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28 On 23 February 2015, the Minister requested Werksmans Attorneys to conduct an investigation into the unlawful rendition of Zimbabwean nationals and to review why IPID's final Investigation Report on this matter reached a different conclusion to the preliminary version of this report.⁶

29 I expressed my opposition to the Werksmans investigation as it poses a threat to IPID's constitutionally guaranteed independence. An investigation conducted by private attorneys, at the direction of the Minister, with no parliamentary oversight, which is designed to repeat IPID's investigative work is a severe encroachment on IPID's independence.

30 My opposition to this investigation does not reflect any lack of confidence in IPID's findings in the final Investigation Report or a desire to conceal evidence. Far from it, I have made every effort to engage the Minister and Parliament to explain why the final report reached different conclusions to the preliminary report.

30.1 On 26 November 2014, I wrote to the Minister offering to brief him on IPID's investigation and the final report.⁷ The Minister did not take me up on this invitation, nor has he ever requested me to provide an explanation for the differences between the final and preliminary reports.

30.2 As is clear in my letter to the Portfolio Committee on Police on 27 February 2015, I also made proactive efforts to seek parliamentary scrutiny of the preliminary and final Investigation Reports once it became

⁶ The terms of reference for this investigation can be found at FA, Annexure RM 9; Record, pp 363-366.

⁷ FA, paras 53.3-53.6; Record, p 27; FA, Annexure RM 13; Record p 391-393.

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clear that the preliminary report had been leaked.⁸ I requested an opportunity to appear before the Portfolio Committee to account for the different findings in the preliminary and final Reports. This letter stated:

"[A]s the Executive Director of the IPID, I am firmly of the view that it is in the interests of Justice and in the Public Interest that the IPID account on the conflicting reports.

*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."*⁹

The Portfolio Committee rejected my request.¹⁰

31 I maintain that reporting to the Minister and the Portfolio Committee is the most appropriate means of ensuring IPID's accountability and transparency while safeguarding its independence. Indeed, this is the accountability mechanism that is expressly provided for in section 7(12) of the IPID Act. By contrast, an open-ended investigation conducted by private attorneys acting at the behest of the Minister, is a serious threat to IPID's independence and integrity.

32 Out of concern for IPID's independence, I sought independent legal advice on the legality of the Werksmans' investigation. Pending this advice, I decided that it would not be appropriate for Mr Khuba and other IPID employees to be interrogated by the attorneys from Werksmans. This is reflected in the letter sent by IPID's attorneys to Werksmans on 6 March 2015, confirming that "in the interim, Mr Khuba has not been granted permission to consult with you" (emphasis added). I attach a copy of this email as Annexure RM 3.

⁸ FA, Annexure RM 15A; Record p 396-397.

⁹ Id at p 397.

¹⁰ FA, Annexure RM 15B; Record 398-399.

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33 The Minister has attempted to portray my concerns over the legality of the Werksmans' investigation as evidence that I will interfere with the investigation, deter potential witnesses, and tamper with evidence. Not only are these allegations baseless, but they are also deeply troubling. The implication is that if the head of an independent institution expresses any concern over potential violations of its independence, then this is somehow an indication of underhanded motives and an intention to act improperly.

34 Since it has become clear that the Werksmans' investigation will proceed regardless of IPID's concerns, I took the decision that IPID will cooperate with the investigators, albeit under protest. On 23 March 2015, I directed IPID's attorneys, Adams & Adams, to write to Werksmans Attorneys, expressing this intention to cooperate and to make arrangements for interviews with the investigators. This letter states:

"Our instructions are to facilitate IPID's cooperation with your inquiry, as referred to in your letter under reply, including in respect of interviews with Mr McBride, Mr Sesoko, and others.

...

Our client is confident that your inquiry will not lead to any adverse findings against our client, in relation to the allegations contained in your Terms of Reference (or at all). We confirm that our client's cooperation with your investigation is without prejudice to its rights in relation to the unlawfulness of the Minister's powers referred to above and the pending litigation."

35 I attach a copy of this letter as annexure RM 4.. The letter was delivered to Werksmans Attorneys on 23 March 2015 via email and was responded to on 25 March 2015. I attach a copy of this email as annexure RM 5

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36 This undertaking, as well as my efforts to engage with the Minister and Parliament on the contents of the IPID Investigation Report, shows that there is simply no basis for the Minister's claim that I have something to hide and will interfere with the investigation or otherwise act improperly.

37 The Minister's decision to suspend me is accordingly irrational and unreasonable, and must be reviewed and set aside. It is also unlawful and unconstitutional for violating s 206(6) of the Constitution, and in that it has been taken for an ulterior purpose or improper motive. These grounds of review are addressed in the founding affidavit and do not require any further supplementation.

THE IMPACT OF MY SUSPENSION ON THE INDEPENDENT AND EFFECTIVE FUNCTIONING OF IPID

38 The harm caused to the independence of IPID (actual and perceived) by the threatened suspension of its Executive Director, for no legitimate reason and without any lawful basis, and which I detailed in the founding affidavit is even more damaging now that the suspension has been effected.

39 I wish to emphasise that, in addition to damaging its independence, the effective functioning of IPID is also jeopardised by my suspension. This, in turn, further undermines public confidence in the Directorate.

40 IPID is currently pursuing a number of sensitive investigations involving high-ranking members of the police who are suspected of abusing their positions to



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protect certain criminal syndicates. The investigations reveal a concerted effort by criminal syndicates to infiltrate, compromise and weaken the SAPS. Senior police management are complicit in some of the nefarious activities or either turn a blind eye to them. I cannot disclose the details of these investigations at this critical stage in their progress,¹¹ but the Minister is fully aware of these investigations as I have provided him with regular reports.

41 As the Executive Director of IPID, I played a central role in overseeing and coordinating these investigations, and my suspension will cause significant disruption at a critical stage of the investigations. In particular, my suspension undermines the vital working relationships that IPID has developed *inter alia* with the Secretary for the Police, the Directorate for Priority Crime Investigation ("DPCI", also known as "the Hawks") and the NPA, which are essential to the successful conclusion of these (and other) investigations. My suspension has created general uncertainty amongst IPID's staff leading to instability and erosion of morale within the Directorate.

42 Together with IPID, the Hawks and the NPA work to hold the police accountable for corruption and other abuses of power. As Executive Director, I have played a key role in promoting and ensuring the cooperation and support of these organisations. I did so by building trust with the heads of these organisations, and by developing effective strategies of collaboration. I have

¹¹ Section 33(2) of the IPID Act makes it a criminal offence for any member of the Directorate to disclose such information:

"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."

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worked hard to build effective working relationships in my time as Executive Director, and I fear that these relationships will be irreparably harmed by my suspension and possible removal from office. Without such relationships, however, the effective conduct of investigations and their successful prosecution is practically impossible.

43 My suspension also affects the other members of IPID and their ability to act independently, particularly in that:

43.1 It sends a strong message to IPID's investigators that any investigations which cause embarrassment to the Minister or other high-ranking officials will be punished by the Minister;

43.2 It indicates that any objection to Ministerial incursions into the independence of IPID, such as my stated opposition to the Werksmans investigation, will be portrayed as misconduct and used as a pretext for suspension and possible dismissal; and

43.3 Public trust in the independence of IPID has been fundamentally undermined. A reasonable member of the public, aware of the Minister's campaign to remove Dramat and Sibiya, would perceive the Minister's decision to suspend me as retribution for the political embarrassment and impediment that IPID's final Investigation Report has caused him. Public trust in the independence of IPID is essential for IPID to function effectively: If the public does not trust that IPID can carry out its mandate without threats to its independence, they will not be inclined to report corruption and other abuses that implicate high-ranking, politically

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connected members of the police. Public trust, and the perception of independence, is thus an intrinsic part of the actual independence of IPID.

THE RELIEF SOUGHT

44 As indicated, the relief sought in the review application (Part B of the original notice of motion) has been amended to challenge the suspension decision.

44.1 Paragraph 1 of the amended Notice of Motion seeks an order declaring invalid and setting aside the Minister's decision to suspend me.

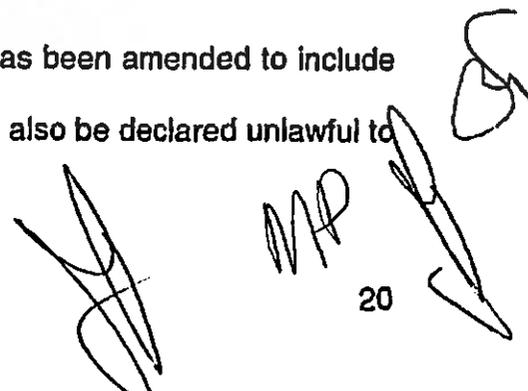
44.2 In paragraph 2, I persist in seeking a (slightly varied) declaratory order that the following provisions are unconstitutional and unlawful to the extent that they purport to authorise the Minister of Police to suspend, take any disciplinary steps pursuant to suspension, or remove from office the Executive Director of IPID:

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

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

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

45 In addition to the above provisions, paragraph 2 has been amended to include a prayer that section 6(3)(a) of the IPID Act should also be declared unlawful to



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the extent that it purports to authorise the Minister to unilaterally suspend the Executive Director. Section 6(3)(a) of the IPID Act provides that:

"(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".

46 I recognise that it may be appropriate to suspend the declaration of invalidity sought in prayer 2 for a certain period to allow Parliament to correct the defects in the IPID Act.

47 However, in that event, an interim remedy will be needed to secure the independence and proper functioning of IPID while Parliament deliberates on the appropriate amendments. A possible appropriate interim remedy is set out in the Notice of Motion.

47.1 The interim remedy proposed is that, during the suspension of the order of invalidity, section 6(6) of the IPID Act be read as though it provides:
"Sub-sections 17DA(3) - (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".

47.2 In this regard, sub-sections 17DA(3) - (5) provide for the removal of the National Head of the DPCI in two ways: (a) by a committee of the National Assembly on a finding of incompetence, incapacity, or

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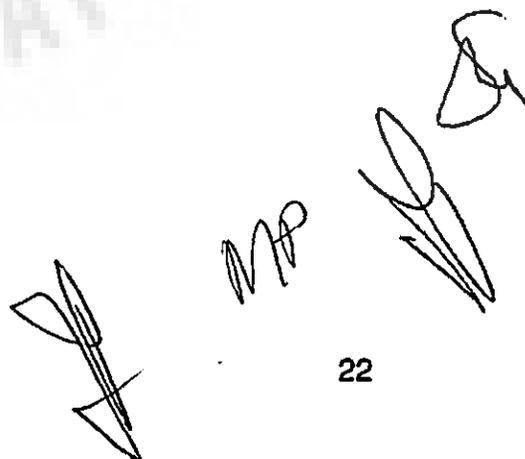
misconduct; or b) by a resolution of the National Assembly with the support of a two-thirds majority. Sub-section 17DA(5)(a) provides that the Minister may only suspend the Head of the DPCI after the start of removal proceedings initiated in a committee of the National Assembly. Finally, sub-sections 17DA(6) - (7) allow for the removal of the Head of the DPCI at his or her request.

48 While full argument will be advanced on the appropriateness of this interim remedy, I emphasise that:

48.1 The Executive Director of IPID fulfils a similar function to the National Head of the DPCI and a similar degree of independence is required for both officials to carry out their corruption-fighting mandate without fear of undue political interference.

48.2 This reading-in would not be a significant encroachment on Parliament's authority. On the contrary, it makes use of Parliament's chosen method of removal and suspension for the head of an independent corruption-fighting body of a similar status to IPID. These provisions were further endorsed by the Constitutional Court in *Helen Suzman Foundation*. In any event, this interim remedy leaves it open to Parliament to adopt a different method, provided that it guarantees a similar level of structural and operational independence.

EXPEDITED HEARING OF PART B



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49 There is a clear need for an expedited hearing of Part B of this application.

This is so in view of:

49.1 The decision of the Minister to suspend me;

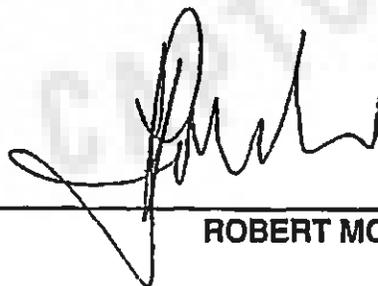
49.2 The ongoing harm that my suspension is causing to the independence and perceived independence of IPID; and

49.3 The need for Parliament, the Minister, IPID, myself and the public to all obtain urgent clarity on the important constitutional issues raised.

50 In the circumstances, the amended Notice of Motion calls on the respondents to file answering affidavits, if any, by Monday 20 April 2015 and for me to file replying affidavits by Tuesday 28 April 2015. My attorneys will ask the respondents' attorneys to agree to approach the Deputy Judge President to seek an expedited hearing in this regard.

CONCLUSION

51 I pray for the relief sought in the amended Notice of Motion accompanying this affidavit.

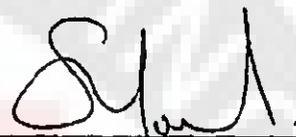


ROBERT MCBRIDE



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The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at PRETORIA on 2nd APRIL 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:

SHABNAM HASSIM
SAIT Ex officio - TT (SA)
Commissioner of Oaths

Business address:

1 Dreyer Street, Cape and Manor

Designation:

Capacity:



"RM 1" 461

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

Case Number: 6588/2015

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES (NO)

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED.

18/3/15 *[Signature]*

DATE SIGNATURE

In the matter between:

THE INDEPENDENT POLICE
INVESTIGATIVE DIRECTORATE
ROBERT MCBRIDE

FIRST APPLICANT
SECOND APPLICANT

And

MINISTER OF POLICE
MINISTER FOR PUBLIC SERVICE
AND ADMINISTRATION

FIRST RESPONDENT
SECOND RESPONDENT

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JUDGMENT

Fabricius J,

1.

