamant.

\* Entire record requested.

MF

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## 2 Reference number, if available:

Dietsheet CAS-390/7/2012

## 3 Any further particulars of record

A copy of the clocked contents  
regarding the above-mentioned  
case.

## E. Fees

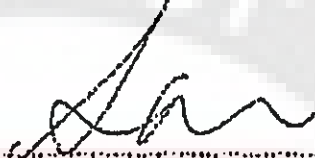
- (a) A request for access to a record, other than record containing personal information about yourself, will be processed only after a request fee has been paid.
- (b) You will be notified of the amount required to be paid as the request fee.
- (c) The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.
- (d) If you qualify for exemption of the payment of any fee, please state the reason for exemption.

## Reason for exemption from payment of fees:

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How would you prefer to be informed of the decision regarding your request for access to the record?	
Email <u>john@jfrlaw.co.za</u>	Fax: (021...) <u>797 - 1499</u>

Signed at WYNBERG this 14 day of JANUARY year 2015

  
S. PANGARI  
SIGNATURE OF REQUESTER / obs J.F. RILEY  
PERSON ON WHOSE BEHALF REQUEST IS MADE

RILEY INCORPORATED  
Attorneys of Record for the  
Requester Lt.-Gen Anna Dramat.

  
MP

RM 10.5

385



Attorneys, Notaries and Conveyancers  
Reg no: 2009 / 012614 / 21

212 Rosmead Avenue, Wynberg 7800 | Docax 1, Wynberg

Tel: (021) 797 7116 | Fax: (021) 797 1499

[info@riley.co.za](mailto:info@riley.co.za) |

[www.riley.co.za](http://www.riley.co.za)

OUR REF: JFR/MAT11144/wd  
YOUR REF: 1/P/1112015 VM

January 14, 2015

ROBERT MCBRIDE  
EXECUTIVE DIRECTOR  
IPID

PER E-MAIL: [RMcBride@ipid.gov.za](mailto:RMcBride@ipid.gov.za)

PER E-MAIL: [vmaoka@ipid.gov.za](mailto:vmaoka@ipid.gov.za)

Dear Sirs,

**OUR CLIENT: LT. GENL. A DRAMAT – ACCESS TO IPID REPORTS IN CONNECTION  
WITH DIEPSLOOT CAS 390-7-2012 - ALLEGED ILLEGAL AND UNLAWFUL RENDITION OF  
ZIMBABWE NATIONALS TO ZIMBABWE**

We refer to our previous discussions and your letter dated 9 January 2015 herein.

1. We acknowledge receipt of "Form A – Request for Access to the Record of a Public Body" attached to your letter.
2. The aforementioned Form A has been now completed and attached to this letter as per your request.
3. Note carefully that we have requested the IPID report, the recommendations accompanying such report as well as a copy of the contents of the docket pertaining to CAS390/7/2012.
4. We would appreciate that, given the seriousness of the matter and the delays already experienced, that you deal this request with the utmost urgency.

DIRECTOR: JOHN FRED RILEY, B JURIS, LLB  
ASSOCIATES: STEVEN BARKER, B PROC | DENNIS BURT CAVERNELLS, BA, LLM | TRACEY-LEE JAMES, BA, LLB | RUNA ALLIE DA COSTA, BCOM, LLB  
CONSULTANT: SAGEER PANSARI, BA, LLB

RM 10.E

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

Private Bag X941, Pretoria, 0001, 114 Vermeulen Street (Madiba Street), City Forum Building, Pretoria  
Tel: (012) 399 0000 Fax: 012 399 0087

Your Ref.:  
Our Ref.: 1/P/111/2015 VM  
Enquires: Maoka PVH  
E-mail: [ymaoka@ipid.gov.za](mailto:ymaoka@ipid.gov.za)  
Tel: 012 399 0053  
Date: 2015/01/09

**RILEY INCORPORATED****CAPE TOWN****PER E-MAIL: JOHN@JFRLAW.CO.ZA**

Dear Sir

**APPLICATION IN TERMS OF SECTION 11, READ WITH SECTION 18 OF THE PROMOTION OF ACCESS TO  
INFORMATION ACT, ACT 2 OF 2000: YOUR CLIENT LT GENL A DRAMAT**

The above matter refers.

1. By direction of the Information Officer and the Executive Director of the IPID, Mr. RJ McBride we acknowledge receipt of your request for access to Information dated the 04 January 2015, in the matter above.
2. Attached herewith is an application form J750, in terms of section 18(1) of Act 2 of 2002 that you must complete and send to writer hereof, in order for the IPID to consider and respond to your request.
3. We trust you find the above in order.

With kind regards,

**MR. VICEROY MAOKA  
ACTING DIRECTOR: LITIGATION ADVISORY SERVICES**



" PM 11 "

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ipid

Department:  
Independent Police Investigative Directorate  
REPUBLIC OF SOUTH AFRICA

Private Bag X941, Pretoria, 0001, 114 Vermeulen Street, City Forum Building, Pretoria  
Tel: (012) 399 0000 Fax: (012) 326 0408

Honourable Minister EN Mthethwa

MINISTER OF POLICE

WACHTHUIS

Pretoria

0001

By Hand

10 March 2014

**INFORMATION NOTE**

Dear Honourable Minister,

**REPORT TO THE MINISTER: MEETING WITH THE NDPP**

**BACKGROUND**

To give feedback to the Minister on the outcome of the meeting with the NDPP held on 6 March 2014.

**Matters discussed:**

1. The meeting agreed to establish a task team to draft MOU between IPID and NPA.
2. Section 33 on Compliance issues was also discussed; the team discussed the reluctance by the Provincial DPP to prosecute police officers on non-compliance to section 29. The NDPP undertook to issue an instruction to the Provincial DPP's to

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**REPORT ON TO MINISTER: MEETING WITH THE NDPP**

Improve cooperation, he also assured us that he will review all the matters that were declined by the Provincial DPP's

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**3. High Profile Cases:****3.1 Cator Manor Case:**

The Cator Manor - Implications of the High court ruling in Durban to drop the racketeering charges against Major General Booysen. It was explained by the NPA that it only affects the racketeering charges but other matters/cases are still on and that they are reviewing the ruling for further action.

**3.2 Defeating the end of Justice: General Phiyega**

The team explained to the NDPP that IPID has almost completed the investigation and that the case will be handed over to his office due to the sensitivity and due regard for the senior office of the National Commissioner. We also expressed a view to the NDPP that as far as the National Commissioner is concerned the elements of a crime are absent as such we do not recommend any prosecution. However we have not yet taken a warning statement from the National Commission and that once these has been taken, we will hand the docket over.

We were advised that it was important to take a warning statement before finalising our conclusions, as aspects of the warning statement might throw additional light on the matter. We indicated that we will get the statement as soon as possible and then revert to the NDPP.

**3.3 Rendition Case: General Dramat and others**

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.

2 | Page



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## REPORT ON TO MINISTER: MEETING WITH THE NDPP

\_\_\_\_\_  
MR R MCBRIDE  
EXECUTIVE DIRECTOR  
DATE: \_\_\_\_\_

Report NOTED/ COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
EN MTHETHWA, MP  
MINISTER OF POLICE  
DATE: \_\_\_\_\_



"AM 12"

390



**MINISTRY OF POLICE  
REPUBLIC OF SOUTH AFRICA**

Private Bag X463 PRETORIA 0001, Telephone (012) 393 2800, Fax (012) 393 2819/20, Private Bag X9080 CAPE TOWN 8000, Tel (021) 467 7021

**The Executive Director  
Independent Police Investigative Directorate**

**ATTENTION: Mr Robert McBride**

**RE: THE ZIMBABWEAN RENDITION DOCUMENTS**

The Minister of Police has, in his possession, a report from Crime Intelligence Component dated 27/09/12.

The allegations are those of murder, kidnapping and theft. The cases were reported under the Diepsloot Police Station, Cas number 390/07/2010.d


The content of the report suggests that; there are contraventions of international laws pertaining to how the above-mentioned matter was handled. The said matter was referred to IPID in 2012 for investigation.




In this regard, the Executive Director of IPID is hereby requested to provide the Minister of Police with copies of the dockets in colour, exhibits thereto, progress reports and the final report in this matter.

The requested documents will enable the Minister of Police to discharge his constitutional responsibilities, in terms of Section 207 (2) of Act, 108 of 1996 and advise, concerned constituencies, accordingly.

The requested document/s should be delivered on or before 28/11/2014.

Your urgent co-operation will be highly appreciated.

  
\_\_\_\_\_  
**Minister of Police (Mr)  
Nkosinathi Phikwayinkosi Nhleko  
24 November 2014**

*Top Secret*

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**ipid**

Department:  
Independent Police Investigative Directorate  
REPUBLIC OF SOUTH AFRICA

City Forum Building, 114 Madiba Street, Pretoria, 0002  
Private Bag X 941, Pretoria, 0001  
Tel: (012) 399 0026 Fax: (012) 399 0144  
E-Mail: [rmcbride@ipid.gov.za](mailto:rmcbride@ipid.gov.za) <http://www.ipid.gov.za>

Enq: Mr M Sesoko  
Tel: (012) 399 0047

Minister NPT Nhleko, MP  
MINISTER OF POLICE  
South African Police Services  
Wachthuis, 7<sup>th</sup> Floor  
229 Pretorius Street  
Pretoria  
0002

**By Hand**

26 November 2014

**INFORMATION NOTE**

Dear Honourable Minister,

**RE: INVESTIGATION OF CAS 390/07/2012**

With reference to your request dated 24/11/2014, kindly note that the docket CAS (390/07/2010) is incorrect as the docket CAS number investigated by the IPID is 390/07/2012. We assume that this is the docket referred to in your correspondence as the Reference Group requested the same. Indeed, the Reference Group indicated to Mr Khuba (Investigating officer) that they will request the docket through your office.

**BACKGROUND**

The IPID started an investigation on this matter in November 2012. In the course of the investigation, IPID cooperated with members of Crime Intelligence, in particular Colonel Mokangwe. The same Colonel started with the investigation and brought the docket to the IPID, purportedly at the behest of the then Minister of Police.

INVESTIGATION OF CAS 390/07/2012

11 Page

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*Top Secret*

The investigation was also conducted in consultation with the two Advocates from the office of the NDPP, Advocate Anthony Mosing and Advocate Billy Moeletsi. The two advocates were involved with the investigation even before the investigation was handed to the IPID. Indeed, they remained intimately involved with the investigation throughout. This included directing the investigation on certain aspects. Progress and preliminary reports were provided to them by the investigating officer.

As a result of the decision by the previous Acting Executive Director (Ms K Mbeki) Mr Khuba was instructed that the investigation be conducted in collaboration with Col Mokangwe, since he had started the investigation.

#### INVESTIGATION PROCESSES.

The investigation by IPID included verifying statements already obtained by members of Crime Intelligence and following up on leads, some of which were provided by Crime Intelligence.

During the course of the investigation reports were made to the Acting Executive Director and the office of the then Minister was also apprised of the progress on the investigation.

#### LEAKS TO THE MEDIA DURING INVESTIGATIONS

During the course of the investigation, it became apparent to the IPID investigators that leaks to the media, containing intimate knowledge of the investigation, were made.

#### INVESTIGATIVE CONCLUSION

At the conclusion of the investigation notwithstanding several other preliminary report 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. It must be noted that IPID considered other charges against those involved but thought it prudent to wait for the decision of the NDPP.

#### CONCLUSION

The Executive Director, after careful and thorough consideration of the report, approved the report with recommendations to the NDPP and the SAPS National Commissioner.

The recommendation with the entire docket (and evidential material) was forwarded to the office of the NDPP on the 14/04/2014. On the same day a disciplinary recommendation was forwarded to the office of the National Commissioner.

Your office is hereby handed copies of the docket that was forwarded to the office of the NDPP.

INVESTIGATION OF CAS 390/07/2012

21 P 556



*Top Secret*

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The IPID is still awaiting the decision of the NDPP on this matter. Similarly, we have not received the SAPS's report on the initiation of the disciplinary process against Lt Col Maluleke.

The Executive Director and the Investigation Team will be available to brief the Minister on this investigation, at any time convenient to the Minister

Yours with utmost sincerity, faith and trust.

**MR RJ McBRIDE**  
**EXECUTIVE DIRECTOR**  
**INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE**



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3/11/2015

BDlive - Print Article

Print this page

# Lt-Gen Dramat, national head of Hawks and KZN boss Johan Booysen are suspended

24-Dec-2014 | Linda Ensor

National head of Hawks Lt-Gen Anwa Dramat is placed on precautionary suspension for 60 days, while KZN's Hawks boss, Lt-Gen Booysen is also suspended because of his persistence in investigating well-connected people

CAPE TOWN — It is not only the national head of the Hawks, Lieutenant-General Anwa Dramat who has been placed under precautionary suspension by Police Minister Nkosinathi Nhleko, but apparently also the head of the KwaZulu-Natal (KZN) head of the Hawks, Lt-Gen Johan Booysen.

Helen Suzman Foundation director Francis Antonie said on Wednesday that the suspensions "on the eve of Christmas, of the director of the Hawks and of his KZN counterpart, are troubling in so far as they destabilise the administration of justice, more particularly, the fight against corruption."

He said he had it on good authority that Lt-Gen Booysen had been quietly suspended last Friday because of his persistence in investigating well-connected people with the support of Lt-Gen Dramat. However police ministry spokesman Musa Zondi could not confirm or deny the suspension of Lt Gen Booysen.

Lt-Gen Dramat is understood to be lodging an urgent application to the Labour Court in Cape Town on Wednesday to have his suspension overturned.

Democratic Alliance (DA) police spokeswoman Dianne Kohler-Barnard said Lt-Gen Booysen had been instrumental in conducting various investigations into six MECs. He had also investigated the KZN police commissioner Major-General Mmamonye Ngobeni and her "corrupt" relationship with Mr Toshan Panday, a close business partner of President Jacob Zuma's son.

"The National Police Commissioner, Riah Phiyega, tried to fire him (Lt-Gen Booysen), but was stymied by the ruling that only the head of the Hawks may do so," Ms Kohler Barnard said. She said the obvious next move was to suspend Lt-Gen Dramat and replace him with a "puppet", who would do the job of getting rid of Lt-Gen Booysen.

"Lt-Gen Booysen has now been cleared four times — twice by the Labour Court, once by the High Court and emphatically in an internal SAPS (South African Police Service) disciplinary hearing, when the SAPS was ordered to put him back on duty immediately".

Ms Kohler Barnard said she was "astounded at the extraordinary and unconstitutional act" of the minister in suspending Lt-Gen Dramat, which was in "flagrant disregard of the rule of law". She called on Mr Nhleko to reverse his decision at once as it was in contempt of court.

Last month the Constitutional Court Chief Justice Mogoeng Mogoeng ruled on an application brought by the Helen Suzman Foundation that the section of the South African Police Service Act, which allowed the minister to suspend and remove the head of the Directorate of Priority Crime Investigations (DPCI) — the Hawks — was invalid as it undermined its independence.

Mr Justice Mogoeng said the subsection gave the minister "almost untrammelled power to axe the national head." He declared that the section of the act was invalid and had to be "deleted from the date of this order."

In terms of the ruling the head of the Hawks can only be removed by a two-thirds vote from Parliament.

Mr Justice Mogoeng noted that some amendments made to the act in 2012 regarding the establishment of the Hawks undermined the constitutional obligation "to create an anti-corruption unit that enjoys adequate structural

3/11/2015

BDive - Print Article

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and operational independence." This did not sufficiently insulate the Hawks from potential executive interference.

Police spokesman Musa Zondi said the precautionary suspension of Lt-Gen Dramat — which would not last longer than 60 days — related to the allegations that Lt-Gen Dramat was involved in the illegal rendition of Zimbabwean nationals in November 2010. Lt-Gen Dramat has denied the allegations which have been hanging over his head for four years.

Mr Zondi said the minister took the decision to suspend Lt-Gen Dramat on Tuesday after receiving a report of the Independent Police Investigative Directorate (Ipid).

Since the minister had needed to seek a legal opinion, had to follow all the necessary processes, while also attending to other issues, this was the reason why he was only taking action now.

"It really needs to bring to finality these allegations about the rendition of Zimbabwean nationals. If really there is nothing to it, then let it be cleared once and for all because you cannot have the head of such an organisation as the Hawks operating under such a cloud. It really needs to be finalised once and for all," Mr Zondi said.

Mr Zondi stressed that the precautionary suspension — which would facilitate the collection of evidence — would not last more than 60 days. He would not disclose whether or not the Ipid report recommended that Lt-Gen Dramat be charged.

Lt-Gen Dramat was told by Ipid last year that it was investigating criminal charges against him relating to the claims that he was implicated in the apprehension and deportation of Zimbabwe's most wanted criminals, some of whom were allegedly tortured and killed after their return home.

According to a newspaper report Ipid spokesman Moses Dlamini Ipid had handed over its report to the National Prosecuting Authority (NPA) earlier this year.

- o o o -



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396

**ipid**

Department:  
Independent Police Investigative Directorate  
REPUBLIC OF SOUTH AFRICA

City Forum Building, 114 Madiba Street, Pretoria, 0002

Private Bag X 941, Pretoria, 0001

Tel: (012) 399 0026 Fax: (012) 399 0144

E-Mail: [rmcbride@ipid.gov.za](mailto:rmcbride@ipid.gov.za) <http://www.ipid.gov.za>

Mr F Beukman, MP  
Chairperson  
Portfolio Committee on Police  
National Assembly  
Parliament of the Republic of South Africa  
Private Bag X 15  
CAPE TOWN  
8000

Per E-Mail: [fbeukman@mweb.co.za](mailto:fbeukman@mweb.co.za)  
[zvandermeulen@parliament.gov.za](mailto:zvandermeulen@parliament.gov.za)  
[bmbengo@parliament.gov.za](mailto:bmbengo@parliament.gov.za)

27 February 2015

Dear Mr Beukman,

**RE: TO REQUEST A SPECIAL SITTING OF THE PORTFOLIO COMMITTEE ON  
POLICE TO BRIEF THE PORTFOLIO COMMITTEE ON THE "RENDITION" CASE**

The above case has reference.

1. On the matter regarding the "Rendition", it has come to the notice of the Executive Director that various media groups have claimed to have in their possession a/report(s) that were made by the Independent Police Investigative Directorate (IPID) to the National Prosecuting Authority (NPA).
2. It is therefore clear that the IPID recommendations have been leaked.
3. Since December 2014, IPID has had to endure numerous statements, criticisms and doubts to its integrity without any response. We have not responded precisely because we have an understanding with the National Prosecuting Authority (NPA) to the effect that we allow the NPA to make their decisions without comment or speculation from IPID. There is also speculation about the existence of "two reports" and a "U-turn" by IPID.

RE: TO REQUEST A SPECIAL SITTING OF THE PORTFOLIO COMMITTEE ON POLICE TO DISCUSS TWO ISSUES: TO BRIEF THE PORTFOLIO COMMITTEE ON  
THE "RENDITION" CASE

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4. As a result of the above, and as the Executive Director of the IPID, I am firmly of the view that it is in the interest of Justice and in the Public Interest that the IPID account on the conflicting reports.

- ~~5. Kindly indicate when it would be most convenient for the IPID and its Senior Management to appear before the Portfolio Committee to account on this matter.~~

Regards



MR RJ MCBRIDE  
EXECUTIVE DIRECTOR

cc. Jerome Maake - jmaake@parliament.gov.za  
Maapi Molebatsi - mmolebatsi@parliament.gov.za  
Dianne Kohler-Barnard - dkohler-barnard@parliament.gov.za / dk55@ananzi.co.za  
Mabija Livhuhani - lmabija@parliament.gov.za  
Zak Mbhele - zmbhele@parliament.gov.za / voxprimus@gmail.com  
Irvin Kinnes - ikinnes@parliament.gov.za  
Albert Mncwango - mmncwango@parliament.gov.za  
Lucky Twala - dtwala@parliament.gov.za / diliza.twala@gmail.com



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

Office of MR F BEUKMAN (MP)  
Chairperson: Portfolio Committee on Police

Office V377, Old Assembly Building, Parliament

☎ 021 403 2873 📠 021 4032138 📞 082 300 9040 ✉ fbeukman@mweb.co.za

"Bm 15"  
B  
398

05 March 2015

Mr R McBride  
Executive Director IPID  
114 City Forum Building  
Madiba Street  
Pretoria  
0001

Dear Mr McBride

**RE: THE REQUEST FOR A SPECIAL SITTING OF THE PORTFOLIO COMMITTEE ON POLICE TO BRIEF THE PORTFOLIO COMMITTEE ON THE "RENDITION" CASE**

Dear Mr McBride

We refer to your letter dated 27 February 2015 that was addressed to my office, and also copied to members of the Portfolio Committee on Police.