The Applicants herein launched an application in the Urgent Court on 13 March 2015 in which they, as per part A thereof, sought an order which would interdict and restrain First Respondent from suspending the Second Applicant from his position as the Executive Director of the Independent Police Investigative Directorate. Costs of two Counsel were also sought. The Respondents were given one day to file an Answering Affidavit and the First Respondent did indeed so, but without dealing with the merits of the factual allegations made in the Founding Affidavit, together with its annexures, which almost comprise of 400 pages. The Interim Interdict was sought pending the final determination of part B of the application in which the following relief would be sought:

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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;

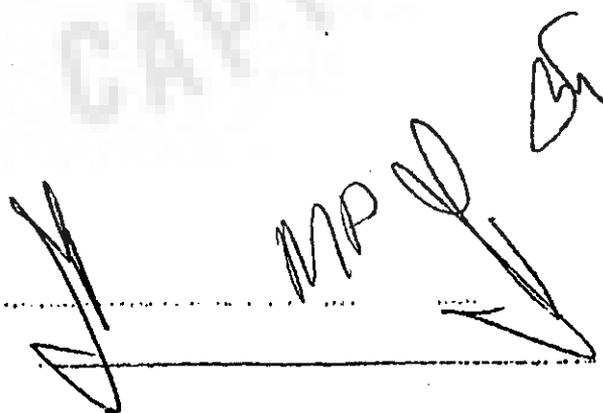
2.1 Section 6(6) of the Independent Police Investigative Directorate Act No 1 of 2011;

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.



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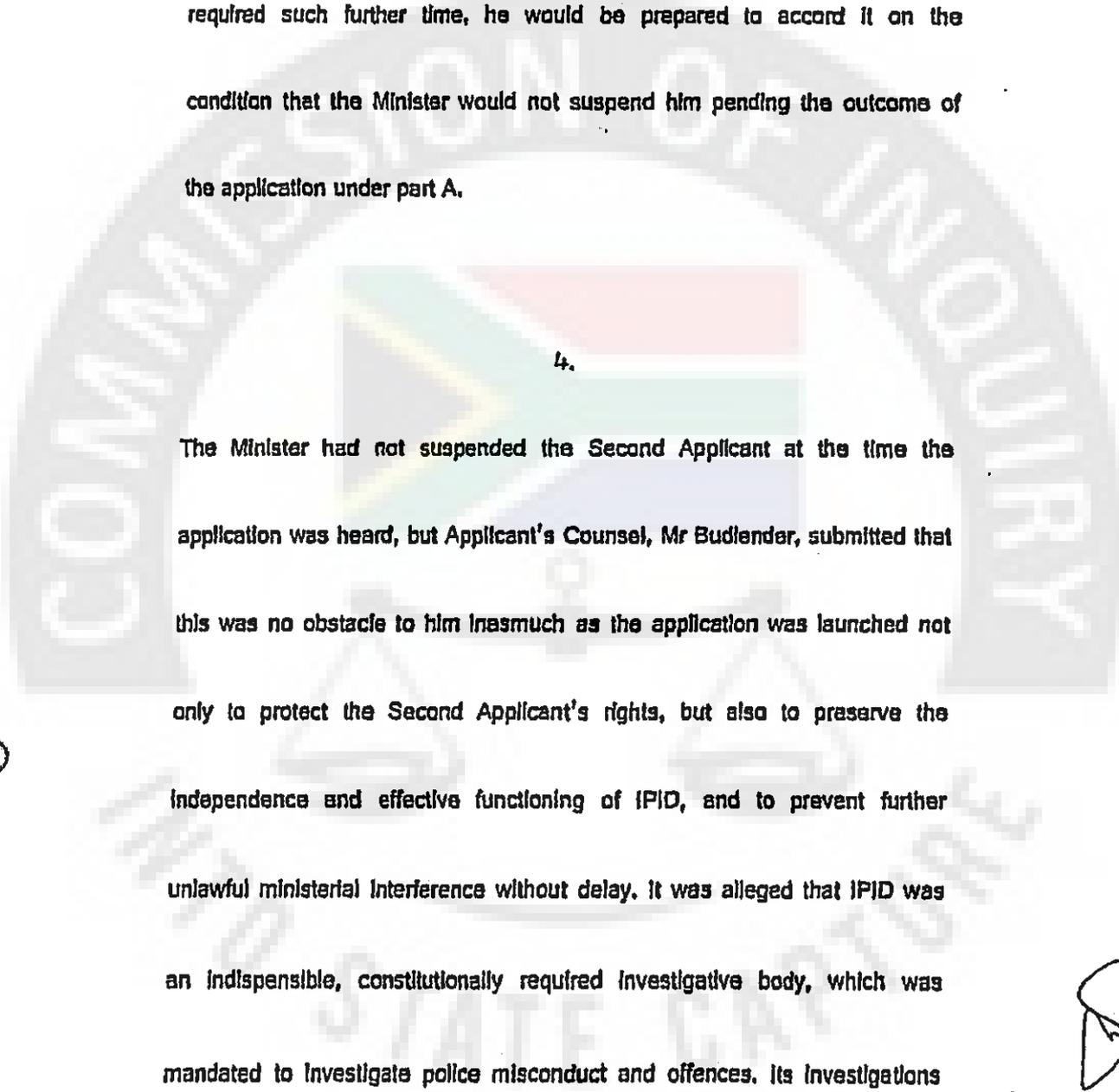
In the Founding Affidavit Second Applicant said that he appreciated that the Respondents would have very little time to answer this application but, if they required such further time, he would be prepared to accord it on the condition that the Minister would not suspend him pending the outcome of the 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

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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



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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

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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.

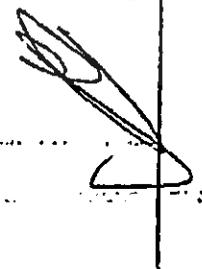
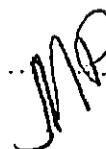
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6.

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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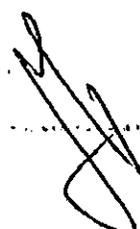
been in operation for a number of years, and that the Applicant could not say that he wished to remain immune from any steps pertaining to allegations of misconduct against him whilst he intended challenging the constitutionality of legislation which did confer powers of him to play the particular oversight 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

Airroad 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*

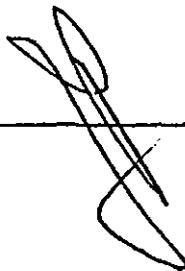
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SA 262 (SCA) at 269 par. 16. I do however not need to decide this debate in the present instance, because it is well established that the lawfulness of public power is subject to scrutiny by the Courts. See: *National Treasury infra at par. 44*, and *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 (8) SA 223 CC*, Moseneke DCJ again repeated them, and emphasized that under the test of *Setlogelo vs Setlogelo 1914 AD 221* as later refined in *Webster vs Mitchell 1948 (1) SA 1188 (WLD)*, a particular claimant must establish not merely that he has a right to approach a Court in order to review a decision (administrative decision), but it must be a right to which, if not protected by an interdict, irreparable harm would ensue. Quite apart from the right to review and to set aside impugned decisions, an Applicant would have to demonstrate a *prima*



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facie right that is threatened by impending or imminent irreparable harm. A right to review an impugned decision does not require any preservation *pendente lite* because obviously it does exist.

10:

In the context of a Minister exercising powers invested in him by a statute it was said in *Gool vs Minister of Justice and Another 1955 (2) SA 682 CPD* that in the absence of allegations of *mala fides*, a Court would not readily grant such an interdict. A Court would only grant such an interdict in exceptional circumstances and when a strong case has been made out for relief. This is not surprising. Subject to the principle of legality and the separation of powers between the executive, the legislative and the judiciary, a Court must ask itself not whether an interim interdict against an authorized State functionary is competent, but rather whether it is constitutionally appropriate to grant the interdict. See: *National Treasury supra* at *par. 66*.

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11.

In the context of the question of the balance of convenience; Mr Budlender submitted that the stronger the prospects of success were, the less the balance of convenience arose. I accept that, but I must also consider to which extent an order at this stage would disrupt legislative functions authorized by law. It is clear that while a Court has power in this context, it would not readily exercise it except when a proper and strong case has been made out for the relief and then only in the clearest of cases. This was also emphasized in the *National Treasury* decision *supra par. 66*. I may just add that I am also aware that the *National Treasury* case is distinguishable from the present facts as a policy decision of the Government is not attacked, but nevertheless the Court's *dicta* relating to the requirements for urgent interdicts are of general application. What is important in the present instance is that if the order were to be granted now, pending a likely very lengthy process under part 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 2008 (6) SA 416 CC at

par. 69.

13.

The Second Applicant has not yet been suspended. He has made representations which the Minister will consider. What the outcome will be, I do not know. An interdict cannot be aimed at the past. Ordinarily that would be the end of the matter, except insofar as the Second Applicant alleges that the public at large is also affected by the decision because of the important oversight role that the First Applicant plays. What will happen if he is suspended, in the context of his temporary successor, I also would not know and cannot speculate. I cannot simply accept as a given that such person would be open to unlawful manipulation or that the public would perceive this to be so. Fortunately vigorous debates are held in the press about such appointments and the background of such persons. The fact of the matter is of course that the Applicants do have the right to approach the Court for the relief in part B. That right has not been taken away from them and cannot be taken away from them. It also requires no interdict in the interim. I am not satisfied that the

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Applicants have shown that they will suffer irreparable harm in the meantime. If actual harm does arise on some or other ground, whilst an application for the main relief is pending, nothing would stop them from approaching Court for appropriate relief.

Mr Budlender has accepted that this is not an ordinary case, and that he would have to show more than a *prima facie* right, and indeed would have to make out a very strong case, on analogy of the *dicta* that I have referred to in the *National Treasury* decision *supra*. In that context he submitted that the whole process was presently unconstitutional and caused harm not only to the Second Applicant but to the general public at large. The Second Applicant was not an ordinary employee, and if the Minister was under the apprehension that he could continue to act without lawful statutory authority, the harm would be on-going. On that basis he was entitled to urgent relief and the Applicants had a right which needed to be protected now. I do not agree for the reasons stated. The Applicants can exercise all the rights that they rely on in the future in due course. They do not require an urgent Interdict now to



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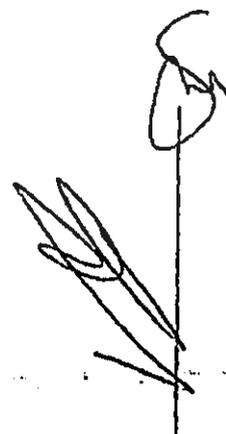
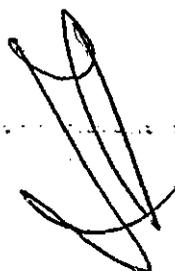
safeguard such rights. I am aware of the fact that a Court has a power to grant this relief but that is not the issue in my view at all.

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.

20 - 22

H.J. Fabricius

JUDGE H.J FABRICIUS
JUDGE OF THE GAUTENG HIGH COURT, PRETORIA

MP

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486

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

[Handwritten signatures and initials]



MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA

Private Bag X483 PRETORIA 0001, Tel. (012) 383 2800, Fax (012) 383 2619/20 • Private Bag X0080 CAPE TOWN 8000, Tel (021)-187 7021, Fax (021) 487 7033

Mr Robert McBride
Executive Director
Independent Police Investigative Directorate
Pretoria

24 March 2015

Dear Mr McBride

RE: Your Precautionary suspension with full pay and benefits

I refer to the notice of intention to place you on precautionary suspension, dated 11 March 2015, as well as the allegations contained in the said notice which must be read as if incorporated in this letter. In the said notice I requested you to make written representations to me by no later than close of business on Thursday, 12 March 2015 as to why I should not place you on precautionary suspension on the basis of the allegations set out in the said notice.

Your written representations, accompanied by a supporting affidavit or a sworn statement were received by my office on Thursday, 12 March 2015. I would like to thank you for having positively responded to my request to make written representations, which has assisted in making my decision. I have considered your representations and sworn statement.

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I have also taken into account that you have admitted that you refused Mr. Innocent Khuba permission to cooperate with the investigation, commissioned by myself, as the Minister of Police, currently conducted by Werksmans Attorneys.

Furthermore, you have also admitted to have removed a device from the safe in Major-General Sibiya's office whilst he was on suspension. I have taken into account your reasons for having acted in the matter aforesaid and I am not persuaded by those reasons.

Prima facie, your actions were intended to interfere with the ongoing investigation into the existence of two IPID investigation reports and any possible acts of defeating the ends of justice. These matters require to be investigated in an environment which is free from interference, intimidation and possible interference with investigations and possible witnesses.

The matters that are being investigated are of a very serious nature and directly implicate you as the most senior official within the IPID. It is important that when these matters are being investigated, and in order to preserve the independence, integrity and good name of the IPID, given the important constitutional and statutory function it performs in our constitutional state, you are placed on precautionary suspension.

As you are aware that I have the power in terms of section 8(6)(a) of the Independent Police Investigative Directorate Act 1 of 2011 to remove the Executive Director from office on account of misconduct. Inherent in the power aforesaid, is the power to suspend and institute disciplinary proceedings when allegations of misconduct are levelled against the Executive Director.

The Public Service Act, 1994, and chapter 7 of the Senior Management Handbook are equally applicable to you in relation to a decision to place you on precautionary suspension and same have been accordingly invoked by me. Besides, the common law right of employer to suspend is equally enforceable in this regard.

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489

I have reason to believe that if you are not placed on precautionary suspension, you are likely to interfere with the investigation, as you have prima facie already shown to have done, and there is a potential to deter potential witnesses from cooperating with the investigation as you have prima facie shown to have done, including the possibility of tampering with the evidentiary material. Your suspension is precautionary in nature and it is for a period of 60 calendar days pending the investigation and possible disciplinary proceedings.

I therefore place you on precautionary suspension with immediate effect, on full pay and benefits for a period of 60 calendar days pending the investigation and possible disciplinary enquiry.

You are entitled to take with you your personal belongings except items, equipment or goods which belong to IPID, utilised specifically for the performance of your day to day duties.