It would be appreciated if correspondence in future could be forwarded in accordance with the relevant convention.

Your letter was discussed at the Portfolio Committee meeting that was held on Wednesday 4<sup>th</sup> March 2015.

The Committee resolved not to support your request.

With reference to the request for a "special sitting" on the "Rendition" case it should be noted that a referral in terms of Section 17 of SAPS Act, 1995, may still be tabled with the Portfolio Committee on Police.

It would therefore not be appropriate to deal with the matter on a piece-meal basis.

*[Handwritten signature]* *[Handwritten initials MP]*

Secretary: Zuraynah Van Der Meulen  
Room E3.24, New Wing Building, Parliament

☎ 021 4036644 📠 021 4032138 📞 0837098411 ✉ zvandermeulen@parliament.gov.za



It is also public knowledge that further investigations/legal proceedings/discussions with regard to the matter is still underway, and it will be prudent for the Portfolio Committee to await the outcome of these processes.

We trust that you find it to be in order.

Kind regards.

\_\_\_\_\_  
Mr F Beukman, MP

Chairperson: Portfolio Committee on Police

Date:



MP



ipid

Department:  
Independent Police Investigative Directorate  
REPUBLIC OF SOUTH AFRICA

Private Bag X941, Pretoria, 0001, 114 Madiba Street, City Forum Building, Pretoria  
Tel: (012) 399 0070 Fax: (012) 399 0144

"Rm 17"

400

Honourable Minister NTP Nhleko, MP  
MINISTER OF POLICE  
WACHTHUIS  
Pretoria  
0001

By Hand

12 March 2015

Dear Honourable Minister,

**IN RE: RESPONSE TO NOTICE OF INTENTION TO SUSPEND**

1. I refer to your "Notice to place me on precautionary suspension with full pay", dated 10 March 2015, which notice I received on 11 March 2015 at approximately 7h30.
2. I have deposed to an affidavit setting out comprehensively the grounds why I should not be suspended and a copy of this affidavit is attached hereto, for your attention.
3. Without detracting from the specificity in the affidavit and for your ease of reference, I summarise the reasons below:
  - 3.1. No particularity of the alleged serious allegations in the media against me is provided. I cannot reasonably be expected to respond to such a vague allegation and, in any event, such allegations cannot properly form the basis for my suspension. I do, however, confirm that I have not committed any wrongdoing;
  - 3.2. I have never breached my responsibility to act with independence and impartiality. As more fully set out in the affidavit, any communications with the legal representatives of Lieutenant General Dramat and Major General Sibiya were reasonable and entirely in keeping with my responsibilities. There is no basis for the allegations that have been made in this regard;
  - 3.3. The Minister was at all relevant times fully aware of the existence of preliminary and final IPID reports. As more fully set out in the affidavit, the Minister has chosen to rely on recommendations contained in a preliminary report. I remain available to address any concerns that the Minister may have in relation to the preliminary and final reports;



ipid

Department:

Independent Police Investigative Directorate  
REPUBLIC OF SOUTH AFRICA

- 3.4. I have not undermined the Minister's authority on oversight responsibility. As more fully set out in the affidavit, I remain committed to report fully to the Minister and Parliament. The Minister's investigation into IPID (and the NPA) is, however, impeding on IPID (and the NPA's) independence and expertise and I have acted responsibly in this regard by refusing to grant my permission for IPID's officials to be interviewed by the appointed investigators. I remain willing to engage with the Minister in respect of the investigation, and, specifically to ensure that there are sufficient safeguards to protect IPID;
- 3.5. As more fully set out in the affidavit, there is no factual basis for the allegation that I tampered with evidence. I, at all relevant times, acted in accordance with my statutory mandate.
4. For these reasons, I am firmly of the belief that my suspension is, notwithstanding the aforesaid grounds, a foregone conclusion.
5. I also believe that my suspension would not be in the best interest of IPID, of which I am the head and for which I am responsible.
6. I have, accordingly, instructed IPID's attorneys to launch an urgent application out of the North Gauteng High Court for appropriate relief, including interdicting you from suspending me.
7. I confirm that the application is in the process of being issued and will be served on the State Attorney shortly.

Yours faithfully,

  
Mr RJ MCBRIDE  
EXECUTIVE DIRECTOR  
INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

DATE: 12/03/2015



"2M 18"

402

## AFFIDAVIT

I the undersigned General S. M Sibiya hereby under oath declare that I am an adult male 48 years of age with force number 0619846-5.

1

I am appointed as the Provincial Head of the DPCI in Gauteng and I am currently under suspension. On the 10<sup>th</sup> February 2015 I received information that there were two Colonels from Crime Intelligence in my office and they wanted my safe keys because they wanted to seize a data 6 fax line device from my office because it belong to General Mdluli.

2

I immediately contacted my attorney of record Mr Victor Nkhwashu for advice. My attorney immediately contacted SC William Mokhari who acts on behalf of both the Minister and the National Commissioner of the South African Police services, to find out from them if they are aware of such an instruction to remove a device that was installed in my safe. Mr Mokhari immediately called my lawyer back and informed him that it is not true because the Acting Provincial Head of Gauteng, Major General Dlamini was in his office throughout the day and that he never saw such policemen in my office. I realised that the actions of the two Colonels were illegal. I then decided to call on the Executive Director of the Independent Police Investigative Directorate (IPID) Mr Robert McBride to intervene and to see if the device was in fact not a bugging device that was installed unlawfully to monitor my communications. As a result, I asked Mr McBride to seize the device and investigate whether there was any crime committed or not.

3

That is all I can declare

I know and understand the content of this declaration

I have no objection in taking a prescribed oath

I consider the oath to be binding on my conscience

Signature of Deponent

Date 10-03-2015

I, the undersigned, do hereby certify that the above is a true and correct copy of the statement made by the deponent and that the deponent has read and understood the contents of this statement and that the deponent's signature and the signature of the undersigned have been placed thereon in my presence.

at Pretoria on 10/03/2015 at 15:00

Signature of Commissioner of Police

MATTHEWS SESOKO

Full First Names and Surname in Block Letters

114 MADIBA STREET

Business Address (Direct Address)

PRETORIA

CHIEF DIRECTOR INVESTIGATIONS

Rank

MD  
H

"RM 19"

403

## SWORN AFFIDAVIT

I, the undersigned,

Pearl Angel Pomuser

State under oath that:

1

I am an adult female in the employment of the South African Police Service with the rank of Chief Admin Clerk with service number 0467273-9 and performing secretarial and staff officer duties at the office of Major General Sibiya at No: 16 Empire Road, Parktown. My contact details are (011) 274 7857 and cellular number 071 481 2536.

2

The facts herein contained are true unless otherwise indicated within my personal knowledge and belief.

3

I gained knowledge of the facts stated in this affidavit through personal observation and through others who had or may reasonably have had personal knowledge of this matter.

4

On the 10<sup>th</sup> of February 2015, towards midday, at plus minus 12:00, I was performing my normal office duties when two white males entered my office. They were dressed in plain clothes and one of them introduced himself as Colonel van Eeden from National Head Office, Crime Intelligence.

5

He then enquired about a Data Box that was in one of the walk in safes but he was not sure which safe. I then told him that I don't know of any data box as I have not seen one. I further asked him what it was and how did it look. He said it is like a fax machine but an encrypted machine. I told him that I have never seen it. He then asked me if I had the keys to the safe and I told him that I don't keep the safe keys only LT Botha was tasked by Major General Sibiya to keep them. LT Colonel Van Eeden then walked towards the passage and whilst he was there I heard him speaking to someone on the phone and I could understand that it was about the safe because then he came back and said to me that the data box is in the safe of the HAWKS. Then I replied and said "okay then it must be our safe which was

404

PEARL ANGEL POMUSER

previously used by LT General Mdluli". He then said he wants to see if the data box was inside the safe.

6

I called LT Botha on his cellular phone number and explained to him that a LT Colonel van Eeden is in the office of the General and would like to gain access to the walk in safe. LT Botha then clearly told me that he is not allowed to open the safe for anyone and that Major General Sibiya gave him strict instructions regarding the safe. I then handed the phone to LT Colonel van Eeden and requested him to speak to LT Botha.

7

They held a telephonic discussion in Afrikaans and thereafter he handed the phone back to me. LT Botha indicated to me that the gentlemen said they will come back on Thursday with tools to open up the box and take the Data 6 box because they don't have the set of keys for it. Afterwards LT Colonel van Eeden said he was leaving and he wrote down his cellular phone number on a piece of paper as LT Colonel Hugo van Eeden – 082 552 7584 and left. I also reported the visit by these members to Major General Dlamini afterwards and Major General Sibiya because he is still the custodian of the walk in safe and he indicated that no one is allowed to remove anything from the safe without the permission of the National Commissioner and the Minister of Police especially if the information is sensitive in nature and required by Crime Intelligence.

8

On Wednesday, 11 February 2015 at about 14:00, as I was exiting my office I saw a group of three men standing outside the glass door. I recognised one of them as Robert Mc Bride. I greeted him and he said he was looking for the office of the HAWKS and Pearl. I replied that I was Pearl, he shook my hand and we entered the office. I noticed that he was carrying a box under his arm. He said he would like to talk to me in private and then we walked towards the lounge area. We sat down and he handed me the box, told me to open it. He explained that he is serving me with a notice with regard to the Data Box in the safe. I read the content and I was a bit overwhelmed by fear when I noted that I must hand over the Data 6 line box and failure to comply amounts to a criminal offence.

9

He asked me for the keys to the safe and I explained to him that LT Botha has the keys. He then requested that I call him of which I complied. LT Botha indicated to





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PEARL ANGEL POMUSER

me that he is in the building and was attending a SCM meeting however he was on his way out of the building but he will return back. In about six minutes he arrived and Mr Robert Mc Bride introduced himself and his colleagues to LT Botha. He further explained his purpose to LT Botha and requested him to take them to the safe. He also told LT Botha that he was going to issue him also with a notice because he didn't know that he was in possession of the safe keys. Lt Botha said he had no problem. I also reminded LT Botha about General Sibiya's instructions and he said to me "Ms Pomuser we cannot ignore a notice from the Ministers office because IPID is part of the Minister's office".

10

LT Botha then took the three IPID gentlemen to the walk in safe and I went into my office and made attempts to call Major General Dlamini. After several unsuccessful attempts I gave up. Afterwards the gentlemen returned and one of them, not Robert Mc Bride 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. I also informed him that I was going to alert Major General Dlamini and he replied that it was not a problem I should inform him. I tried calling Major General Dlamini again but it just rang and thereafter I contacted General Sibiya and his phone was off.

11

Later on I tried the office of General Ntsemeza, the lady told me that he is out of the Province and I requested for LT Colonel Gwayis number, but when I tried calling it went on to voicemail. Later I got hold of Colonel Eksteen, Commander of West Rand Organised Crime, she told me to send an sms to Colonel Sibisi who was at the time in a meeting with General Dlamini. I informed him to tell Maj General Dlamini that I was urgently seeking to talk to him about what transpired in the office. Major General Dlamini called me at about 18:20 and I reported the matter to him.

12

I know and understand the content of this statement.  
I have no objection to taking the prescribed oath.  
I do consider the prescribed oath to be binding to my conscience.

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DEPONENTS

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## PEARL ANGEL POMUSER

I certify that the above statement was taken by me, signed and sworn to before me at Johannesburg on the 03<sup>rd</sup> of March 2015, and that the deponent has acknowledged that she knows and understands the contents of this affidavit, that she has no objection in taking the prescribed oath and she considers the oath to be binding on her conscience.

**COMMISSIONER OF OATHS**

Full Names: \_\_\_\_\_

Capacity: \_\_\_\_\_

Address: \_\_\_\_\_

AP

MP

"Rm 20"

407



ipid

Department:  
Independent Police Investigative Directorate  
REPUBLIC OF SOUTH AFRICA

Private Bag X941, Pretoria, 0001, 114 Vermeulen Street, City Forum Building, Pretoria  
Tel: (012) 399 0000 Fax: (012) 326 0408

Enq Executive Support  
Tel: 012 399 0028

Pearl Pomusa  
The Personal Assistant: Provincial Head  
DPCI: Gauteng  
SAPS Provincial Office  
16, Empire Road  
Parktown  
Johannesburg

BY HAND

11 February 2015

Dear Pearl

**SYSTEMIC CORRUPTION INVESTIGATION: DATA LINE BOX**

The IPID is investigating a case of systemic corruption, as part of the investigation IPID will require to take possession of the Data 6 line box in your possession.

You are directed to hand over the Data 6 line box in terms of section 29(2) of the IPID Act.

Please note that failure to comply amounts to a criminal offence in terms of section 33 of the IPID Act.

I trust that this is all in order.

Many thanks

MR RJ McBRIDE  
EXECUTIVE DIRECTOR  
DATE:

MP

"Rm 21"

408.

# ACKNOWLEDGEMENT OF DATA 6 BOX

ITEM	Serial No.	Received by : Personal number	Rank	Initial and Surname	Component	Date
1 X Data 6 Box	60741 Barcode 93860741 / SFU 1100FMKIII	153 27001	Executive Director	<i>[Signature]</i> R.J. MCBRIDE	IPID	11/02/2015



MP

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

CASE NO: 6588/2015

In the matter between:

THE INDEPENDENT POLICE  
INVESTIGATIVE DIRECTORATE

1<sup>ST</sup> Applicant

ROBERT McBRIDE

2<sup>ND</sup> Applicant

and

MINISTER OF POLICE

1<sup>ST</sup> Respondent

MINISTER FOR PUBLIC SERVICE  
& ADMINISTRATION

2<sup>ND</sup> Respondent

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FIRST RESPONDENT'S ANSWERING AFFIDAVIT

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I, the undersigned;

NKOSINATHI NHLEKO

do hereby make oath and say:

1. I am the Minister of Police and a Member of Cabinet in the Government of the Republic of South Africa. By virtue of my position, I am a Member of the Executive in the national administration.
2. The facts herein contained are within my personal knowledge and belief both true and correct. I make legal submissions upon legal advice that I have received from my legal team and I accept the legal advice to be correct.

*[Handwritten signature]*

*NP*

3. The applicants have brought on extreme urgent basis an application for an interim interdict restraining me from suspending the second applicant from his position as the Executive Director of the Independent Police Investigative Directorate. There relief sought in Part A is pending the adjudication of the relief sought in Part B.
4. In Part B, which is brought in the normal course, the applicant seeks the following relief:
- "1. *It is declared that the decision of the first respondent ("the Minister of Police") to initiate a process to suspend the second applicant from his position as Executive Director of the first applicant ("the Independent Police Investigative Directorate") is unlawful and invalid and the decision is set aside.*
  2. *It is declared that the following provisions are unconstitutional and unlawful to the extent that they purport to authorize the Minister of Police to suspend or remove from office the Executive Director of the Independent Police Investigative Directorate:*
    - 2.1 *section 6(6) of the Independent Police Investigative Directorate Act, No. 1 of 2011;*
    - 2.2 *section 17(1) and 17(2) of the Public Service Act, 1994; and*
    - 2.3 *paragraph 2.7(2) of Chapter 7 and paragraph 18 of Chapter 8 of the Senior Management Service handbook, 2003.*
  3. *The first respondent is directed to pay the applicants' costs, including the costs of two counsel.*
  4. *Further and/ or alternative relief."*





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5. When this application was launched and served in the evening of 12 March 2015 I was in Cape Town and due to a limited period of time given to me to oppose the application and to attend Court through counsel, I could not read the entire application and its annexures because of their voluminous nature. I however instructed my legal team to oppose the Part A of the application on well-established legal principles applicable to urgent applications and interim interdicts. I was however advised that the legal grounds with sought to be relied upon by myself should nevertheless be placed before Court by way of an affidavit duly deposed to by myself.

6. In this affidavit, I do not deal with the merits. I will do so at an appropriate time. I simply deal with three crisp issues:

6.1 first, the applicant has not been suspended;

6.2 secondly, the applicant has submitted written representations to me on Thursday, 12 March 2015 for my consideration before I make a decision on whether or not I should place him on precautionary suspension; and

6.3 thirdly, the applicant has not met the requirements of an interim interdict because he has not demonstrated irreparable harm if the relief that he seeks is not granted on an urgent basis, nor has he shown absence of irreparable harm.

MP



**THE APPLICANT HAS NOT BEEN SUSPENDED**

7. On 10 March 2015, I issued a notice of intention to place the applicant on precautionary suspension with full pay. In the notice aforesaid, I detailed allegations that are made against the applications and afforded him an opportunity to submit written representations to me by no later than close of business on Thursday, 12 March 2015.
8. To date, since I had issued the aforesaid notice, I have not suspended the applicant and I have not yet made a decision on whether or not I should suspend the applicant because I cannot do so before I consider his written representations.

**THE APPLICANT HAS SUBMITTED WRITTEN REPRESENTATIONS**

9. The applicant has complied with my request in the notice of intention to suspend him by submitting written representations on Thursday, 12 March 2015, setting out the grounds or reasons why I should not place him on precautionary suspension. I have an application to consider his written representations objectively, so that they can assist me in making a decision on whether or not I should place him on precautionary suspension. When the written representations were submitted to my office, accompanied by an affidavit deposed to by the applicant, I was in Cape Town and I had not yet read them. At the time of deposing to this affidavit, I do so whilst I am still in Cape Town. Whilst I saw the written representations when the application was

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emailed to me, I have not yet considered them but I can assure the applicant that I will consider them objectively so that I make a decision that is fair and rational. I would have no legal basis to suspend the applicant if I find that the representations he has made to me are compelling and militate against any necessity to place the applicant on precautionary suspension. The allegation by the applicant that I prejudged the matter is false. I have not prejudged the matter and I cannot do so because I am obliged to consider his written representations before I make a decision. My decision on whether or not the applicant should be placed on precautionary suspension would be made in due course, but I will ensure that there is not an undue delay in making the decision in order to avoid uncertainty looming for longer within the IPID because I am alive to the fact that the IPID performs a critical statutory and constitutional function which require its stability in order for it to optimally perform its statutory obligations.

10. Until such time that I make a determination upon consideration of the applicant's written representations, the applicants' application as contained in Part A of the notice of motion is premature and ill-conceived.
11. The applicants' allegation that his suspension is a foregone conclusion is a speculative and wrong.

**THE APPLICANT HAS NOT MET THE REQUIREMENTS OF AN INTERIM  
INTERDICT AND THE APPLICATION IS NOT URGENT**

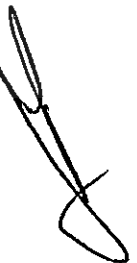
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12. Intertwined with urgency is very the requirements for an interim interdict. The requirements for an interim interdict are well established and they are interlinked with whether urgent interdictory relief is appropriate. Whether or not urgent interim relief is desirable depends on the facts and circumstances of each case. Primarily, it is the duty of the applicant being the party rested with the onus to establish the existence of the four requirements for an interim interdicts which are: a prima facie right; irreparable harm; absence of alternative remedy; and balance of convenience which is linked to prejudice.
13. A determination of whether or not the matter is urgent is considered in the context of whether if interim interdict is not granted irreparable harm will ensue because the applicant does not have alternative remedies.
14. In the context of the foregoing, the applicant has not demonstrated urgency and the matter should be struck off the roll with costs.
15. In relation to the requirements for an interim interdict, the applicant has not demonstrated a prima facie right although open to some doubt that this Court should intervene at this stage because no decision has been made yet on whether or not he should be suspended. It may very well that I do not suspended the applicant because I have been persuaded by his written representations. With regard to the irreparable harm, there can be no any irreparable harm that would be suffered by the applicant because if he is suspended, the suspension is bound to be with full pay and benefits. Any harm that the applicant may perceive, is mitigated by this fact. In any event,

MP



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this is even speculative on if he is suspended because no decision has been made yet in that regard. If he is suspended, the suspension would be for limited duration of 60 days and if nothing tangible is done in compliance with the prescribed procedure in the public service regarding the conduct of discipline, then the applicant would be entitled to resume his duties upon the expiry of the 60 days. This is another protection that is afforded to the applicant by law. The applicant also has an alternative remedy in abundance because if he is suspended, he can elect to challenge the suspension in Court, or he can go to the CCMA or Bargaining Council depending on the cause of action framed.


16. The balance of convenience do not favour the applicant at all. It is not in dispute that I perform and oversight role over the IPID and the Executive Director of IPID. The applicant recognizes the existence of statutory power pertaining to the oversight role that I play hence in Part B of the notice of motion, the relief sought by the applicant is the declaration of the unconstitutionality and unlawfulness of certain sections of the Police Investigative Directorate Act, No. 1 of 2011. The applicant should accept that until such time that Part B is dealt with, and he is successful in declaring the aforesaid provisions of the Police Investigative Directorate Act unconstitutional, this provisions as they exist in the legislation passed by Parliament, are law of the Republic, and should be applied and obeyed. It does not make sense that the applicant can remain immune from any steps pertaining to allegations of misconduct against him because he has

MP

challenged the constitutionality of the legislation which confer powers to me to play that oversight role.