Yours faithfully,


NP Mhleko

Minister of Police

Date: 24/03/2015



"RM 3"

490

PATENT, TRADEMARK, COPYRIGHT, COMMERCIAL,
PROPERTY & LITIGATION ATTORNEYS

Adams & Adams

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Our Reference: JSM/vc/LT2141
Your Reference: Mr S July/kb/MINI29568.1
/#3524136v1
Date: 6 March 2015

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WERKSMANS ATTORNEYS
Johannesburg

Dear Sirs

IN RE: MINISTER OF POLICE / INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

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

Yours faithfully
ADAMS & ADAMS

J S MARAIS
Checked and signed by author and sent electronically

Pretoria, Johannesburg, Cape Town, Durban, Mozambique (ARIP), Angola, Tanzania, Burundi, Cameroon (GAP), Botswana, Lesotho, Namibia, Swaziland, Kenya, Ghana & Nigeria
 Partners Gavin Kotze Howard Rogers Daria Tattler Johan du Preez Colin Mackenzie Nels Hickman Marita du Preeze Samantha Copling Gérard du Preez Phil Pla
 Louis van der Walt Charité le Roux Russell Bagnall Simon Brown Suzanne Leung Gregor Walter Joseph Goetzke Brian de Vries André Visser Nolwazi Gcube Eugene Honey
 Darren Dillier David Schapers Megan Masoro Mervin Gertler Kelly Thompson Nolo Khachane Jenika Geyerd Nani Chetty Lucy Sigmond Steven Yeates Johnny Flandrau
 Leander Opperman Jenny Plester Darin Dohmen Alex Apostolides Biko Rasool Vanisha Mogenhai-Moosce Debbie Marriot Michael Owale Lauren Ross Dale Healy
 Mandy Gordon Rosalyn Gray Nicolaas Koch James Davies Nicky Garnett Vishen Pooj Godfrey Budal Joe Maritz Nthabizeng Phaswana Olathe Wehagen Ferdi Myburg
 Sonnyia Khan Ganie Strachan Nabeen Singh Warren Griffiths Rajesh Ganeshtaran Pieter Visagie Justica Amelton Jani Cronje Willem Prossack Nicciela Egger Jean-Paul Rood
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 Wynand Fourie Vuyokazi Ndumbe Jan-Harm Swanevool Sunya Venkatesh Dalalo Luhindi Dianne Mubika Wendy Britz Khe Rampharath Letzi Mostert Thumany Gwendol
 Zuhair Chirif Uta-Miri Demata Kerry Wiers Nicole Haworth Catherine Wojtowicz Richard Wiers Aghin Penamal Karisma Shaik Shal Gounder Alesia Nayindah Jan Larmonth
 Assisted by Jevonne Le Roux Farzana Rasool Melissa Dryer Karan Lam Zandiswa Sokhela Teyyba Nafe Lisa Mauer Farzahan Marjoo Thando Marantze Gabi Makhis
 Nazli Parker Navazani Pflay John Ndlovu Jeanette Visagie Dairde Daniel-Naudé Franciska Landman Megan Dennis Golan Griffo Masha Post Khanyisa Mnyale Otho Modibedi
 Helgard James Van Rensburg David Gama Luzzan Dudley Sheni Van Der Bergh Chandre Du Toit Fuhrhard Barmann
 Chief Operating Officer Dave Forbes

Level 3 BBBEE Contributor rating

Handwritten signatures and initials, including a large signature on the left and initials 'MP' on the right.

"RM 4"

491

Varana Chutterpaul

From: Jac Marais
 Sent: 23 March 2015 04:47 PM
 To: 'sjuly@werksmans.com'
 Cc: Jac Marais; Michael Gwala; Jameel Hamid; Varana Chutterpaul; Ansuya Buccas
 Subject: IN RE: INVESTIGATION BY THE MINISTER OF POLICE ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT: MAJOR GENERAL SHADRACK SIBIYA; AND OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES INVESTIGATION ("DPCI") IN THE ILLEGAL RENDITION OF ZIMBABWEAN

Attachments: Email to Werksmans Attorneys 23 03 2015.PDF

WERKSMANS ATTORNEYS
 Johannesburg

ATTENTION: Mr S July

Dear Mr July

IN RE: INVESTIGATION BY THE MINISTER OF POLICE ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT: MAJOR GENERAL SHADRACK SIBIYA; AND OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES INVESTIGATION ("DPCI") IN THE ILLEGAL RENDITION OF ZIMBABWEAN NATIONALS IN 2010

Please see attached correspondence for your kind attention.

Yours faithfully,

Jac Marais
 Partner

PHONE +27 12 432 6356

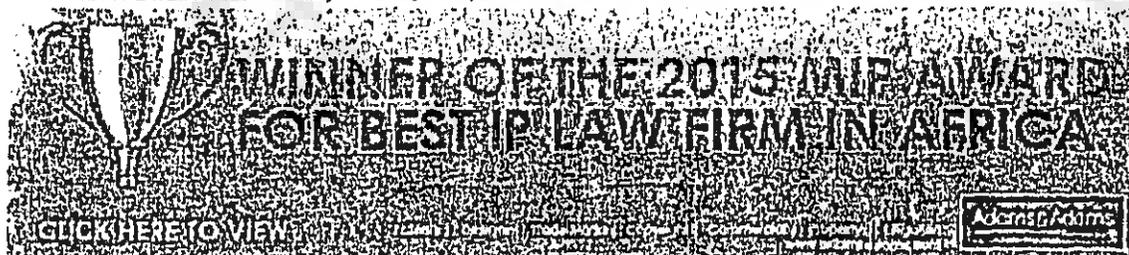
FAX +27 12 432 6550

EMAIL jac.marais@adamsadams.com

WEBSITE www.adamsadams.co.za

PHYSICAL ADDRESS Lynnwood Bridge, 4 Daventry Street, Lynnwood Manor, Pretoria, South Africa

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Adams & Adams

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Our Reference: JSM/vc/LT2141
Your Reference: Mr July/MIN129566.1
Date: 23 March 2015

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WERKSMANS ATTORNEYS
Johannesburg

URGENT

ATTENTION: Mr S July

Dear Mr July

IN RE: INVESTIGATION BY THE MINISTER OF POLICE ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT; MAJOR GENERAL SHADRACK SIBIYA; AND OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES INVESTIGATION ("DPCI") IN THE ILLEGAL RENDITION OF ZIMBABWEAN NATIONALS IN 2010

1. As previously indicated, we represent the Independent Police Investigative Directorate ("IPID"). Your correspondence below addressed to Mr. M. Sesoko has been referred to us for consideration and reply.
2. Our instructions are to facilitate IPID's cooperation with your inquiry, as referred to in your letter under reply, including in respect of interviews with Mr. McBride, Mr. Sesoko and others. We request that you address all further correspondence to us.
3. With regard to the aforesaid we draw your attention to the judgement per Fabricius J in the matter of *Independent Police Investigative Directorate and Robert McBride v Minister of Police and Minister of Public Service and Administration* under case number 6588/2015

Pretoria, Johannesburg, Cape Town, Durban, Mozambique (ARPCO), Angola, Tanzania, Burundi, Cameroon (CAMP), Botswana, Lesotho, Namibia, Swaziland, Kenya, Ghana & Nigeria
 Perrone Gavin Kotze Howard Rogers Darla Terzani John du Preez Colin Mackenzie Neils Hickman Mariette du Plessis Samantha Copeling Gérard du Plessis Pié Pit
 Louis van der Walt Chanté le Roux Russell Sagnall Simon Brown Suzanne Laing Gregor Wolke Joseph Goshals Beth de Villiers André Visser Norwood Ouba Eugene Honey
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 Leander Opperman Jenny P'enseur Denise Dohman Alexia Apostolida Biki Rasool Marlene Magerdhal-Mooloo Debbie Marriot Michael Owele Luzan Ross Dale Healy
 Mandy Gordon Roelof Grové Nicolette Koch James Davies Nicky Garnett Vahan Piley Godfrey Duzel Jac Maree Ntshahang Phaswana Dieter Wallhagen Ferdi Myburg
 Spreyysa Khan Denise Strachan Mahan Singh Weira Gröbner Sakjha Ganiadlen Pieter Visagie Jessica Anselon Jari Cronje Willem Potzky Noolotte Bigger Jean-Paul Ruid
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 Amina Sultan Andrew Philips Nicole Smalberger Renée Nensber Tiffany Conley Cheryl Mprah Nondumiso Mdmang Paul Muncat Laurike van Deventer Jean-Louis La Grange
 Wynand Fourie Vuyisizwe Ndameo Jan-Harm Swaneport Sunaya Veerasamy Debale Luhiriri Dione Mubika Wenzel Britz Kim Kemperzacht Lizzi Mostert Thermany Gouwer
 Zinaid Oliver Lisa-Milli Oemate Kerry Wiers Nicole Haworth Catherine Wojtowicz Richard Wiers Ashli Perumal Kareem Shaik Elnal Gouwerd Albee Nyanah Jan Laarmann
 Jevonne La Roux Farzana Rasool Melissa Dreyer Karen Lutz Zamokuhle Bothela Teyyiba Nette Lisa Nunes Farzanah Marjoo Thando Mshenba Gabi Makula Nezi Parker
 Nevaehni Piley John Ndlovu Jeanette Vaele Ceidre Daniel-Haudé Françoise Landman Megan Dinnie Gillian Griffiths Maha Post Khanyale Khanyale Ched Modibedi
 Helgard Janse Van Rensburg David Gama Luzan Dudley Shan Van Derburgh Chandra Du Toit Rebhardt Blemans Lize-Mari Van Dyk Neels Christy

Chief Operating Officer Dave Forbes Level 3 BSEEE Contributor rating

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Page 2

where it was held by the Honourable Judge that *"I do believe that part B is arguable, and it does have reasonable prospects of success"* (paragraph 15). Our client's view in respect of the Minister's powers as presently formulated in the IPID Act is fortified by the views expressed by the Honourable Fabricius J. Our client has accordingly requested the Minister to agree to expedited time periods for the hearing of Part B of the aforesaid application. We await to hear from the Minister in this regard.

4. Our client is confident that your inquiry will not lead to any adverse findings against our client, in relation to the allegations contained in your Terms of Reference (or at all). We confirm that our client's cooperation with your investigation is without prejudice to its rights in relation to the unlawfulness of the Minister's powers referred to above and the pending litigation.
5. We will consult with our client's Mr. Sesoko as soon as possible whereafter we will revert regarding suitable dates and times for an interview. To assist you with planning we confirm that our client's Mr. M. Sesoko has indicated he will probably be out of town tomorrow. We are, however, appreciative of the time pressures that you are under and will therefore endeavour to revert as soon as possible.

Yours faithfully
ADAMS & ADAMS

JS MARAIS

Checked and signed by author and sent electronically



Handwritten signatures and initials at the bottom right of the page, including a signature that appears to be 'JAP' and another that looks like 'E'.

"RM 5"

494

WERKSMANS
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OUR REFERENCE: Mr S July/st/MINI29566.1/#3574121v1
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EMAIL ADDRESS: sjuly@werksmans.com

URGENT

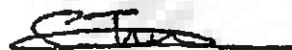
25 March 2015

Dear Sir

IN RE: INVESTIGATION BY THE MINISTER OF POLICE ON THE POSSIBLE INVOLVEMENT OF LIEUTENANT GENERAL DRAMAT; MAJOR GENERAL SHADRACK SIBIYA; AND THE OTHER MEMBERS OF THE DIRECTORATE FOR PRIORITY CRIMES, IN THE ILLEGAL RENDITION OF ZIMBABWEAN NATIONALS IN 2010

- 1 We refer to your letter dated 23 March 2015.
- 2 Kindly advise on when are you and your client, Mr Sasoko, available to consult with us in relation to the above matter. We are available to consult on Thursday 26 March and/or Wednesday 1 April 2015.
- 3 We look forward to hearing from you as a matter of extreme urgency.

Yours faithfully



Werksmans Inc

Werksmans Inc, Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa
Directors O Hertz (Chairman) AL Armstrong BA Aronoff DA Artelro T Bata AR Berman NMN Bhengu L Bick HGB Boshoff GT Bozer TJ Boswell MC Brdnn
W Brown PF Burger PG Cleland JG Cloets PP Coetser C Cole-Morgan D Corbett JN de Villiers GW Driver LJ du Preez RJ Feenstra S Fodor SJ Gardiner
D Gewer JA Gobetz H Goolam R Goolkin ID Gouws GP Griessel J Hollesen MGH Honball VR Hostlosky BB Hotz HC Jacobs TL Jansa van Rensburg
N Jansen van Vuuren G Johannes S July J Kallmeyer SLG Kayana A Kenny BM Kew R Kiloran N Kirby HA Kotze S Kige PJ Krusche P le Roux MM Lesing
E Levenstein JS Lochner JS Lubbe BS Mshaba PK Mabasa PM Madala MPC Manaka H Masondo C Moratle KO Molshwane L Naidoo J Nicktg JJ Niemand
BPF Olivier WE Oosthuizen M Pansegrouw CP Pauw AV Pillay T Potter SC Price AA Pyzikowski RJ Raath A Ramdhan L Rood BR Roothman W Rosenberg
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HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker D Wegierski M Wlahzht DC Willans DG Williams E Wood
BW Workman-Davies

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495

**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 &
ADMINISTRATION**

Second Respondent

ANSWERING AFFIDAVIT

I, the undersigned,

NKOSINATHI NHLEKO

do hereby state under oath that:-

1. I am an adult male and the Minister of Police, the first respondent in this application. I took the decision to suspend the applicant from his position. That decision is the subject of attack in the present application.

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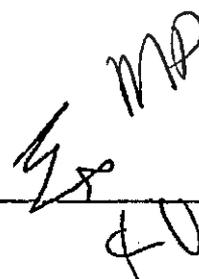
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496

2. The allegations contained herein are true and correct. They are also within my personal knowledge and belief, unless the context indicates otherwise. Where I make submissions of law, those submissions are made on the advice of my legal representatives.
3. I have read the founding affidavit, together with its annexes, as well as the supplementary founding affidavit and its annexes. I refer to the supplementary founding affidavit as the supplementary affidavit. In this affidavit I shall respond to the allegations contained in both affidavits.

INTRODUCTION

4. The relief sought by the application falls broadly into two categories. First, he wants to set aside my decision to suspend him. Second, he seeks to invalidate certain provisions of the Independent Police Investigative Directorate Act 1 of 2011 ("the IPID Act"), the Public Service Act, 1994 and the Senior Management Service Handbook. I am not the Minister responsible for the Public Service Act and the Senior Management Service Handbook. I confine my responses to the IPID Act.



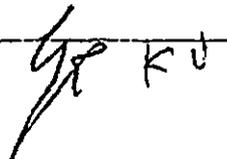
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5. In respect of the challenge to the IPID Act, the mainstay of the claim is that the impugned provisions infringe upon the independence of the Independent Police Investigative Directorate ("IPID"). The challenge the suspension decision is based on the allegations that I do not have the powers under the IPID Act to suspend the applicant; that the decision was not rational or reasonable; that I acted for improper reasons; and that I infringed the independence of IPID by suspending the applicant.

6. These allegations are without merit.

6.1 My decision to suspend the applicant is not administrative action. It is executive action. It cannot be challenged in terms of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA").

6.2 To the extent that the decision is challenged for violating the principle of legality, it is denied that I do not have the power to suspend the applicant; or that the decision was not rational or reasonable when regard is had to the information I had at my disposal; or that the decision was influenced by an improper purpose; or that the decision infringed the independence of IPID. I have the power to suspend the



applicant. My decision was taken for legitimate and lawful reasons relating to the gross misconduct of the applicant and his abuse of authority.