17. If for whatever reason anything happens to the applicant about his employment, which is currently speculative, the applicant will always have an opportunity at any given time to redress that wrong that in his view would have been meted on him at any appropriate forum or jurisdiction including the Courts.
18. For the above reasons, the applicant has not made out a case for an urgent relief and that he should simply await a decision from me after I have considered his written representations and only after I have made the decision, the applicant can then decide what step to take if the decision is for whatever reason construed by him to be of adverse nature to him.
19. For the above reasons, I submit that the applicant has not made out a case for the relief in Part A. If for whatever reason the Court wishes to entertain the application on the merits, then I should be afforded an opportunity to address the merits in full because I have not done so in this affidavit due to the extreme limited time that I have been given to deal with this application.
20. Accordingly, I respectfully request this Court to dismiss the application with costs, including the costs consequent upon the employment of two counsel.

MP





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DEPONENT

I CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to, before me, at ..... on this the 13<sup>th</sup> day of MARCH 2015, the Regulations contained in Government Notice No. R.1258 dated 21 July 1972 (as amended) and Government Notice No. R.1648 dated 19 August 1977 (as amended) having been complied with.

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COMMISSIONER OF OATHS

MP

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

Case Number: 6588/2015

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES <input checked="" type="radio"/> NO <input type="radio"/>
(2)	OF INTEREST TO OTHER JUDGES: YES <input checked="" type="radio"/> NO <input type="radio"/>
(3)	REVISED. <input checked="" type="checkbox"/>
<hr/>	
18/3/15	<i>[Signature]</i>
DATE	SIGNATURE

In the matter between:

THE INDEPENDENT POLICE  
INVESTIGATIVE DIRECTORATE  
ROBERT MCBRIDE

FIRST APPLICANT  
SECOND APPLICANT

And

MINISTER OF POLICE  
MINISTER FOR PUBLIC SERVICE  
AND ADMINISTRATION

FIRST RESPONDENT  
SECOND RESPONDENT

*[Signature]**[Signature]*

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**JUDGMENT**

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Fabricius J,

1.

The Applicants herein launched an application in the Urgent Court on 13 March 2015 in which they, as per part A thereof, sought an order which would interdict and restrain First Respondent from suspending the Second Applicant from his position as the Executive Director of the Independent Police Investigative Directorate. Costs of two Counsel were also sought. The Respondents were given one day to file an Answering Affidavit and the First Respondent did indeed so, but without dealing with the merits of the factual allegations made in the Founding Affidavit, together with its annexures, which almost comprise of 400 pages. The Interim Interdict was sought pending the final determination of part B of the application in which the following relief would be sought:



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1. "It is declared that the decision of the First Respondent (The Minister of Police) to initiate a process to suspend the Second Applicant from his position as Executive Director of the First Applicant (The Independent Police Investigative Directorate) is unlawful and invalid and the decision is set aside.

2. It is declared that the following provisions are unconstitutional and unlawful to the extent that they purport to authorize the Minister of Police to suspend or remove from office the Executive Director of the Independent Police Investigative Directorate;

2.1 Section 6(6) of the Independent Police Investigative Directorate Act

No 1 of 2011;

2.2 Section 17(1) and section 17(2) of the Public Service Act, 1994; and

2.3 Paragraph 2.7(2) of Chapter 7 and paragraph 18 of Chapter 8 of the Senior Management Service Handbook, 2003.

A cost order was also sought.



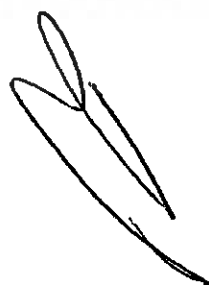
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2.

Second Applicant alleges that on 11 March 2015 he was given a letter by the First Respondent as a notice to inform him that the Minister intended placing him under precautionary suspension with full pay and benefits for a period not exceeding 60 calendar days. Details of the alleged serious misconduct committed over a course of time were then given, and it was concluded that: "Because of the seriousness of these allegations, given the most senior position you occupy at IPID, the possible interference with the investigation and the tempering (sic) with evidential material, I intend placing you on precautionary suspension with full pay for a period not exceeding 60 calendar days, pending an investigation into the abovementioned allegations and possible disciplinary enquiry against you."

Second Applicant was given an opportunity to make representations as to why he should not be suspended and he was given until the close of business on 12 March 2015 to do so.



MP

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3.

In the Founding Affidavit Second Applicant said that he appreciated that the Respondents would have very little time to answer this application but, if they required such further time, he would be prepared to accord it on the condition that the Minister would not suspend him pending the outcome of the application under part A.

4.

The Minister had not suspended the Second Applicant at the time the application was heard, but Applicant's Counsel, Mr Budlender, submitted that this was no obstacle to him inasmuch as the application was launched not only to protect the Second Applicant's rights, but also to preserve the independence and effective functioning of IPID, and to prevent further unlawful ministerial interference without delay. It was alleged that IPID was an indispensable, constitutionally required investigative body, which was mandated to investigate police misconduct and offences. Its investigations



MP



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extended to the highest offices in South Africa. It therefore had to be given substantial protections to carry out its mandate without political interference.

The Executive Director was at the very heart of IPID's ability to function effectively to fulfil its constitutional mandate, and was critical to ensuring the proper conduct of investigations by IPID. Should a suspension be effected, such an act would have immediate deleterious consequences for the effective functioning of IPID, so it was submitted. This was especially so in the current political climate, and given the extent of ministerial interference in the independent institutions in the criminal justice sector. I am paraphrasing this allegation in the Founding Affidavit, and it is noticeable that no details were given of what was meant by the "current political climate" and what actual

facts underlay the submission that the Minister interfered in the independent institutions in the criminal justice sector. The following was then said in the Founding Affidavit: "The suspension of the Executive Director would, in all likelihood, be followed by the Minister's appointment of a new acting Executive Director, who could fundamentally undermine the effective

MP

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functioning of the institution and impede high-profile investigations. This is demonstrated by the events that followed the suspension of the Head of the Directorate for Priority Crime Investigation (the DPCI or the Hawks) Lieutenant-General Dramat, and the appointment of Major-General Ntsemeza as an acting National Head of the DPCI. Those events are detailed in the Founding Affidavit filed by the Helen Suzmann Foundation in the Constitutional Court on 25 January 2015." This was annexed to the Founding Affidavit. Those events are all in the public domain, and have been the subject matter of litigation in this Court. I do not intend dealing with the judgments relevant to those proceedings. They speak for themselves.



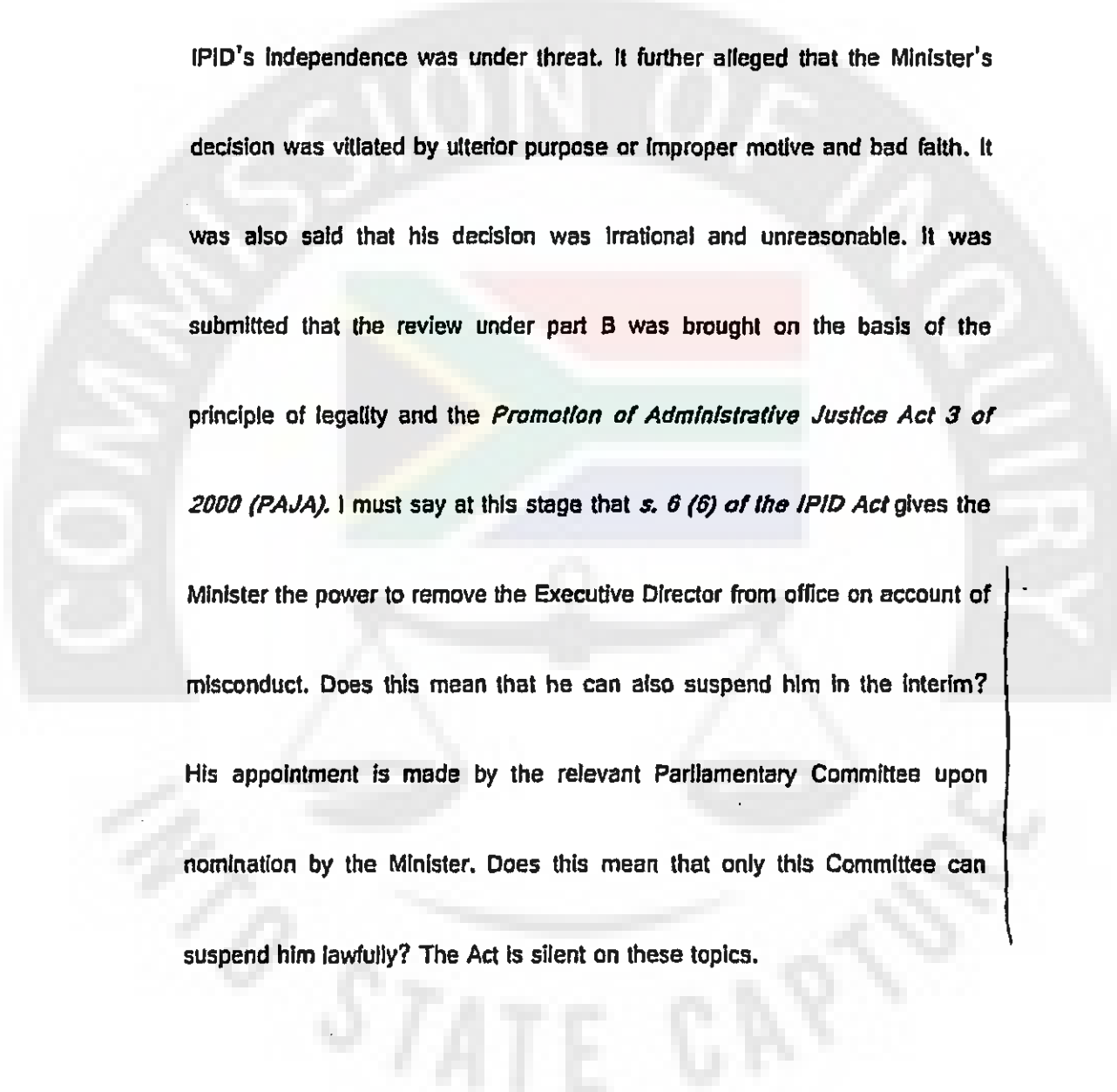
5.

In part B of the Founding Affidavit it was alleged that initiation of the process to suspend Second Applicant was unlawful and unconstitutional, on the grounds that the Minister did not have the power to suspend the Executive Director of IPID, as this would contravene the independence of IPID

MP

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enshrined under *Section 206 (6) of the Constitution*. Alternatively, even if the Minister had the power to suspend the Executive Director, the Minister had exercised his power unlawfully by creating a reasonable perception that IPID's independence was under threat. It further alleged that the Minister's decision was vitiated by ulterior purpose or improper motive and bad faith. It was also said that his decision was irrational and unreasonable. It was submitted that the review under part B was brought on the basis of the principle of legality and the *Promotion of Administrative Justice Act 3 of 2000 (PAJA)*. I must say at this stage that *s. 6 (6) of the IPID Act* gives the Minister the power to remove the Executive Director from office on account of misconduct. Does this mean that he can also suspend him in the interim? His appointment is made by the relevant Parliamentary Committee upon nomination by the Minister. Does this mean that only this Committee can suspend him lawfully? The Act is silent on these topics.

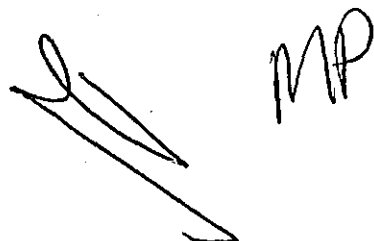


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6.

The First Respondent said in his Answering Affidavit that he did not intend dealing with the merits of the application at this stage, but would oppose it on the basis that the Second Applicant had not been suspended and that he had made written representations which he was considering, and that in any event he had not met the requirements of an interim interdict because he had not demonstrated irreparable harm if the relief that he sought was not granted on an urgent basis. The application was therefore premature and ill-conceived. The First Respondent also stated that he was aware of the fact that IPID performs a critical statutory and constitutional function which requires stability in order for it to optimally perform its statutory obligation. It was submitted that Second Applicant would have alternative remedies in due course, and if he were to be suspended it would be with full pay and benefits and only for the limited time of 60 days. It was also open for Applicant to approach the CCMA or the relevant Bargaining Council depending on how he framed his cause of action. He denied that the balance of convenience favoured the Applicant at all, inasmuch as particular sections of the Act that were sought to be attacked had

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been in operation for a number of years, and that the Applicant could not say that he wished to remain immune from any steps pertaining to allegations of misconduct against him whilst he intended challenging the constitutionality of legislation which did confer powers of him to play the particular oversight role. What would happen after suspension, if it was decided upon, was currently merely of a speculative nature. As a result, it was submitted that Applicant had not made out a case for the relief sought in part A.

7.

I do not intend dealing with the likelihood or otherwise of the relief sought in part B of this application being granted or not. However, there is merit in the submission that these type of bodies should be independent, but at the same time I am also aware of the fact that independence is one of degree, depending upon the relevant context of the legislation applicable.

See: *Van Rooyen vs The State 2002 (5) SA 246 (CC)*

Also, to prevent abuse of power, which is obviously and sadly part of human nature, someone has to guard the guardian. "Quis custodiet ipsos custodes" the Roman

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poet Juvenal asked in one of his Satires. He lived in the first century AD. As opposed to that realistic view (some call it sceptical), Plato (The Republic) was overly optimistic when he opined that it was absurd that city fathers would require oversight. This was his view some 500 years before Juvenal expressed his more practical view. I am merely mentioning this because I do believe that part B is arguable, and it does have reasonable prospects of success. That is in my view one of the requirements in the present context having regard to the test laid down in *Airoad Express (Pty) Ltd vs Chairman Local Road Transportation Board Durban* 1986 (2) SA 663 (AD).

8.

I am not convinced that the decision of the First Respondent and the decision whether to suspend Second Applicant or not, is of an administrative law nature. However, Applicants' Counsel said, while we briefly debated this issue, that the Minister's decision not only affected the Second Applicant, but also the public at large. See in this particular context *Chirwa vs Transnet Ltd and Others* 2008 (4) SA 367 (CC) and *Provincial Commissioner, Gauteng: SAPS vs Nguni* [2013] 2 All

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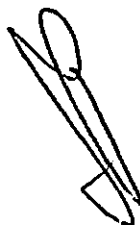


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*SA 262 (SCA) at 269 par. 16.* I do however not need to decide this debate in the present instance, because it is well established that the lawfulness of public power is subject to scrutiny by the Courts. See: *National Treasury Infra at par. 44*, and *Pharmaceutical Manufacturers Association of South Africa in re Ex Parte President of the Republic of South Africa and Others 2000 (2) SA 674 (CC) at par. 17.*

## 9.

The requirements for an interdict have been set out throughout the decades of our illustrious common-law history. In *National Treasury and Others vs Opposition to Urban Tolling Alliance 2012 (6) SA 223 CC*, Moseneke DCJ again repeated them, and emphasized that under the test of *Sellogelo vs Sellogelo 1914 AD 221* as later refined in *Webster vs Mitchell 1948 (1) SA 1186 (WLD)*, a particular claimant must establish not merely that he has a right to approach a Court in order to review a decision (administrative decision), but it must be a right to which, if not protected by an interdict, irreparable harm would ensue. Quite apart from the right to review and to set aside impugned decisions, an Applicant would have to demonstrate a *prima*



*facile* right that is threatened by impending or imminent irreparable harm. A right to review an impugned decision does not require any preservation *pendente lite* because obviously it does exist.

10.

In the context of a Minister exercising powers invested in him by a statute it was said in *Gool vs Minister of Justice and Another 1955 (2) SA 682 CPD* that in the absence of allegations of *mala fides*, a Court would not readily grant such an interdict. A Court would only grant such an interdict in exceptional circumstances and when a strong case has been made out for relief. This is not surprising. Subject to the principle of legality and the separation of powers between the executive, the legislative and the judiciary, a Court must ask itself not whether an interim interdict against an authorized State functionary is competent, but rather whether it is constitutionally appropriate to grant the interdict. See: *National Treasury supra* at par. 66.

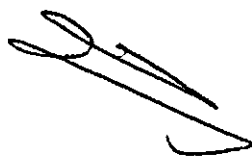
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11.

In the context of the question of the balance of convenience, Mr Budiender submitted that the stronger the prospects of success were, the less the balance of convenience arose. I accept that, but I must also consider to which extent an order at this stage would disrupt legislative functions authorized by law. It is clear that while a Court has power in this context, it would not readily exercise it except when a proper and strong case has been made out for the relief and then only in the clearest of cases. This was also emphasized in the *National Treasury* decision *supra par. 66*. I may just add that I am also aware that the *National Treasury* case is distinguishable from the present facts as a policy decision of the Government is not attacked, but nevertheless the Court's *dicta* relating to the requirements for urgent interdicts are of general application. What is important in the present instance is that if the order were to be granted now, pending a likely very lengthy process under part B, including proceedings before the Constitutional Court, the Applicant would in reality be immune from disciplinary steps in the interim, no matter what



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further serious evidence against him might emerge. I agree with Mr Mokhari SC on behalf of First Respondent that this cannot be in the interests of justice.

12.

I have also had the occasion to write a judgment about the requirements of Interim Interdicts in *AFRISAKE NPC vs City of Tshwane Metropolitan Municipality and Others* under case number 74192/2013 dated 14 March 2014 (not reported). I also emphasized that the proper question would be whether an Applicant in Interdictory proceedings required an order now so as to protect a right which he would otherwise not be able to protect at all. One does not require an Interdict *pendente lite* to protect a right which one can in any event protect in future by, amongst others, litigation in due course. It is an absolute minimum requirement that irreparable harm must be shown to exist before the Court can grant such an Interdict, and in the present context the constitutional desirability of such an Interdict weighs heavily on my mind. A Court is not to disrupt legislative functions where authority is exercised within the bands of legislation and the Constitution. See: *Doctors for Life*

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*International vs Speaker of National Assembly and Others 2006 (6) SA 416 CC at*

*par. 69.*

13.

The Second Applicant has not yet been suspended. He has made representations which the Minister will consider. What the outcome will be, I do not know. an Interdict cannot be aimed at the past. Ordinarily that would be the end of the matter, accept insofar as the Second Applicant alleges that the public at large is also affected by the decision because of the important oversight role that the First Applicant plays. What will happen if he is suspended, in the context of his temporary successor, I also would not know and cannot speculate. I cannot simply accept as a given that such person would be open to unlawful manipulation or that the public would perceive this to be so. Fortunately vigorous debates are held in the press about such appointments and the background of such persons. The fact of the matter is of course that the Applicants do have the right to approach the Court for the relief in part B. That right has not been taken away from them and cannot be taken away from them. It also requires no interdict in the interim. I am not satisfied that the

MP J

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Applicants have shown that they will suffer irreparable harm in the meantime. If actual harm does arise on some or other ground, whilst an application for the main relief is pending, nothing would stop them from approaching Court for appropriate relief.

Mr Budlender has accepted that this is not an ordinary case, and that he would have to show more than a *prima facie* right, and indeed would have to make out a very strong case, on analogy of the *dicta* that I have referred to in the *National Treasury* decision *supra*. In that context he submitted that the whole process was presently unconstitutional and caused harm not only to the Second Applicant but to the general public at large. The Second Applicant was not an ordinary employee, and if the Minister was under the apprehension that he could continue to act without lawful statutory authority, the harm would be on-going. On that basis he was entitled to urgent relief and the Applicants had a right which needed to be protected now. I do not agree for the reasons stated. The Applicants can exercise all the rights that they rely on in the future in due course. They do not require an urgent interdict now to





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safeguard such rights. I am aware of the fact that a Court has a power to grant this relief but that is not the issue in my view at all.

*See: President of South Africa and Others vs United Democratic Movement and*

*Others 2003 (1) SA 472.* It was held therein that the High Court has jurisdiction to

grant interim relief designed to maintain status quo or to prevent violation of a

constitutional right where legislation was alleged to be unconstitutional and

reasonably feared that it might cause irreparable harm of a serious nature. Such

interim relief should be granted only, it was held, where strictly necessary in the

interest of justice. In determining the interest of justice in such a context, the Court

had to balance the interests of persons seeking interim relief against the interest of

others who might be affected by the grant of such relief. Such interim relief should be

strictly tailored to interfere as little as possible with the operation of legislation.

14.

The facts do not support the relief sought, nor do the applicable legal considerations.

The application is not urgent.



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It is accordingly struck off the Roll.

15.