6.3 It is also denied that the decision infringed upon the independence of IPID. The independence of IPID is constitutionally and statutorily protected. It was not violated in this case merely on account of a decision to suspend the applicant, in circumstances where the suspension was temporary – pending the institution of disciplinary proceedings – and the suspension of the applicant was operationally justifiable to protect the integrity of IPID.

7. In relation to the constitutional attack, I must state upfront that I wholeheartedly support the proposition that the independence of IPID is paramount. However, I deny that the current legislative framework does not sufficiently protect the independence of IPID. I submit that the law as it stands provides for adequate safeguards for the independence of IPID.

8. I also agree with the submission of the applicant that IPID should not be open to political manipulation by members of the executive. But I deny also the

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4-09

allegation that I have attempted in any manner to interfere with the independent functioning of IPID. My actions, in suspending the applicant, have been motivated by the desire to protect and safeguard the integrity and the very independence of IPID. It is important to mention that IPID should not only be independent from external political influence, but should also operate independently from members of the police, whom it is legally obliged to investigate.

9. The IPID Act flows from section 206 of the Constitution, which envisages that IPID shall be politically accountable to the Minister. The IPID Act itself creates enough protections for the independence of IPID. The applicant did not complain of any political interference – or lack of adequate independence – in the discharge of his duties, until he was suspended for gross misconduct. The constitutional attack is thus clearly contrived. The problem here which led me to resort to the suspension of the applicant was the following..

- 8.1 The applicant attempted to protect senior members of the South African Police Service ("SAPS") from the consequences of their alleged criminal conduct and their alleged misconduct. Particularly, the senior

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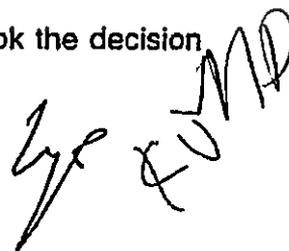
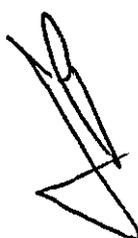
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6

members were General Anwar Dramat ("Dramat") and General Shadrack Sibiya ("Sibiya"). I cannot speculate on the motivations behind the conduct of the applicant. What is clear, on the objective evidence, is that the conduct of the applicant amounted to abuse of power and was unlawful. The conduct of the applicant undermined the integrity, independence and effectiveness of IPID.

8.2 In misconducting himself, as he did, the applicant also gave instructions to junior members of the IPID staff to act in a manner designed to achieve his improper motive.

8.3 In the course of preparing this answering affidavit, I was also informed by current IPID staff that the applicant caused an advance payment, in the amount of R500,000.00 to be made to the account of his current attorneys of record, Adams and Adams. This violates the provisions of the Public Finance Management Act 1 of 1999 to the extent that the payment was for services which had not been rendered. Furthermore, I consider it entirely inappropriate for the applicant to use public funds for personal benefit. The fact that he is the one who took the decision

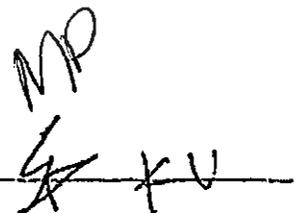


creates a further problem, namely, that he had a conflict of interest.

This is an issue which shall be included in the charge sheet of the applicant in due course. It was not included when the charge sheet was presented to the applicant because it had not yet come to light at that stage.

10. Based on these allegations it would have been irresponsible to do nothing, as the applicant appears to suggest. I was duty bound to take appropriate steps to protect the independence and integrity of IPID by suspending him and subjecting his conduct to an independent disciplinary enquiry.

11. It is notable that the applicant has singularly failed in his two affidavits to set out a proper sequence of the facts. Not only is this self-serving, it also deprives this court of a proper factual basis for the examination of the constitutional arguments raised. I shall accordingly begin by giving the proper and correct sequence of the facts in order to correct this defect. Before I do so, I must set out certain events which have occurred since the application for interim relief was instituted to the extent that those events have a bearing on the relief sought.



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10.1 The application for interim relief – which was a premature attempt at preventing the suspension decision from being taken – was struck off the roll by this Court.

10.2 The applicant was in fact suspended for a period of 60 days, pending the institution of disciplinary proceedings on charges of gross misconduct.

10.3 The applicant has been served with a notice to attend a disciplinary enquiry, commencing on 21 May 2015, chaired by Mr Phillip Mokoena SC, who is an independent chairperson, from the Johannesburg Society of Advocates. I await Mr Mokoena's findings and decisions on the charges of misconduct. The charge sheet is attached marked "NM1".

10.4 I had appointed Werksmans Attorneys to conduct an investigation into the conduct of the applicant. They have since finalised their investigation. Their report is attached marked "NM2". They find that there is sufficient *prima facie* evidence of misconduct against the



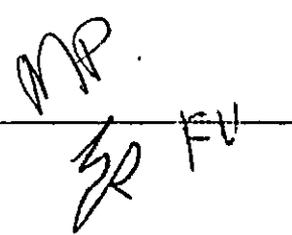
applicant. These findings will be made available to the independent chairperson of the disciplinary enquiry.

10.5 I shall be briefing the relevant committee of the National Assembly regarding these developments, in due course, and will take into account whatever views and decisions are taken by the National Assembly regarding how I should proceed with the matter.

10.6 I proceed, then, to deal with the facts relevant herein.

12. The applicant correctly observes that his case should be understood in the overall context of what transpired in regard to the conduct of Dramat and Sibiya. I wish to set out briefly the facts in relation to those cases.

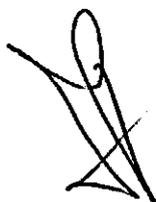
13. As apparent from the two reports of IPID attached to the founding affidavit marked "RM3" and "RM4", the allegations against Dramat and Sibiya related to their knowledge and participation in the arrest, detention and rendition of nationals of Zimbabwe by members of the SAPS to the police of Zimbabwe. Some of the nationals that were arrested by SAPS were killed in Zimbabwe. The arrest, detention and rendition of these nationals was unlawful.



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14. To summarise: Members of the SAPS, together with police from Zimbabwe, under the leadership and approval of Dramat and Sibiya conducted three operations in South Africa, on 5 November 2010, 23 November 2010 and 11 January 2011. In these operations, nationals of Zimbabwe were arrested and handed over to Zimbabwean police. At least two of the arrested nationals were killed in Zimbabwe. One of them, Mr Dumisani Ndeya, was killed in an exchange of fire with the police of Zimbabwe, whilst in the custody of the police of Zimbabwe. Another Zimbabwe national, Mr Johnson Nyoni, who was arrested in the operation conducted on 11 January 2011, died while in the custody of the police of Zimbabwe. There is strong *prima facie* evidence showing that Dramat and Sibiya were aware of these operations and in fact approved them. Before the applicant assumed office, IPID investigated the matter and recommended criminal charges of kidnapping and defeating the ends of justice against Dramat and Sibiya. After he assumed office, the applicant caused IPID to change its report and recommendations regarding the criminal charges against Dramat and Sibiya. The disciplinary case against the applicant (which is also the reason for his suspension) is that he attempted to suppress the evidence which implicates Dramat and Sibiya.



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PRIMA FACIE EVIDENCE AGAINST OF DRAMAT

15. There was sufficient *prima facie* evidence showing that Dramat was aware of and condoned the arrest, detention and rendition of the nationals of Zimbabwe. That *prima facie* evidence emanates from the following events:-

15.1. On 4 February 2011 a report entitled "*Consolidated Success Report:*

Most Wanted Fugitives: Wanted for murder and robbery: DPCI

TOMSREF : 3/12/2010 and Zimbabwe, (Bulawayo) CR 348/09/2010):

Witness Dumisani Nkosi @ Ndeya : Zimbabwean National and others"

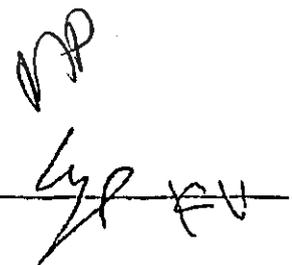
was produced.

15.2. That report, a copy of which is attached hereto marked "NM3" recorded

in paragraph A.1:-

"On 2010-11-05, Zimbabwean police visited office of the Directorate for Priority Crime Investigation ("HAWKS") and held a meeting with the Deputy National Commissioner Dramat about their nationals who shot and killed one of their senior officers and robbed his service firearm and are suspected to be in South Africa."

[Emphasis added]



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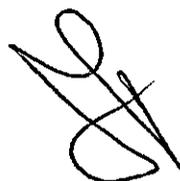
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15.3. In paragraph 3 of the report, it is recorded that Captain ML Maluleke
*"was tasked to trace and arrest the suspects around Johannesburg and
other parts of Soweto."*

15.4. The report records further that Captain Maluleke, with the assistance of
TOMS Gauteng Province, managed to track and trace the most wanted
fugitives, namely Dumisani Witness Ndeya Vudhla who was arrested.
The suspect, it is stated, was later *"successfully"* taken to Zimbabwe.

15.5. The report also notes that on 12 January 2011 members of Crime
Intelligence, Pretoria, traced another suspect, Mr Gordon Dube, and
arrested him and retrieved a firearm suspected to be linked to the
commission of offences. It is claimed that a ballistic examination of the
firearm established a connection to the murder of a senior
superintendent of the Zimbabwean police.

15.6. The report was sent to Dramat. It concluded by asking for the
recognition of *"the outstanding work performed in assisting the
Zimbabwean police to finalise their matter."*

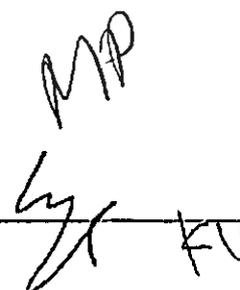


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15.7. An information note was addressed to Dramat on 24 November 2010. It records that on 5 November 2010 a legal mutual request was received from the Zimbabwean police for the tracing of fugitives. The information note, however, does not contain a copy of the mutual legal assistance requested referred to. It confirms, however, that Captain Maluleke was assigned the task of assisting in tracing the fugitives who had committed armed robbery and attacked Zimbabwean police officials. The information note also states that on 23 November 2010 "Pritchardt Tshomo (alias) Chuma", was arrested. The note is attached marked "NM4".

15.8. Another information note also addressed to Dramat, attached hereto marked "NM5", notes that Dumisani or Nkosi and Shepherd Duma were the "suspects arrested".

15.9. A statement which was prepared by Lieutenant Colonel Mdanduleni Richard Madilonga, an officer of SAPS stationed at Beit Bridge at the time, stated the following:-


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

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

"When I approached them, one of them introduced himself to me as the leader of the group and he said to me he was a superintendent Ncube from the Homicide Unit in Harare. He then requested me if they could not find a place and sit down and discuss. I then took them to my office and sat down for discussion. We then went to my office together with his colleague. Superintendent Ncube told me that he is going to Pretoria to meet General Dramat. He said to me maybe I knew about the Chief Superintendent who had been murdered. He said that the suspects were in Gauteng and he had organised with General Dramat to assist them in tracing the suspects."

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

"I phoned General Dramat on his cellphone and he responded by saying that he is aware of the Zimbabwean police and I must let them come. I used my landline, if I did not use my official cellphone. I took the Zimbabwean police's passports and taken them to the Immigration Office to be stamped. The registrations of their vehicles were also documented. I handed their stamped passport and gate pass and they crossed the entry gate into South Africa."

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

"The following day after the departure of Zimbabwean police, I received a call from Captain Maluleke who is also known as Cowboy. It was on 8 November 2010 between 16h00 and 17h00, when he called and introduced himself as Cowboy and I asked as to who is Cowboy and he said that he is Captain Maluleke and was with me at Paarl in Cape Town in 2005. ..."

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

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

"When we arrived at the Zimbabwean side the vehicle stopped and immediately all the vehicles were surrounded by Zimbabwean police. They then pulled the suspects from the back seat of the vehicle behind us. We could not even hand the

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

"Captain Maluleke told me that what happened is top secret and people must not know of what happened. Captain Maluleke drove me back to where he found me and I entered into my car and drove home."

[Emphasis added]

15.10. A copy of the commissioned statement from Mr Madilonga is attached hereto marked "NM6".

(I must mention that a few weeks after Mr Madilonga prepared the statement he was found dead of what was described as natural causes).

15.11. The fact of the meeting between Dramat and Zimbabwean police was also confirmed under oath by Mr McIntosh Polela, who was formerly employed as the spokesperson of the DPCI. In his statement, attached hereto marked "NM7", it is stated:-

"From December 2010 to May 2013 I was employed by South African Police Service as a spokesperson for DPCI. I was

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reporting directly to General Dramat and Brigadier Mashigo. I remember that I was introduced to Zimbabwean police who were having a meeting with General Dramat. I cannot remember when and how the meeting was conducted. It was not necessary for me to know the details. The Zimbabwean police were introduced by Lieutenant General Dramat."

16. It is submitted that these facts show that:

14.1 Dramat was aware of the presence of Zimbabwean police on South African soil. He condoned their presence.

14.2 He was also aware that the Zimbabwean police wanted to conduct and in fact did conduct an operation, together with the South African Police aimed at arresting Zimbabweans that were in South Africa. He also condoned those actions.

14.3 Furthermore, Dramat was aware that the Zimbabwean nationals were rendered to the Zimbabwean police. This should have alerted him to the need to ensure compliance with the relevant laws of the country.

14.4 I am also aware that at the time in question, namely September 2010 to December 2010, there was an agreement between the sovereign states of South Africa and Zimbabwe to the effect that Zimbabweans

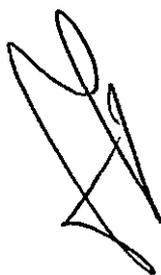


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residing in South Africa, whether legally or illegally, would benefit from a special dispensation. That dispensation – referred to as the Special Dispensation for Zimbabwe – entailed that Zimbabwean nationals would not be deported on account of the fact that they were illegal immigrants. Thus there was a clear moratorium on the deportation of Zimbabweans. Zimbabweans, suspected of being illegal immigrants, had to be assisted to regularise their status in South Africa. I attach a copy of the relevant documents explaining the Zimbabwe-South Africa dispensation, which was common knowledge at the time, marked “NM8”. It makes it clear that the dispensation applied until December 2010.

14.5 Once Dramat was aware of the fact that the wanted suspects were from Zimbabwe, he was duty bound to ensure that they would not be taken to Zimbabwe except in accordance with the law. These facts, as I explain below, were also known to the applicant. It is submitted that there was a strong *prima facie* case of illegal conduct on the part of Dramat.



PRIMA FACIE CASE AGAINST GENERAL SIBIYA

17. I note from the founding affidavit that the applicant denies that Dramat or Sibiya committed an offence. Whether or not Sibiya committed an offence should be decided by the courts of the country. What is however clear, is that there was a strong *prima facie* case against Sibiya in relation to his involvement in the decision to arrest, detain and render the Zimbabwean nationals to the officials of the government of Zimbabwe. I say this for the following reasons:-

17.1. The DPCI, in Gauteng, had set up a unit known as "*Tactical Operations Management Section (TOMS)*" which was led by Sibiya, presumably to focus on specialised operations. While the precise mandate and legality of this unit is unclear, it appears that this unit was assigned the responsibility of tracing and arresting the Zimbabwean nationals in this case.

17.2. The statement prepared by Mr Bongani Henry Yende, who is member of the SAPS and was also in the TOMS unit, attached hereto marked "NM9" spells out that on 5 November 2010 Warrant Officer Makoe

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requested assistance of certain members of SAPS to assist in conducting an operation to search for suspects in a case involving a Colonel who had been killed. Mr Yende was one of the members of SAPS who was invited to this operation and he participated in it. Mr Yende has confirmed that Mr Sibiya was personally present during the arrest of the Zimbabwean nationals between 5 and 6 November 2010.

His statement reads as follows:-

"On 2010-11-05 in the evening I received a phone call from Warrant Officer Makoe of DPCI in Gauteng who was also part of the task team 'TOMS' that Major General Sibiya wanted us to meet at Fourways to go and search for suspects in a case which a Colonel was killed. I went to Fourways with Constable Desmond Campbell who was also part of 'TOMS' task team. On our arrival at Fourways Shopping Centre Warrant Officer Makie introduced two African males as our police counterparts from Zimbabwe police."

"The time Warrant Officer Makoe introduced the two policemen from Zimbabwe, I realised that the Colonel who was killed was from Zimbabwe and not South African police. Warrant Officer Makoe informed us that the two police officers came to us via the office of General Dramat who is national head of DPCI. Major General Sibiya was sitting in a navy BMW vehicle busy on his cellphone and I could not manage to greet him."

[Emphasis added]

17.3. General Sibiya was not only involved in the operation on 5 November 2010. According to another member of the TOMS unit, Mr Petros

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Jawuke, a further operation was conducted also in search of other Zimbabwean nationals on 23 November 2010. The statement by Mr Jawuke is attached hereto marked "NM10". In that statement the following is stated:-

"On 2010-11-23 the second operation was arranged and I also got the call from Warrant Officer Makwe that our commander Major General Sibiya wanted us to meet at Diepsloot Shoprite. I also participated in the second operation but I did not collect Warrant Officer Ndobe on the second operation. Major General Sibiya was also present on the second operation but the two police officers from Zimbabwe were not present."

[Emphasis added]

17.4. There is a further statement by Mr Desmond Campbell, another crime intelligence official. It also makes it abundantly clear that General Sibiya was involved in the operation for the arrest and detention of the Zimbabwean nationals. The statement is attached hereto marked "NM11".

18. It is apparent that after the arrest of the suspects, false reasons were advanced in relation to their arrest and their detention. I submit that on the probabilities Dramat and Sibiya were aware of the fact that the true reasons for the arrest were falsified. I explain the falsification below.

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18.1. The suspects, having been arrested, were taken to the Orlando Police Station. At the station they were detained on the grounds that they were illegal immigrants. The occurrence book of 6 November 2010 records that at 04h20 the suspects Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepherd Chuma were detained on the grounds that they were illegal immigrants. I attach the relevant extracts from the occurrence book marked "NM12".

18.2. Subsequent to the detention, the further entries in the occurrence book show that on 8 November 2010 at 11h55 the four suspects were booked out of Orlando Police Station and taken to Beit Bridge. The entry records:-

"Suspect taken to Beit Bridge : Captain M L Maluleke taken the following suspects of illegal immigrant:

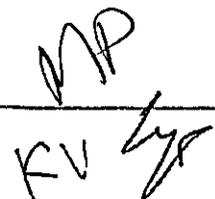
1. Dumisani W Ndeya SAP 14 4002/11/2010
2. Nelson Ndlovu SAP 14 4003/11/2010
3. Maqhawe Sibanda SAP 14 4004/11/2010
4. Shepherd Chuma SAP 14 4005/11/2010
and all free from injuries."



18.3. Captain Maluleke signed the occurrence book recording the removal of the suspects and the fact that they were being taken to Beit Bridge. The relevant extracts of the occurrence book are attached marked "NM13".

18.4. The normal practise where suspects are arrested on immigration related offences is that they would be taken to the Lindela Repatriation Centre, after which certain procedures would be followed. Deportation to the country of origin is almost invariably never resorted to. Particularly, deportation is never resorted to absent the involvement of the Department of Home Affairs, which is the department responsible for dealing with immigration related matters. In this particular instance I emphasise that at the time in question it was simply illegal to deport Zimbabwean nationals because of a special dispensation which had been agreed between South Africa and Zimbabwe.

19. It is now common knowledge that Dumisani Ndeya was later killed on or about 20 November 2010 while he was in Zimbabwe. A copy of his certificate of death extracted from a report of the Sunday Times on 23 October 2011 is



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attached marked "NM14". As such by the time of the operation on 23 November 2010, it must have been known that Ndeya had died while in the custody of the Zimbabwean police.

20. It will be recalled that Captain Maluleke had been tasked to spearhead the operation for the arrest of the wanted suspects at the meeting held at Dramat's office on 5 November 2010. It is also noted that Sibiya was in fact personally present during the operations, according to the statements of the officers who carried out the operation. These facts were known to the applicant. The applicant had access to the statements of the officers. If he wished to interview the officers, he could have done so. The officers, as I explain below, had in fact been interviewed by IPID.

IPID INVESTIGATIONS

21. In October 2011, the Sunday Times published an article in which the allegations of illegal renditions were first made. I attach a copy of the article marked "NM15". In the article Dramat admitted being aware that the suspects had been deported for being "*illegal immigrants*". He claimed that the DPCI had followed the correct channels. It is emphasised that these suspects

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included Ndeya and Nyoni who were both killed while in the custody of the police of Zimbabwe.

22. I do not agree that the correct channels had been followed. As mentioned, if the true reason for the deportation related to the immigration status of the suspects, it was illegal to facilitate their deportation. The correct procedure would have been to permit them to apply to regularise their immigration status. On reflection, it appears that the immigration issue was used as a ruse. The true reason, and indeed one which is recorded in the official documentation of the DPCI, was that the suspects were arrested because they were suspects in the alleged murder of a Zimbabwean police official.

23. A complaint was lodged with IPID in October 2012 relating to the conduct of the police. That complaint was assigned to an investigator, Mr Innocent Khuba.

24. In October 2013, Khuba sent his draft report to the NPA, for the attention of Advocate Timothy Mosing, who was dealing with the matter. In paragraph 5.6 of the draft report by Khuba, it is clear that there were "*outstanding matters*" marked as such. Mr Mosing considered the draft report and advised Khuba

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that there was a need to conduct further investigation on the case, which included information on the analysis of cell phones, vehicle tracking information and statements from Dramat, Sibiya and Maluleka. This was confirmed in an internal memorandum by Mosing addressed to Advocates Mxolisi Nxasana and Nomgcobo Jiba dated 12 November 2013, a copy of which is annexed marked "NM16". Mr Nxasana is the National Director of Public Prosecutions. Ms Jiba is the Deputy National Director of Public Prosecutions. I have not been able to determine whether or not there was a response to this memorandum of Mosing.

25. Mr Khuba went on to finalise his report. Before submitting his report, he had asked for the warning statements from Sibiya and Dramat, but had not received them. He then compiled his final report on 22 January 2014. The report has been attached to the founding affidavit as "RM3". This was the final report, which also excluded the reference in the earlier paragraph 5.6 to any outstanding matters.

26. After an extensive investigation, which included interviews with all the affected role-players, and a detailed analysis of the evidence, Mr Khuba came to the



conclusion that Dramat, Sibiya, Captain Maluleke, Constable Radebe, Captain SE Nkosi and Warrant Officer Makoe should be charged criminally for kidnapping and defeating the ends of justice.

27. That report together with a full docket comprising of all documents mentioned in the report, was submitted to the National Prosecuting Authority ("NPA"), also on 22 January 2014 for decision whether to prosecute or not. I am advised that the practise at IPID is that when a report, together with a docket has been finalised, IPID retains a duplicate copy of the entire file. Indeed, this is common sense. In respect of this particular matter, I am advised that IPID retained its file of the docket which had been sent to the NPA for decision whether to prosecute or not. That file, including the report as well as the full docket, is still at the offices of IPID.

28. At this point, in January 2014, IPID had finalised its investigation. Of course IPID remained open to following up any suggestions to be made by the NPA pursuant to considering the contents of the docket. But this did not mean the investigations were incomplete. If they were not complete, it would have made

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no sense to refer the docket to the NPA for decision whether to prosecute or not.

29. Mosing accepted the final report, as such. He also advised Khuba that he should also include his own statement. Khuba did so. On 13 February 2014 Mosing addressed a memorandum to Advocate Jiba and Advocate Chauke. Chauke is the Director of Public Prosecutions in South Gauteng. The memorandum was also copied to Jiba. Attached to the memorandum was the report, the full docket, comprising of two lever arch files and other files containing cell phone data and evidence obtained from computers of the DPCI. The Mosing memorandum makes it clear that the docket is being referred so that a decision whether to prosecute or not can be taken. Mosing made it clear that the investigation was final. I attach a copy of this internal memorandum by Mosing marked "NM17". At this stage the docket was with the NPA for decision whether to prosecute or not. IPID had discharged its mandate under section 7 of the IPID Act.



30. The applicant was employed with effect from 3 March 2014, approximately two months after IPID had finalised its investigation and had compiled the docket for decision by the NPA.
31. In an interview given by the applicant to Werksman's attorneys, the applicant stated that shortly after his assumption of office he requested information regarding certain "high profile" matters which were under investigation by IPID. He was advised that the matter of the rendition of the Zimbabwe nationals was one of these high profile matters. He was also informed of the status of the matter and the fact that IPID had prepared a report to the NPA.
32. Khuba advised Werksmans attorneys that he received a call from Mr Matthews Sesoko, on 4 March 2014 informing him that the applicant wanted a copy of the report which had been submitted to the NPA. Khuba e-mailed a word version of the report to Sesoko.
33. On 5 March 2014 there was a meeting held at IPID regarding the report attended by the applicant and Khuba. The applicant enquired about the report of IPID. Mr Khuba said that he informed the applicant of the true status of the investigation, namely that the report and the docket were in the possession of

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the NPA for decision whether to prosecute or not. The applicant raised a number of issues regarding the report and his dissatisfaction regarding certain aspects of it. The applicant informed Khuba that he would discuss the report with him at a later stage. The meeting was not conclusive as to whether any changes needed to be made to the report. What was, however, certain was that the applicant was not entirely satisfied with the report of January 2014.

34. On 6 March 2014 there was a further meeting attended by Khuba, the applicant and Mr Glen Angus, an employee of IPID in the Mpumalanga office. The applicant instructed Khuba and Angus to retrieve the full docket and report which had been submitted to the NPA for decision. I understand that the NPA had not, at this stage, taken a decision whether or not to prosecute Dramat or Sibiya and the other implicated officials.
35. Khuba advised Werksmans that the applicant instructed him, together with Angus to fetch the docket from the NPA. In addition to the docket, the applicant also wanted each and every document which was in the possession of IPID relating to this investigation.

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36. On 7 March 2014 Khuba and Angus indeed attended at the offices of the NPA to retrieve the docket. Khuba spoke to Advocate Zais van Zyl SC, the Deputy Director of Public Prosecutions, working with Mr Chauke on the matter. Van Zyl was in possession of the docket.
37. Khuba informed Van Zyl that IPID wanted to retrieve the docket in order to conduct a further investigation on the matter and to include certain information. Van Zyl consented to this request.
38. Van Zyl requested that Khuba should confirm in writing that the report and the docket had indeed been removed. I attach written confirmation signed by Khuba confirming that he had removed the docket from the possession of the NPA. This is marked as annexure "NM18".
39. The account of the events at the NPA is also apparent from the memorandum prepared by Chauke and Van Zyl attached hereto marked "NM19". This document was given to Werksmans attorneys during their investigation.

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40. Khuba and Angus advised the applicant that they had retrieved the docket from the NPA, for which he thanked them. They handed the docket to the applicant personally.
41. Subsequent to the retrieval of the docket, between 7 March 2014 to 9 April 2014, the report was revised at the instruction of the applicant. A number of versions exchanged hands with the applicant, Khuba and Sesoko making inputs into the report. Khuba and Sesoko signed the report on 18 March 2014, while the applicant signed the report on 9 April 2014, after satisfying himself with the contents thereof.
42. According to Khuba, during the process of revising the report, the applicant and Sesoko tried to explain to him why the January 2014 report was wrong insofar as it implicated Dramat and Sibiya. However, they had not conducted any further investigation on the matter. In particular, they did not interview the officers who had been interviewed by Mr Khuba and who confirmed that the roles played by Dramat and Sibiya.
43. The applicant made extensive comments on the contents of the report and particularly the respects in which the report should be changed. It was known

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by all that the final report had already been submitted to the NPA for decision in January 2014. Mr Khuba gave effect to the views of the applicant in relation to the contents of the report.

44. The March 2014 report differed materially from the January 2014 report, in the following respects:

42.1 The narration of the Madilonga statement where he specifically mentions having called Dramat to verify whether to allow the police from Zimbabwe to enter South Africa as they had a meeting with him is excluded in the March 2014 report. The January 2014 report accurately captures Madilonga's statement. Specifically, it mentions that Madilonga called Dramat and asked whether to allow the police from Zimbabwe to enter the country. Dramat agreed that the Zimbabwe police must be allowed in as they had a pre-arranged meeting with him. Similarly, the January 2014 report notes that the cell phone records of Madilonga confirm that he was in contact with Dramat. However, this has been excluded in the March 2014 report.

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42.2 The references to the "success report" were also changed in the March 2014 report. In particular, the reference to the fact that the Zimbabwe police had a meeting with Dramat on 5 November 2010 was removed. The January 2014 report correctly records that the success report confirmed the meeting between Dramat and the Zimbabwe police on 5 November 2010.

42.3 In the narration regarding e-mails from Maluleke to Dramat and members of the Zimbabwe police, there has been an alteration so as to exclude Dramat. Yet, the January 2014 report correctly notes that Dramat, via his personal assistant, was also a recipient of the e-mail which contained about 20 photographs of the suspects who were arrested and the members of the SAPS who conducted the operation.