In my view the application in due course under part B is not without merit, and it is accordingly not appropriate that I make a cost order against the Applicants.

See: *Blowatch Trust vs Registrar, Genetic Resources 2009 (6) SA 232 CC* at par.

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JUDGE H.J. FABRICIUS

JUDGE OF THE GAUTENG HIGH COURT, PRETORIA



Case no.: 6588/15

Counsel for the Applicants:

Adv S. Budlender

Adv J. Bleazard

Instructed by: Adams & Adams Attorneys

Counsel for the Respondent:

Adv W R Mokhari SC

Instructed by: Hogan Lovells (South Africa)

Heard on: 13/03/2015

Date of Judgment: 18/03/2015 at 10:00



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

CASE NO: 6588 / 15

In the matter between:

**ROBERT MCBRIDE**

Applicant

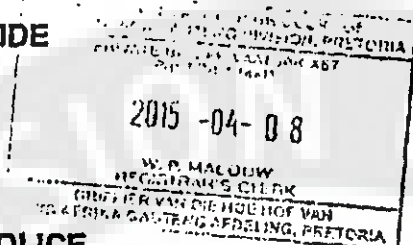
and

**MINISTER OF POLICE**

First Respondent

**MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION**

Second Respondent




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**AMENDED NOTICE OF MOTION**

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**KINDLY TAKE NOTICE** that the Applicant intends to make application to this Honourable Court on a date to be determined by the Registrar for an order in the following terms:

1. It is declared that the decision of the First Respondent (the Minister of Police) to suspend the Applicant from his position as Executive Director of the Independent Police Investigative Directorate is unconstitutional, unlawful and invalid and the decision is set aside.
2. It is declared that the following provisions are unconstitutional, unlawful and invalid to the extent that they purport to authorise the Minister of Police to suspend, take any disciplinary steps pursuant to suspension, or to remove from office the Executive Director of the Independent

Police Investigative Directorate:

- 2.1. sections 6(3)(a) and 6(6) of the Independent Police Investigative Directorate Act, No. 1 of 2011;
  - 2.2. sections 17(1) and 17(2) of the Public Service Act, 1994; and
  - 2.3. paragraph 2.7(2) of chapter 7 and paragraph 18 of chapter 8 of the Senior Management Service Handbook, 2003.
3. The declaration of invalidity in paragraph 2 is suspended for a period of 12 months from the date of the order to enable Parliament to correct the constitutional defects.
4. Pending the correction of the defects, or the expiry of the 12-month period, whichever occurs first:
- 4.1. Section 6(6) of the Independent Police Investigative Directorate Act, No. 1 of 2011 is to be read as providing as follows:

*"Sub-sections 17DA(3) to 17DA(7) of the SAPS Act apply to the suspension and removal of the Executive Director of IPID, with such changes as may be required by the context"; and*
  - 4.2. Sections 17(1) and 17(2) of the Public Service Act, 1994 and paragraph 2.7(2) of chapter 7 and paragraph 18 of chapter 8 of the Senior Management Service Handbook, 2003 shall have no application to the Executive Director of the Independent Police Investigative Directorate.



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5. The Respondents are directed to pay the Applicant's costs, including the costs of two counsel.
6. Further and/or alternative relief.

TAKE NOTICE FURTHER that the accompanying affidavit of ROBERT MCBRIDE will be used in support of this application.

TAKE NOTICE FURTHER that the Respondents are required to file answering affidavits, if any, by Monday, 20 April 2015.

TAKE NOTICE FURTHER that the Applicant will file his replying affidavit, if any, by Tuesday 28 April 2015.

DATED at ..... Pretoria ..... this ..... 2<sup>nd</sup> ..... day of APRIL 2015.

..... B.P. Adams .....

**ADAMS & ADAMS**

**ATTORNEYS FOR THE APPLICANTS**

Lynnwood Bridge Office Park

4 Daventry Road

Lynnwood Manor

Tel: (012) 432 6000

Ref: JSM/MG/LT2141

TO: THE REGISTRAR  
HIGH COURT: GAUTENG, PRETORIA





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**AND TO: THE MINISTER OF POLICE**  
**c/o HOGAN LOVELLS (SOUTH AFRICA)**  
First Respondent  
22 Fredman Drive  
Sandton  
Johannesburg  
Tel: 011 286 6900

Acknowledgement of  
Receipt

Date

**AND TO: THE MINISTER FOR PUBLIC SERVICE AND  
ADMINISTRATION**  
Second Respondent  
**c/o STATE ATTORNEY**  
316 Thabo Sehume Street  
Pretoria

Acknowledgement of  
Receipt

Date



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

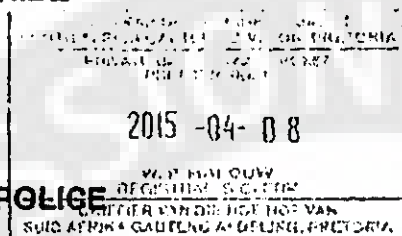
CASE NO: 6588 / 15

In the matter between:

**ROBERT MCBRIDE**

Applicant

and



**MINISTER OF POLICE**

First Respondent

**MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION**

Second Respondent

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**SUPPLEMENTARY FOUNDING AFFIDAVIT**

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I, the undersigned

**ROBERT MCBRIDE**

state under oath as follows:

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

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- 3 I was initially the Second Applicant in this matter, with IPID being the First Applicant. However, following my suspension on 24 March 2015, IPID has made clear to their attorneys, Adams & Adams, that it wishes to withdraw from this matter. Accordingly, I am now the sole applicant and IPID is no longer a party. A copy of this affidavit and all further pleadings will nevertheless be served on IPID for such interest as it may have.
- 4 This affidavit is filed pursuant to the First Respondent's decision to suspend me as Executive Director of IPID, which decision was taken on 24 March 2015, with immediate effect ("the suspension decision"). The purpose of this affidavit is to support the amended relief sought in the review application (Part B of the original notice of motion), including to detail the grounds upon which the suspension decision is challenged. The amended notice of motion will be filed together with this affidavit.
- 5 While the decision now sought to be reviewed and set aside is the suspension decision (as opposed to the decision to initiate the suspension process), I persist in relying on the allegations detailed in the founding affidavit in support of the review. The grounds upon which the suspension decision is sought to be reviewed and set aside are materially identical to the grounds upon which the Minister's prior decision to initiate the suspension process was challenged.
- 6 The Minister's decision to suspend me was unlawful and unconstitutional on three grounds:



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6.1 The provisions that the Minister relies on for his unilateral powers to suspend or remove the Executive Director of IPID from office are unconstitutional and invalid to the extent that they breach IPID's independence, as guaranteed by section 206(6) of the Constitution. Alternatively, the manner in which the Minister exercised these powers is unconstitutional as it creates the reasonable apprehension that IPID's independence is under threat;

6.2 The Minister's decision is vitiated by an ulterior purpose or improper motive; and

6.3 The Minister's decision is irrational and unreasonable.

7 In what follows, I begin by detailing the relevant background facts pertaining to the Minister's decision to suspend me. Second, I describe more fully the role of IPID and the responsibilities of the Executive Director to explain the impact of the Minister's decision on the independence of IPID. Third, I describe the only new alleged basis for my suspension (which was not addressed in the founding affidavit), namely my alleged obstruction of the Werksmans' investigation initiated by the Minister. Fourth, I address the impact of my suspension on IPID. I conclude by addressing the amended relief sought.

#### **PART A OF THE APPLICATION AND THE SUSPENSION DECISION**

8 Under Part A of this application, I sought urgent interim relief to interdict the Minister from suspending me from the position of Executive Director, pending the outcome of the review of that decision in Part B. The application was

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launched on an urgent basis, in response to the Minister's notice of his intention to suspend me, dated 10 March 2015.<sup>1</sup>

9 Fabricius J heard Part A of the application on 13 March 2015 and handed down judgment on 18 March 2015. Part A was struck off the roll for lack of urgency as the Minister had not yet taken a decision on my suspension. A copy of this judgment is attached as RM 1.

10 On 24 March 2015, I received a letter from the Minister confirming his decision to suspend me ("the suspension letter"). The suspension letter indicates that I have been placed on "precautionary suspension" for 60 days, on full pay and benefits, *"pending the [Werksmans] investigation and possible disciplinary proceedings [against me]"*. A copy of this letter is attached, marked RM 2.




11 The suspension letter lists the following grounds for my suspension:

11.1 The Minister incorporates by reference all allegations contained in his initial suspension notice of 10 March 2015. I have addressed these allegations in full in my reply to the Minister's notice of his intention to suspend me and in the founding affidavit. I maintain that these allegations provide no basis for the Minister's decision to place me on suspension. It is telling that the Minister has given no proper response to my reply to the notice of intended suspension.

11.2 The Minister also relies on two "concessions" that I allegedly made in my reply to the notice of intended suspension and in the founding affidavit:

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<sup>1</sup> Annexure RM1 to the FA; Record, p 44-46.

    
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first, that I did not give Mr Khuba permission to meet with the investigation team from Werksmans Attorneys and, second, that I removed a device from the office of Major General Sibiya in March 2014. These matters are also fully canvassed in my reply and in the founding affidavit.<sup>2</sup> These actions also provide no basis for the Minister's decision.

11.3 In the light of these allegations and my alleged "concessions", the Minister contends that I am likely to interfere with the investigation he has commissioned into IPID's final and preliminary Investigation Reports, which is being conducted by Werksmans Attorneys ("the Werksmans' investigation"). The Minister states:

*"I have reason to believe that if you are not placed on precautionary suspension, you are likely to interfere with the investigation, as you have prima facie already shown to have done, and there is a potential to deter potential witnesses from cooperating with the investigation as you have prima facie shown to have done, including the possibility of tempering [sic] with the evidentiary material."*

This is an entirely unfounded and spurious allegation. As I explain further below, my legitimate concerns over the legality of the Werksmans' investigation cannot be distorted into evidence of an intention to act improperly. Moreover, before my suspension, I took the decision that IPID would cooperate fully with the Werksmans investigation, albeit under protest. This was conveyed to Werksmans Attorneys via email on 23 March 2015. The allegation made by the Minister is thus without any basis.

<sup>2</sup> FA, paras 54-63; Record, pp 36-39.



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- 12 Another feature of the Minister's letter is that it reveals for the first time the purported legal basis of his power to make a unilateral decision to suspend the Executive Director of IPID.