42.4 In page 22 of the January 2014 report, it is stated that Dramat and Sibiya went to Zimbabwe in August 2010 to discuss matters of cooperation and Sibiya was appointed to coordinate relations between Zimbabwe and South Africa. The March 2014 report excludes this reference and deletes the names of Dramat and Sibiya.



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42.5 In page 22 the report refers to one Moyo's case, who was shot and transported to the border with the assistance of Zimbabwean police. The letter states that Maluleke confirmed in a letter that he had sent it to Dramat. The March 2014 report excludes the name of Dramat.

42.6 The analysis of the cell phone records of Sibiya were altered and changed. The January 2014 report stated that Sibiya communicated with the officers who conducted the operation and sent more than 20 text messages to Dramat at the time of these operations. The March 2014 report simply asserts that Sibiya *"was never at the crime scenes or planning area as alleged by members of Crime Intelligence."* There is no attempt at engaging with the facts established in the January 2014 report. The same appears in relation to Captain Maluleke. The January 2014 report alleges that he was in constant SMS communication with Dramat during the entire operation. Yet in the March 2014 report, this has been excluded. While the March 2014 report says that there is a *prima facie* case against Maluleke, it completely excludes the analysis of the cell phone records which

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implicate Dramat and Sibiya. The pattern can be detected in relation to the cell phone records of Col Neethling.

42.7 In the statement of Khuba contained in the January 2014 report, it is made clear that the original complaint came to the former head of IPID from the secretary of police. It also states that there were warrants of detention for the four Zimbabweans who were to be "deported" for being "illegal foreigners". This has been excluded in the March 2014 report.

42.8 The January 2014 report contains a detailed account of the sources from which the conclusion that Dramat had a meeting with the Zimbabwean police is drawn. However, the March 2014 report concludes, without any explanation that the success reports "lacks detail" about the meetings with Zimbabwean police.

42.9 The January 2014 report contained information about the fact that the officers who were part of the operation were personally congratulated by Dramat and were warned not to tell anyone about the operation. However, the March 2014 report is silent on this finding issue.

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42.10 The January 2014 report mentions a letter from the Zimbabwean official to Colonel Ntenti. The letter clearly states the names of the wanted suspects and the reasons why they were wanted in Zimbabwe, namely, the murder of the police official in Zimbabwe. These were the same names who were arrested, about whom Dramat said the true reason for the arrest was that they were illegal immigrants. Again the March 2014 report says nothing about this finding or this letter.

42.11 As clearly apparent from annexure "RM4", one of the most significant changes from the January 2014 report is that the recommendation to charge Dramat and Sibiya was altered. Instead, it was replaced with the finding and recommendation that there was insufficient evidence to charge them with criminal offences.

45. Mr Khuba then compiled the second report as instructed by the applicant. It was thereafter printed for signature by all parties. The applicant also appended his signature to the report. Once the report had been changed, it was sent to the NPA again with the docket. The new report appears in the founding papers as "RM4".

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46. When the two reports are compared, it is unmistakable that there was a crude and deliberate attempt to exclude any evidence which implicates Dramat or Sibiya. This was done at the instance of the applicant.
47. I say the above because the facts show that applicant engineered the preparation of the new report in March and April 2014. He did so by issuing instructions to Khuba to alter his findings and recommendations as contained in the January 2014 report. He also gave extensive personal inputs into the March 2014 report.
48. The applicant has given contradictory accounts regarding the circumstances in which the two reports came into existence. In the founding affidavit, he claims that he regarded the January 2014 report as being "*preliminary*" and therefore subject to changes. Yet, from the transcript of his interview with Werksmans Attorneys, he claims he never knew of the January 2014 report at all. Furthermore, in the founding affidavit the applicant claims to have considered and reviewed the alleged preliminary report prior to the conclusion of what he claims to be the final report. However, the transcript of the Werksmans interview shows that the applicant alleged that he only made

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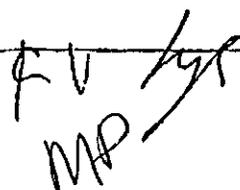
spelling and grammatical changes and attached his signature. The interview transcript of the applicant is attached marked "NM20".

49. The attempt by the applicant to influence Khuba to alter his report was unlawful and constituted misconduct:-

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

49.2. The attempt on the part of the applicant to influence Khuba to amend the report was on its own unlawful, regardless of whether Khuba was instructed or not. Investigators of IPID must conduct their work independently. This includes independence from their seniors, like the applicant.

49.3. By attempting to influence Khuba to make changes to his report, the applicant was interfering with the independent functioning of



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investigators of IPID. This constitutes gross misconduct. Also, it is clear that the applicant's true agenda was to protect members of the police. This is also gross misconduct since IPID is established specifically to investigate the police. It is axiomatic that IPID must be independent of the police, whom it is created to police.

49.4. The applicant has attempted to explain his conduct on the basis that new evidence came to light, thus necessitating revision of certain conclusions contained in the first report. There was no new evidence which came to light so as to justify the changes of the January 2014 report. There was also no attempt to verify the facts with the officers who had made the accusations against Dramat and Sibiya in the first place. And there is clearly no new evidence justifying the changes from the January 2014 report to the March 2014 report.

49.5. The applicant had no reasonable basis for the conclusion that Dramat and Sibiya should not be criminally charged. He did not conduct any investigation to come to this conclusion. He should have left matters as they stood with the January 2014 report of Khuba. If the applicant, as



he alleges, did not in fact read the March 2014 report, which he signed – a fact which is most improbable – then he has made himself guilty of gross negligence in appending his signature to a document which he had no knowledge of, as head of IPID.

50. The point, however, is that the facts show, at least on a *prima facie* basis, that Dramat was aware of the visit to South Africa by Zimbabwean police. He granted them permission to cross at the border post when he informed the officials stationed there to permit them access to South Africa. He had a meeting with them on 5 November 2010. He claimed that the suspects who were arrested had been arrested in relation to their immigration status. Not only does this show that he was aware that the suspects were arrested, it also illustrates that he knew the reasons for the arrest. The "success reports" which were submitted to Dramat also explain that the true reason for the arrest was the alleged murder of a Zimbabwean police officer. The facts show that there was a *prima facie* case that Dramat was accordingly a party to an act of defeating the ends of justice insofar as he was aware of (and aided and abetted) the arrest and rendition of Zimbabwean nationals. These facts were known to the applicant. He had no reasonable basis to come to

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the conclusion that there was no *prima facie* case of criminal conduct on the part of Dramat. Had he been acting reasonably, independently and objectively as the head of the IPID, the applicant could not have come to the conclusion that there was no evidence implicating Dramat in the commission of criminal offences, as recommended by Khuba.

51. Similar facts apply to Sibiya. Sibiya had been positively identified by police officers as being personally present at the operations conducted on 5 November 2010, as well as 23 November 2010. He had also been intricately involved in the planning and execution of the operation for the arrest of the Zimbabwean nationals. This included the falsification of the reasons for the arrest, as being immigration related matters, when it was known by the officers concerned that the true reason for the arrest was related to the alleged murder of a Zimbabwean police officer. Again, the applicant could not have reasonably believed that there was no *prima facie* case against Sibiya based on the facts which were before him.
52. The inescapable inference is that the applicant had an ulterior motive in seeking to clear Dramat and Sibiya of the allegations of criminal conduct

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against them. He sought to pin responsibility to junior officials such as Maluleke, when it is clear that these junior officials were acting under the direction of Dramat and Sibiya.

53. The issues set out above shall constitute the subject matter of disciplinary proceedings against the applicant which I have instituted.
54. Subsequent to the suspension of the applicant, another fact came to light, which is gross misconduct standing alone. The applicant caused an amount of R500 000,00 to be paid to his current attorneys Adams & Adams, ostensibly in lieu of services yet to be rendered. This is in breach of the Public Finance Management Act 1 of 1999, which prohibits the payment of a service provider without proof that such a service provider has rendered services. Moreover, the present matter is about the suspension of the applicant. It is entirely inappropriate for the applicant to utilise public funds for his private benefit. The applicant was also conflicted insofar as he was also an applicant in the application for interim relief. He should have recused himself from the decision to pay R500,000.00 from IPID funds to his personal

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attorneys. This will also form part of the charges which the applicant shall face.

55. I shall now respond to the allegations contained in the affidavits.

AD FOUNDING AFFIDAVIT

56. Ad paragraphs 1 to 10

It is denied that the averments in the founding affidavit are true and correct. It is also denied that the applicant was entitled to the relief sought in Part A of the Notice of Motion. At any rate, the application for interim relief in Part A was struck off.

57. Ad paragraphs 11 to 14

I deny that the applicant is entitled to the relief sought in Part B.

58. Ad paragraphs 15 to 18

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Save to note that the IPID is no longer a party to the proceedings, the allegations are noted.

59. Ad paragraph 19

It is admitted that on 11 March 2015 the applicant was served with a letter of intention to place him on precautionary suspension. The balance of the allegations are denied.

60. Ad paragraphs 20 to 23

60.1. It is admitted that:-

60.1.1. The notice of Intention to suspend the applicant required him to respond by close of business on 12 March 2015;

60.1.2. The allegations of misconduct against the applicant concern his role in the compilation of the IPID investigation report into the rendition of Zimbabwean nationals.

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60.1.3. The applicant signed an investigation report on 9 April 2014 pertaining to the rendition of Zimbabwean nationals.

60.2. The balance of the allegations are denied.

61. Ad paragraph 24 inclusive of sub-paragraphs 24.1, 24.2 and 24.3

61.1. These allegations are denied.

61.2. There was no "*preliminary draft of the report*" in January 2014. On 22 January 2014 a final report which was prepared by Khuba was sent to the NPA together with its investigation docket for decision whether or not criminal charges should be instituted against, among others, Dramat and Sibiya.

61.3. There is no basis for the statement in paragraph 24.2. The applicant does not explain what specifically he found to be "*unsustainable on the evidence*" in relation to the report of January 2014. The applicant also misleadingly omits to mention that the report was accompanied by a full docket which was sent to the NPA. Since there was a docket, in the



possession of the NPA, it is improbable that the applicant did not know that the IPID had discharged its obligation to investigate the matter.

61.4. It is also false that the findings and recommendations of Mr Khuba allegedly included in the "preliminary report" were "not included in the final investigation report". The truth is that the applicant directed the exclusion of factual findings and recommendations which implicated Dramat and Sibiya. Had it not been for the interference of the applicant, those recommendations which had been made by Khuba would not have been changed.

62. Ad paragraph 25

62.1. These allegations are denied. I did not "pursue" the suspension of Dramat or Sibiya. Their suspensions came about as a result of the information that came to my knowledge regarding their participation in the rendition of Zimbabwean nationals. The applicant appears ignorant of the magnitude of the misconduct committed by members of the DPCI under the direction of Dramat and Sibiya. I should explain the scale and depth of the problem: Police from a foreign country were allowed entry

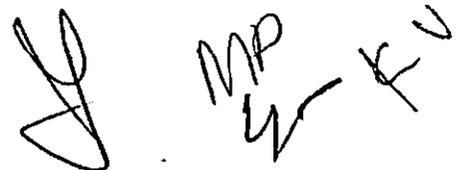
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into South Africa to conduct a policing operation, in violation of the sovereignty of South Africa and without following the correct legal channels. Suspects were identified and arrested. The reasons for the arrest were falsified. It was claimed that the arrest was related to the immigration status of the suspects, when in fact the reasons for the arrest related to crimes allegedly committed in Zimbabwe. The suspects were illegally handed over to Zimbabwean police. It is now a notorious fact that at least two of the suspects were killed in Zimbabwe while in the custody of the police of Zimbabwe. This callous act of facilitating the handing over of people suspected of crimes is not only criminal but undermines the very foundations of South Africa's constitutional establishment. Everyone in the borders of South Africa is entitled to the right to life, which is protected by the Constitution. Everyone is entitled to the right to be presumed innocent, until proven guilty by a court of law. That they may be foreign or suspected of having committed crimes in a foreign country does not take away their entitlement to our constitutional protections. In my view the actions of the DPCI under the leadership of Dramat and Sibiya resulted in the denial of these basic rights and freedoms of the affected Zimbabwean

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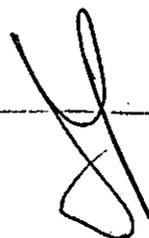
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nationals. It is accordingly irresponsible for the applicant to accuse me of a "zealous pursuit" for the suspension of Dramat and Sibiya as if I did something illegitimate. I have no reason to pursue the suspension of any law abiding member of the police. But it cannot be expected that as the Minister responsible for policing, I should not act to protect South Africa's legal position. If I had not acted as I did, it is most likely that the entire operation would have been swept under the carpet. It is most unfortunate that the people who are appointed to ensure the protection of rights of others, such as the applicant, are completely nonchalant about their duty to police the police and their related duty to protect everyone on South African soil.

62.2. The allegations in paragraph 25.1, 25.2 and 25.3 are not relevant to this application. They appear to have been included for sensational reasons. I shall apply for their striking out at the hearing of this application.

63. Ad paragraph 26

63.1. The allegations are denied.

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63.2. The charges against the applicant are not that he issued the investigative report. The charges are that he was party to the alteration of the report, which he knew to be final. The allegation that I have "*an evident agenda*" for the removal of Dramat and Sibiya is rejected. My reasons are explained above.

64. Ad paragraph 27

64.1. The allegations are denied.

64.2. I have explained my reason for the suspension of the applicant above.

65. Ad paragraph 28, inclusive of sub-paragraphs 28.1, 28.1.1, 28.1.2 and 28.2

65.1. These allegations are denied.

65.2. The correct facts have been set out above.

66. Ad paragraph 30



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I deny the allegation that I do not have the power to suspend the executive director of IPID. It is admitted that the independence of IPID is guaranteed by Section 206(6) of the Constitution. It is denied that the mere existence of the power to suspend the executive director of IPID threatens the constitutionally guaranteed independence of IPID. It is denied that the power to suspend the applicant was exercised unlawfully or for any ulterior or improper purpose. Also, it is denied that the decision is not rational or is unreasonable.

67. Ad paragraph 32

Section 206(6) of the Constitution clearly contemplates that the independent police complaints body must be established by national legislation. Therefore, the nature and degree of independence must first and foremost be guaranteed by national legislation. The IPID Act adequately protects the independence of IPID.

68. Ad paragraphs 33, inclusive of sub-paragraphs 33.1, 33.2, 33.3 and 33.4

The allegations are admitted.

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69. Ad paragraph 34

It is denied that the findings referred to in this paragraph are of any application to the facts of this case. It is unhelpful to draw artificial parallels between the DPCI and IPID. Also unhelpful is the attempt to transpose Constitutional Court authority which applies to the DPCI. IPID is not the DPCI. The findings of the Constitutional Court made in the context of the DPCI do not have automatic application to IPID. Any attack on the legislation regulating IPID must be considered in the light of its own unique history; the constitutional function of IPID; and the contents of the statute which sets up IPID. I shall do this below.

70. Ad paragraph 35

These comments are noted. They are however not relevant in relation to IPID.

71. Ad paragraph 36

These allegations are noted. They are not relevant to IPID.

72. Ad paragraph 37

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It is admitted that IPID must be independent from the SAPS. It is illogical to state that independence from the SAPS "*must include the Minister of Police*", because he is "*politically responsible for the SAPS*". The claim that the Minister's executive and political interests are "*bound to the fate of the SAPS*" is clearly absurd. The fact is that under the South African Police Service Act, 1995, the police are accountable to the Minister. The Minister has the primary responsibility of ensuring that the police comply with the law and the Constitution. Furthermore, the primary purpose behind the establishment of IPID is to investigate police conduct. Both IPID and the police are ultimately under the political responsibility of the Minister of Police. This structure is envisaged in section 206 of the Constitution, which locates IPID under the section whose heading clearly deals with political responsibility of the Minister in relation to the police. It is therefore wrong to conflate the institution of the SAPS with the Minister. The police account to the Minister. This does not mean that the Minister and the SAPS are one and the same thing as is wrongly suggested by the applicant.

73. Ad paragraph 38



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The allegations are noted. It is submitted that these allegations have no relevance to the facts of this case.

74. Ad paragraph 39

These allegations are noted. They are not relevant to the facts of this case.

75. Ad paragraph 40

These allegations are denied. The power to suspend the applicant is implicit from the power vested upon the Minister to remove the head of IPID on grounds of misconduct. I do not understand the allegation 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"*. The law which empowers the suspension of the head of IPID is the IPID Act. This Act allows the Minister to remove the head of IPID. A suspension is a lesser power to the removal power. It is also a necessary power to the exercise of the power of removal. The IPID Act does not conflict with the Constitution. It gives effect to it. The authorities referred to



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by the applicant do not apply to the facts of this case. This will be fleshed out in full during the argument of this case.

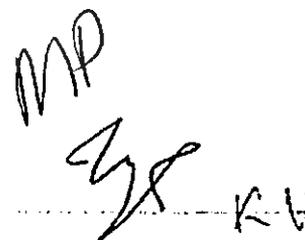
76. Ad paragraph 41

I do not know what is meant by these allegations. The applicant was suspended for misconduct. He was not suspended for protecting the independence of IPID. No reasonable member of the public could possibly come to the conclusion that a suspension of a person for committing misconduct would threaten the independence of an institution such as the IPID. The converse is in fact true. Any reasonable member of the public would support the decision to suspend a person who is suspected of having committed the offences that the applicant is charged with.

77. Ad paragraph 42

These allegations are noted. They have no bearing on the facts of this matter.

78. Ad paragraph 43



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These allegations are denied.

79. Ad paragraph 44

These allegations are denied. It is specifically denied that the decision by the Minister to suspend the applicant constitutes administrative action in terms of PAJA.

80. Ad paragraphs 45 to 47

These allegations are untrue. I have explained the reasons for the suspension of the applicant. The applicant does not explain these "*illegitimate political reasons*". For the record, there are no political reasons behind my decision to suspend the applicant. The reason behind my decision is to protect the institutional integrity and autonomy of IPID and to ensure that there is compliance with the laws of the country and its constitution. There is a *prima facie* case of misconduct against the applicant. There is no basis for the allegation that my decision constitutes abuse of power. It is the applicant who was abusing his power at IPID. It was absolutely vital for me to step in, when I



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did, to protect IPID from further institutional wreckage in the hands of the applicant.

81. Ad paragraphs 48 and 49

The allegations are noted.

82. Ad paragraph 50 inclusive of sub-paragraphs 50.1 and 50.2

82.1. The allegations are denied.

82.2. Particularly, it is false for the applicant to state that the IPID did not recommend the prosecution of Sibiya in its report to the NPA. It did. The problem is that the applicant personally disagreed with the decision to prosecute Sibiya. I cannot speculate on his reasons for doing so. His disagreement was not based on any reasonable grounds. Nevertheless, because he was holding the position of Executive Director, the applicant could order his underlings around to alter the contents of the report to achieve his improper ends.

83. Ad paragraphs 50.3 to 50.4



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83.1. These allegations are false.

83.2. The applicant knew full well that in its January 2014 report IPID had recommended the prosecution of Dramat and Sibiya. There is no reason why he did not mention this to their attorneys when the alleged requests were made.

84. Ad paragraph 51 including sub-paragraphs 51.1 to 51.6

84.1. These allegations are false. The applicant was aware of the following.

84.2. The factual existence of the January 2014 report of IPID, which had been sent to the NPA for decision;

84.3. That the report recommended the criminal prosecution of Dramat and Sibiya;

84.4. That he had changed the recommendations in the report in order to save Dramat and Sibiya from prosecution;

84.5. That he had instructed Khuba to retrieve the report from the NPA; and

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84.6. That IPID had prepared a full docket on the matter, which was also retrieved from the NPA. There was no reason for this if the applicant simply wanted an appraisal of the status of the investigation.

84.7. It is false that the January 2014 report was "*subject to consideration and review by Sesoko as well as myself*" as the applicant alleges. The January 2014 report could never have been the subject of review by Sesoko and the applicant. It had already been submitted to the NPA by January 2014. The applicant was also not employed at IPID by January 2014 when the report was submitted to the NPA for decision. He only became employed in March 2014. I repeat that elsewhere the applicant stated that he was never aware of the January 2014 report, at all. Yet, in this paragraph he claims that he "*considered and reviewed*" the report. Also, he has claimed that he only made superficial changes to the report, which is in conflict with his statement that he considered and reviewed the report in light of some evidence he claims came to light.

84.8. The allegation that the changes to the report were made at the instance of IPID are also false. It was the NPA that requested certain additional

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information. That did not mean the January 2014 report should be changed. It simply meant that the docket should be supplemented in relation to the additional information which was outstanding, at that stage. This is normal prosecutorial practice. But it did not justify a wholesale alteration of the report which was ready for prosecutorial decision.

84.9. It is notable that in paragraph 51.5 the applicant appears to admit that he revised the report that was prepared by Khuba. However, in the interview conducted by Werksmans Attorneys, the applicant denied any knowledge of the January 2014 report. He also denied any substantive changes to the report prepared by Khuba, instead claiming falsely, that the only changes which he effected were superficial.

84.10. The applicant is not telling the truth concerning the involvement of the NPA. The correct sequence of events is that the NPA received the January 2014 report in its final form with its final recommendations. It is therefore misleading to claim that the NPA "*had access to the preliminary report*". The NPA had been given the final report on the



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basis of which a decision had to be taken whether to prosecute or not.

The applicant elected to instruct the withdrawal of the January 2014 report from the NPA in order for him to ensure that it was changed.

85. Ad paragraph 52

85.1. These allegations are false.

85.2. When the applicant prepared the information note on 10 March 2014, it was incumbent upon him to disclose fully the following facts:-

85.2.1. the IPID had submitted a final report to NPA for decision by January 2014;

85.2.2. he had instructed the retrieval of the report and the docket from the NPA and the reasons for that decision;

85.2.3. he had told IPID officials to make changes to the January 2014 report and the reasons for making those changes;

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85.2.4. the March 2014 report was in fact a new report which contradicted the January 2014 report in material respects.

85.3. The applicant did none of the above. To this extent I was entitled to conclude that he had misled me.

86. Ad paragraph 53

The applicant's willingness to account to Parliament after the subject of the illegal renditions came to light was itself disingenuous. At no stage prior to March 2015 did the applicant see it fit to attend Parliament and explain the existence of the two reports. This is despite the fact that the applicant had been aware since at least March 2014 of the two reports, since the second report was generated at his instance. The request to brief the Parliamentary Committee on Policing was an attempt to perpetrate a false narrative regarding these two reports. In any event, if the applicant genuinely intended to explain himself regarding these two reports, he could have done that in writing and there was no reason why he did not inform me first about these two reports. As matters stand, in any event, the explanation which the applicant would have given to the Parliamentary Committee is false. It has

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been repeated under oath in the current application. The reliance on section 7(12) of the IPID Act is misplaced. The applicant was never requested by Parliament to provide any information regarding the activities of IPID. The applicant made the request to address Parliament. If the applicant would have repeated what is contained in the founding affidavit, clearly he intended to lie to Parliament. The request was also a deliberate attempt to undermine my authority. To suggest that I have negated my responsibility by not requesting the applicant to furnish me with the report on the activities of IPID, particularly in relation to the illegal rendition, is nonsensical. I requested the applicant to provide me with information regarding the rendition. He misled me in his response. He failed to disclose the full circumstances that obtained regarding the alteration of the January 2014 report.

87. Ad paragraph 54

87.1. These allegations are denied.

87.2. It is notable that the applicant admits to having instructed a junior official not to attend an enquiry, of which he was fully aware that it had been initiated by me as the Minister. The applicant appears to believe

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that he is not answerable to anyone as head of IPID. This belief is founded on a completely wrong understanding of the constitutional set up, which places IPID under the political responsibility of the Minister.

88. Ad paragraph 55

88.1. These allegations are denied.

88.2. The mere fact that Werksmans Attorneys, a law firm completely independent from government, conducted an investigation, cannot sensibly be viewed as interference with the work of IPID.

89. Ad paragraph 56

89.1. These allegations are denied.

89.2. I did not interfere with the operations of IPID or its independence. I have simply taken steps with regard to the illegal conduct of the applicant. There is no basis for the claim that the suspension of the applicant amounts to interfering with the independence of IPID. The applicant has committed misconduct, for which he must be held

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accountable. The law as it presently stands permits me to take steps towards the removal of the applicant from office.

90. Ad paragraph 57

90.1. These allegations are not understood.

90.2. The applicant has been suspended for committing gross misconduct.

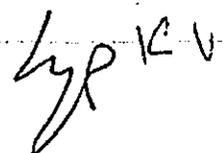
He has not been suspended for doing his work as head of IPID. By the suspension of the applicant, no investigations of IPID as an institution have been interfered with.

91. Ad paragraph 58

These allegations are irrelevant, scandalous and vexatious. They stand to be struck out. At the hearing of this application I shall apply for their striking out.

92. Ad paragraph 59

92.1. I deny these allegations.



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92.2. By his own admission the applicant has interfered with the investigation by refusing to permit Khuba to attend an interview with Werksmans Attorneys.

93. Ad paragraphs 60 and 61

93.1. The allegations herein are denied.

93.2. I am informed that the contents of Data Box 6, which was removed by the applicant from the offices of Sibiya, included evidence of email communication and other correspondence between the Zimbabwean police officers and Sibiya and Dramat on the other hand. This evidence would have been clearly incriminating as against Sibiya and Dramat. If the applicant intended to preserve the evidence, he should have made a duplicate copy of any electronic material to be removed from any office. He did not make any duplicate copy. The result is that, at this point in time, crucial evidence appears to have gone missing. The applicant has failed to disclose to this court, on oath, in full the contents of Data Box 6, which are in his possession. It is also strange that the applicant, being the most senior official at IPID, found it necessary that

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he should personally retrieve electronic evidence from the office of Sibiya. I would have imagined that junior officials would have been sufficiently capable of executing such tasks. The applicant is invited to disclose to this court the full contents of Data Box 6. He is also invited to make available such contents to this Court and to provide an explanation why he has not returned the file to IPID after his suspension. That file is not the personal property of the applicant. If it is evidence intended to be used for official purposes, it must be in the possession of IPID not the applicant, who is presently on suspension.

94. Ad paragraphs 62 and 63

These allegations are denied.

95. Ad paragraphs 64 and 65

95.1. These allegations are denied.

95.2. Argument shall be made at the hearing of this matter in due course.

96. Ad paragraphs 66 to 75

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96.1. These allegations are denied.

96.2. I am advised that these allegations, in any event, have become immaterial in view of the fact that the notice of motion has since been amended.

97. I shall now proceed to deal with the allegations contained in the supplementary affidavit.

AD SUPPLEMENTARY AFFIDAVIT

98. Ad paragraphs 1 to 7

Save to deny that the allegations in the supplementary affidavit are true and correct, the allegations are noted.

99. Ad paragraphs 8 to 11

99.1. These allegations are denied.

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99.2. They have been covered sufficiently in my response to the founding affidavit.

100. Ad paragraphs 12 and 13

I persist with the allegation that the applicant can be suspended under Section 6(6)(a) of the IPID Act. The applicant is employed in terms of a contract of employment. The employer is entitled to suspend an employee for misconduct. In this case the applicant can also be suspended by virtue of the IPID Act.

101. Ad paragraph 14

These allegations are denied.

102. Ad paragraphs 15 and 16

The fact that IPID is independent does not mean that IPID employees, including the applicant, are not accountable. In terms of the Constitution, IPID falls under the political responsibility of the Minister. It is admitted that I may not interfere in the investigations of IPID. But that is not what transpired here.

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Here, the applicant committed misconduct. It was my responsibility to take steps to deal with the misconduct of the applicant. It would have been irresponsible not to take any steps against the applicant, in view of the seriousness of the charges of misconduct against him.

103. Ad paragraph 17

103.1.1 do not understand the allegation that IPID was "*perceived*" to be "*toothless*". The fact that the legislature decided to introduce a specific Act for IPID does not mean that IPID was toothless. In any event, the account provided in this paragraph fails to provide a proper historical context to the establishment of IPID.

103.2. The proper historical account is this.

103.2.1. The Independent Complaints Directorate ("ICD"), which is the predecessor to the present IPID, was established in accordance with the provisions of section 222 of the Interim Constitution, 1993. That section provided:-

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"There shall be established and regulated by an Act of Parliament an independent mechanism under civilian control, with the object of ensuring that complaints in respect of offences and misconduct allegedly committed by members of the service are investigated in an effective and efficient manner."

103.2.2. The Act of Parliament contemplated by section 222 of the Interim Constitution was the South African Police Service Act 68 of 1995. Chapter 10 thereof (which has since been repealed) established the ICD.