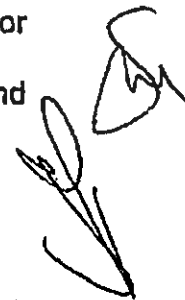
12.1 First, the Minister claims that the section 6(6)(a) power in the Independent Police Investigative Directorate Act 1 of 2011 ("IPID Act") to remove the Executive Director from office gives the Minister an inherent power to suspend and institute disciplinary proceedings.

12.2 Second, the Minister also claims that he has the power to suspend the Executive Director under the Public Service Act of 1994 and chapter 7 of the Senior Management Handbook.

12.3 Third, the Minister invokes the common law, suggesting that the *"common law right of employer to suspend me is equally enforceable in this regard"*.

- 13 The Minister's reliance on the common law of master and servant is further evidence of his disregard for IPID's constitutionally guaranteed independence. The Executive Director of IPID is not a servant of the Minister, at his beck and call, who can be suspended at his discretion.

- 14 Furthermore, as explained in the founding affidavit, the statutory provisions that the Minister relies on are unconstitutional and invalid to the extent that they authorise the Minister to unilaterally suspend or remove the Executive Director of IPID from office. Such powers are in conflict with the constitutional and statutory guarantees of IPID's independence.

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## THE ROLE OF IPID AND THE RESPONSIBILITIES OF THE EXECUTIVE DIRECTOR

- 15 IPID's independence – which requires that it is led by an independent Executive Director – is essential for IPID to pursue its mandate of investigating corruption and other abuses of power within the police service. This is clear from the mandate of IPID and the role of the Executive Director.
- 16 IPID was brought into being by the IPID Act of 2011 and has been operating since April 2012. IPID is the primary body responsible for investigating corruption and other abuses of power within the South African Police Service ("SAPS").
- 17 IPID was created to address the deficiencies of its predecessor, the Independent Complaints Directorate ("ICD"). The ICD was established in 1997, in terms of the now repealed chapter 10 of the South African Police Service Act 68 of 1995. The ICD was widely perceived as a toothless organisation that lacked the mandate, enforcement powers, and independence to tackle police corruption and other abuses of power. In a speech delivered at the second reading of the IPID Bill in September 2010, the then Minister of Police summed up the ICD's limitations and explained how IPID would be different:

*"In changing the focus and the name of the Independent Complaints Directorate (ICD) to the Independent Police Investigative Directorate (IPID), we are sending a clear message that the new body will focus on not just processing complaints but the emphasis is on developing strong investigative capacity. We also seek to investigate substantial systemic defects in policing and general corruption."*

MAP 7

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*Historically there have been several problems that have plagued the smooth operations of the ICD. While it had investigative powers on police, it still had to submit its recommendations to the National Commissioner of Police. The ICD has had no powers to ensure the implementation of its recommendations.*

*There have also been concerns raised in Parliament regarding the broad focus of the ICD's mandate and their inability to effectively implement this mandate. Equally, there have been concerns raised in relation to the ICD lack of powers when investigating cases. In the legislation determining the mandate of the of the new IPID the focus is squarely on what the most important issues are, that the IPID should deal with in order to make a real impact.<sup>3</sup>*

- 18 The IPID Act sought to address these shortcomings by giving IPID a clear mandate to investigate corruption and other offences, powers to compel police cooperation, and further guarantees of its independence.

- 19 In contrast with the ICD, which was only expressly required to investigate deaths in custody or at police hands,<sup>4</sup> the IPID Act sets out a detailed and far-reaching mandate. Section 28 of the Act provides:

*"(1) The Directorate must investigate-*

- (a) any deaths in police custody;*
- (b) deaths as a result of police actions;*
- (c) any complaint relating to the discharge of an official firearm by any police officer;*
- (d) rape by a police officer, whether the police officer is on or off duty;*

<sup>3</sup>The Hansard transcript of the Minister's speech is available at: <<https://pmg.org.za/hansard/18083/>>.

<sup>4</sup>

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- (e) *rape of any person while that person is in police custody;*
  - (f) *any complaint of torture or assault against a police officer in the execution of his or her duties;*
  - (g) *corruption matters within the police initiated by the Executive Director on his or her own, or after the receipt of a complaint from a member of the public, or referred to the Directorate by the Minister, an MEC or the Secretary, as the case may be; and*
  - (h) *any other matter referred to it as a result of a decision by the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case may be, in the prescribed manner.*
- (2) *The Directorate may investigate matters relating to systemic corruption involving the police.*

20 Section 28 gives the Executive Director the power to launch investigations into police corruption on his or her own initiative, even where no complaint has been received. IPID is also empowered to address systemic corruption involving the police, which involves the investigation of broader structures, networks, and practices that support corruption, rather than focusing solely on individual cases. This allows IPID to investigate and address the causes of police corruption, rather than merely dealing with its symptoms.

21 To carry out this mandate, the IPID Act compels members of the police to report incidents to IPID and to cooperate with investigations.<sup>5</sup> Section 33 of the Act bolsters these enforcement powers by making it a criminal offence for anyone to interfere with IPID investigations. This is in contrast with the old ICD, which had no powers to compel police reporting and cooperation.

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<sup>5</sup> IPID Act, ss 21(1)-(2).

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22 The IPID Act also contains express guarantees of IPID's independence, echoing section 206(6) of the Constitution. Section 4 of the Act provides:

*"Independence and impartiality*

- (1) The Directorate functions independently from the South African Police Service.*
- (2) Each organ of state must assist the Directorate to maintain its impartiality and to perform its functions effectively."*

23 The objects of the IPID Act, set out in section 2, further emphasise the importance of IPID's independence. The Act seeks—

- "(b) to ensure independent oversight of the South African Police Service and Municipal Police Services;*
- ...*
- (d) to provide for independent and impartial investigation of identified criminal offences allegedly committed by members of the South African Police Service and Municipal Police Services;*
- ...*
- (g) to enhance accountability and transparency by the South African Police Service and Municipal Police Services in accordance with the principles of the Constitution."*

24 The Executive Director of IPID, as the head of the institution, has a crucial role in ensuring IPID's independence and effectiveness. Section 7 of the IPID Act lists the extensive responsibilities of the Executive Director, providing, in relevant part, as follows:

- "(1) The Executive Director is the accounting officer of the Directorate . . .*
- (2) The Executive Director is responsible for the appointment of the provincial heads of each province as contemplated in section 22(1).*
- (3) (a) The Executive Director must appoint such staff as may be necessary to enable the Directorate to perform its functions in terms of this Act.*
- (b) The staff component must be established in accordance with the Public Service Act.*
- (c) The conditions of service, including remuneration and allowances of such staff, are regulated in terms of the Public Service Act.*

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- (d) *The Executive Director must direct that a register of declaration of interest by managers and investigators be kept in the prescribed form and manner.*
- (e) *The Executive Director must give guidelines with regard to-*
- (i) *the investigation and management of cases by officials within the respective provincial offices;*
  - (ii) *administration of the national and provincial offices; and*
  - (iii) *training of staff at national and provincial level.*
- (4) *The Executive Director must refer criminal offences revealed as a result of an investigation, to the National Prosecuting Authority for criminal prosecution and notify the Minister of such referral.*
- (5) *The National Prosecuting Authority must notify the Executive Director of its intention to prosecute, whereafter the Executive Director must notify the Minister thereof and provide a copy thereof to the Secretary.*
- (6) *The Executive Director must ensure that complaints regarding disciplinary matters are referred to the National Commissioner and where appropriate, the relevant Provincial Commissioner.*
- (7) *Once a month the Executive Director must submit to the Minister a summary of the disciplinary matters and provide a copy thereof to the Secretary.*
- (8) *All recommendations which are not of a criminal or disciplinary nature must be referred to the Minister and provide a copy thereof to the Secretary.*
- (9) *The Executive Director may upon receipt of a complaint, cause to investigate any offence allegedly committed by any member of the South African Police Service or Municipal Police Services, and may, where appropriate, refer such investigation to the National or Provincial Commissioner concerned.*
- (10) *The Executive Director must refer criminal matters which fall outside the scope of the Directorate, to the appropriate authority for further investigation in terms of applicable legislation.*
- (11) *The Executive Director must provide strategic leadership to the Directorate.*
- (12) *The Executive Director must at any time when requested to do so by the Minister or Parliament, report on the activities of the Directorate to the Minister or Parliament."*



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25 As is clear from these responsibilities, IPID's independence depends on the Executive Director being sufficiently insulated from undue political interference:

25.1 The Executive Director provides "strategic leadership" to IPID and is also its accounting officer, giving the Executive Director powers to determine IPID's priorities and how its resources will be allocated in pursuit of its aims. Without sufficient insulation from political interference, the Executive Director may be pressured into channelling IPID's efforts and resources away from areas that may harm the interests of powerful, politically connected members of the police.

25.2 The Executive Director is responsible for staffing IPID, including appointing the provincial directors. There is the risk that if the Executive Director is subject to undue political interference, all staffing decisions could be tainted. IPID's ability to attract and retain independent-minded investigators would also be compromised if it is perceived that the Executive Director lacks sufficient independence from political control.

25.3 The Executive Director assumes a primary role in managing investigations. As is apparent from section 28(1)(g) and (h), cited above, the Executive Director may initiate investigations into corruption or any other matter. Where a complaint has been received, the Executive Director, or the relevant provincial head, decides on which investigators to assign to the case. The Executive Director is also responsible for setting guidelines for investigations and case management. As a consequence, the absence of sufficient protection from improper political interference could significantly undermine investigations.



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25.4 The Executive Director is also responsible for ensuring that further action is taken where investigations reveal evidence of wrongdoing. Where an investigation reveals evidence of criminal conduct, the Executive Director must refer this to the National Director of Public Prosecutions. Similarly, evidence of disciplinary infractions must be referred to the National Police Commissioner or the relevant Provincial Commissioner for further action. Without adequate guarantees of independence, there is the risk that the Executive Director may be pressured into delaying or obstructing these referrals.

26 The Minister's power to unilaterally suspend or remove the Executive Director poses substantial risks to the independence of IPID and its ability to investigate corruption and other abuses of power within the police service. An Executive Director who constantly fears for his or her job will be less inclined to carry out these responsibilities where this threatens to embarrass or expose the Minister or other high-ranking politicians. Furthermore, the absence of security of tenure undermines public faith in IPID, as a reasonable person would have grounds to believe that IPID lacks the independence to pursue its mandate vigorously.

#### THE WERKSMANS' INVESTIGATION

27 The Minister's suspension letter makes it clear that the primary basis of his decision is the allegation that I will interfere with the Werksmans' investigation which he has commissioned. I will now address this allegation squarely.