103.2.3. An important feature to section 222 of the Interim Constitution was that the independent complaints mechanism contemplated therein would be placed under civilian control. The Minister, being a politician, is the civilian oversight mechanism contemplated by the Interim Constitution.

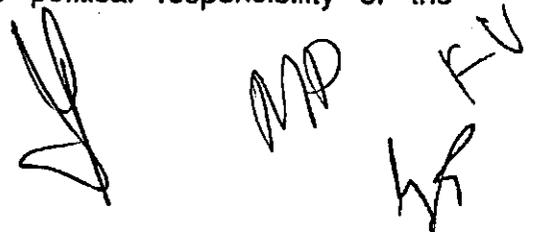
103.2.4. But there was a structural problem with the location of the ICD. While the ICD was meant to investigate the police, it was located structurally and statutorily within the police service.

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103.2.5. Section 206 of the Constitution, 1996 placed IPID under the political responsibility of the Minister. The section is headed "*Political Responsibility*". In section 206(1), it is provided that a Member of the Cabinet must be responsible for policing. The Member of Cabinet must also determine national and policing policy after consultation with provincial governments and taking into account needs and priorities of the provinces as determined by the provincial executives.

103.2.6. Provincial executives are responsible for specific policing functions. In section 206(6), it is envisaged that provincial executives may lodge complaints relating to offences committed by or members of the police service in a particular province. Once such complaints are received they would be investigated by "*an independent police complaints body established by national legislation*".

103.2.7. While it is clear that the Constitution contemplated that the IPID would be under the political responsibility of the

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Minister, it did not address the problem of the institutional separation of IPID from the police. This was necessary for the effective discharge of the mandate of IPID.

103.2.8. The enactment of the IPID Act was intended, among others, to achieve the clear separation legislatively and otherwise, between the police and the body established to investigate the police. It was not intended to establish a body which is unaccountable and reports to no-one. Like the Constitution, the IPID Act proceeds from the premise that IPID is politically responsible to the Minister.

103.2.9. The legislation creates sufficient safeguards for independence of IPID.

103.2.10. First, section 4 clearly states that IPID functions independently from the South African Police Service. It also provides that each organ of State must assist the directorate to maintain its impartiality and to perform its functions effectively. This includes the Minister.

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103.2.11. Second, in section 6 the Minister does not have carte blanche authority to appoint the Executive Director. The appointment is subject to a decision by the sub-committee of the National Assembly to confirm or reject the nomination by the Minister. If the sub-committee of the National Assembly rejects a nomination by the Minister, clearly that appointment will not be confirmed. Section 6(6) provides that the Minister may remove the executive director from office on account of misconduct, ill health or inability to perform the duties of that office effectively. This provision does not authorise the Minister to act arbitrarily or capriciously. The powers of the Minister are constrained by the requirements of legality, reasonableness and procedural fairness which are contained in the Constitution and other applicable legislation.

103.2.12. Third, the Executive Director has complete autonomy and control over the functions of the IPID. The responsibilities of the Executive Director, which clearly illustrate the fact of independence, are set out in section 7 of the Act. Section

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7(4) empowers the Executive Director to refer criminal offences revealed as a result of an investigation to the NPA for criminal prosecution and notify the Minister of such referral. There is accordingly no duty upon the executive director to obtain Ministerial approval when reports are made to the NPA. Similarly, if the NPA elects to institute a criminal prosecution, it is not required to obtain any approval or permission from the Minister. It is only required to notify the Minister of its decision by virtue of the provisions of section 7(5).

103.2.13. Fourth, section 24 grants investigators of IPID wide and untrammelled powers of investigation. There is no scope for ministerial interference in the exercise of such powers. Investigators do not report to the Minister. They report to the executive director of IPID. The powers of IPID and its investigators should also be seen in the context of section 28 of the IPID Act. In terms of section 28(1)(g) IPID may investigate matters of corruption within the police either on its

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initiative or from a complaint from any member of the public.

Section 28(2) also empowers IPID to investigate matters relating to systemic corruption involving the police.

103.2.14. Fifth, the Executive Director is fully accountable for the finances of IPID within the parameters of the PFMA.

103.2.15. Sixth, the Minister is required to consult with the executive director when making regulations regarding the implementation of this Act. This is buttressed by section 34(3) which specifies that it is the Executive Director who should submit regulations to the Minister relating to the implementation of the Act.

103.3. Clearly therefore, the independence of IPID is constitutionally and statutorily protected. The power of the Minister to remove the head of IPID does not interfere with the independence of IPID as an institution. The power is circumscribed by the explicit limitation of the instances when the Executive Director may be removed. It is also constrained by law, which prescribes that the Minister cannot act arbitrarily or without

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procedural fairness. The intrusive legislative proposals contained in the applicant's cumbersome notice of motion are therefore unwarranted and should be rejected.

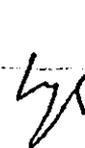
104. Ad paragraphs 18 to 24

These allegations are noted. Reference is made to the provisions of the legislation itself.

105. Ad paragraph 25

105.1. The allegations herein are not understood.

105.2. The applicant has made no allegations that he was under any undue political pressure to take any decision relating to investigations. The institutional independence of IPID is protected by its legislation. The fact that IPID must report and account for its activities to the Minister, cannot reasonably be construed as interfering with its independence. The Minister has no role to play in the investigative functions of IPID. The power to remove the head of IPID from his position, vested upon

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the Minister by legislation, cannot possibly be seen as improperly interfering with the functioning of IPID when construed in the context of the legislation as a whole. In terms of the Constitution IPID falls under the political responsibility of the Minister of Police. The discipline of the Executive Director is a matter to be left to the Minister because IPID accounts to the Minister. IPID does not fall under the political responsibility of Parliament in terms of the Constitution. It would be most improper for this Court to proclaim that Parliament should now assume political and operational responsibility for IPID, when the Constitution does not say so. Institutionally, the applicant's proposals are also unworkable. The operational workings of Parliament are simply not designed to deal with the day to day matters of operations and discipline of officials such as the applicant. If Parliament is to play such a role, that is a matter for a deliberative legislative process to work out, not this Court to impose.

105.3. The facts of this case demonstrate exactly why the Minister should be in a position to take action, such as a suspension, when someone in the position of the applicant abuses their authority to the detriment of

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an organisation such as IPID. It is difficult to speculate on the degree of organisational harm which could have been visited upon IPID by the applicant had he not been called to account by the Minister. But it is clear that such harm would have been profound and perhaps irreversible.

106. Ad paragraph 26

106.1. These allegations are denied.

106.2. This is not a reasonable interpretation of the legislation, read in the context of the Constitution.

107. Ad paragraphs 27 and 28

107.1. These allegations are denied.

107.2. Specifically, it is denied that the purpose of the request to Werksmans was to investigate why "a *different conclusion to the preliminary version*" of the rendition report was reached. The court is respectfully

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referred to the terms of reference for the correct mandate of Werksmans.

108. Ad paragraph 29

108.1. These allegations are denied.

108.2. There is absolutely no threat to the independence of IPID simply because the applicant's personal conduct is under investigation. It is false to claim that the investigation by Werksmans was designed "to repeat IPID's investigative work". Werksmans investigated the misconduct of the applicant. The misconduct of the applicant is not the same thing as the investigative work of IPID as the institution.

109. Ad paragraph 30

109.1. These allegations are false.

109.2. The applicant has perpetuated a false explanation throughout when claiming that there was a preliminary and a final report. He has done so, being fully aware that the January 2014 report was final. In his

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affidavits before this Court he persists with his falsities, despite the clear objective evidence which contradicts the lie he has been telling. What is particularly concerning is that the applicant has never once disclosed the fact that the NPA was given a full investigative report, together with a full docket ready for decision whether to prosecute or not. Also concerning is the fact that the applicant has never disclosed the instruction given to Khuba to remove the docket from the NPA when the very purpose of placing the docket before the NPA was for a decision to be taken whether to prosecute or not.

110. Ad paragraphs 31 and 32

110.1. The applicant misconstrues section 7(2) of the IPID Act. That section applies when the head of IPID has been requested by Parliament to provide a report on its activities. The applicant has not referred to any request by Parliament in this regard. It is the applicant himself who offered to report to parliament. This offer was however not genuine. It was deliberately designed to conceal the truth. I do not understand the allegation of an "open ended investigation." The investigation at any

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rate is now complete. Of relevance for the applicant is that the report recommends that he should be charged with misconduct, which process is underway.

110.2. The applicant is not being truthful in claiming that the reason Khuba was not allowed to consult with Werksmans Attorneys was the concern for the independence of IPID. The true issue is that the applicant knew that if Khuba consulted with Werksmans, the truth would be revealed. Indeed, the evidence given by Khuba to Werksmans clearly shows that in January 2014 a final report was prepared, and handed over to the NPA for decision a fact which was disclosed to the applicant. It is also clear that the applicant purported to revisit the January 2014 report in March 2014 and out of that process a new version appeared. It is also clear that the new version was prepared at the instance of the applicant.

111. Ad paragraph 33

These allegations are baseless. There was no reasonable basis for the applicant to refuse permission to Khuba to consult with Werksmans Attorneys.



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The applicant knew that what was at stake was his misconduct, not the independence of IPID. On the objective facts, it is clear that the applicant had *"underhanded motives and an intention to act improperly when he refused to allow Mr Khuba to consult with Werksmans Attorneys"*. This is demonstrated by the conflicting versions given by the applicant and Khuba to Werksmans Attorneys. The only reasonable inference is that the applicant's intention was to suppress the evidence of Khuba so that it never comes to light.

112. Ad paragraph 34

These allegations are rejected. If the applicant did not want to give evidence to Werksmans, he was at liberty to do so. He cannot, having submitted himself to the interview, seek to complain about the very fact that he attended the interview.

113. Ad paragraphs 35 to 37

These allegations are denied.

114. Ad paragraphs 38 to 41



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114.1. These allegations are rejected.

114.2. I am aware of at least three investigations involving high ranking police officers which are being investigated by IPID. That is because IPID is required to notify me when a decision has been taken to refer a matter to the NPA. In none of those investigations have I ever attempted to influence the decision making process on the part of IPID. It is statutorily and constitutionally impossible for me to influence the direction taken by IPID. In any event, in all three investigations, IPID already took decisions regarding whether criminal charges should or should not be preferred.

114.2.1. In one case, IPID decided that criminal charges should be preferred against a high ranking police officer. Those criminal charges were subsequently preferred by the NPA, without any reference to me or any member of cabinet.

114.2.2. In another case the Director of Public Prosecutions of Kwa-Zulu Natal declined to prosecute. Again, this had no bearing on me as the Minister or any member of cabinet for

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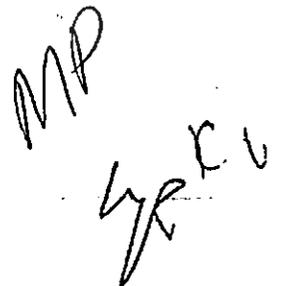
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that matter. That matter was subsequently re-investigated by IPID and a fresh decision was taken to refer the matter to the National Director of Public Prosecutions for a fresh decision. The decision of the NDPP is awaited.

114.2.3. The third matter is the matter relating to the rendition of the Zimbabwean nationals. As things currently stand, a decision is awaited from the NPA. It will be noted from this that other than receiving reports in terms of the IPID Act, I have absolutely no role to play in the flow of information or communication between IPID and the NPA.

114.3. Despite the suspension of the applicant, IPID has continued with its investigations and where appropriate it has referred matters to the NPA for its decision. It is not possible for me to interfere in any of the decisions between IPID and the NPA.

115. Ad paragraph 41



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The applicant appears to forget that all these three investigations started before he was appointed to head the IPID. They were conducted by many dedicated investigators at IPID. At no stage did any of these investigators complain of any political interference. Even after the applicant assumed his position at IPID, he continued with those investigations, interacting regularly as he should have with the NPA. I have never at any stage interfered with the decision making process by IPID. After the suspension of the applicant, IPID has continued doing its work under its legislation and, where necessary, referring matters for decision to the NPA.

116. Ad paragraph 42

116.1. These allegations are denied.

116.2. The applicant appears to labour under the belief that only he is capable of establishing relationships with other law enforcement institutions, including the NPA and the HAWKS. The fact of the matter is that the legal system requires such co-operative arrangements to be established for effective crime fighting. The suspension of the applicant does not mean that the institution stops functioning.

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117. Ad paragraph 43, inclusive of paragraphs 43.1 and 43.2

117.1. These allegations are denied.

117.2. There are no investigations causing embarrassment to the Minister or other high ranking officials which have resulted in me taking a decision to suspend the applicant. As stated before, in one matter involving a provincial commissioner, the Provincial Directorate of Public Prosecutions refused to prosecute. That matter now rests with the National Director of Public Prosecutions. I do not know if the NDPP will prosecute or not. Nor am I concerned. These matter have very little to do with me.

118. Ad paragraph 43.3

The allegations herein are scandalous and vexatious. They are also not relevant to this application. They fall to be struck out. An appropriate application shall be made at the hearing of this matter.

119. Ad paragraphs 44 to 48

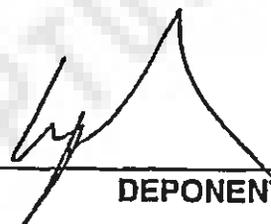
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It is denied that the applicant is entitled to the relief sought. Further argument shall be made at the hearing of this matter.

120. Ad paragraphs 49 to 50

It is denied that there is a basis for an expedited hearing in this matter. It is noted that the disciplinary enquiry against the applicant had commenced with the applicant receiving a charge sheet. It is being chaired by a senior advocate of the Johannesburg Society of Advocates. I shall be guided by his findings and recommendations with regard to the further steps to be taken in the matter. My views are that there is a *prima facie* case of gross misconduct. But it is up to the independent chairperson to decide whether or not a case has been made on a balance of probabilities.

121. The application stands to be dismissed with costs.

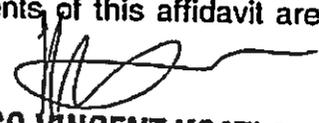

DEPONENT

I hereby certify that this affidavit was signed and sworn to before me at SANDTON on this the 12th day of MAY 2015, by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience



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and who uttered the following words: "I swear that the contents of this affidavit are true so help me God".



KAGISO VINCENT KGATLA

**COMMISSIONER OF OATHS
COMMISSIONER OF OATHS
PRACTISING ATTORNEY (RSA)**

MKHABELA HUNTLEY ADEKEYE INC.

Block C, 7 Eton Road, Sandhurst, 2196

PO Box 1049, Gallo Manor, 2052

Docex 20, Nelson Mandela Square

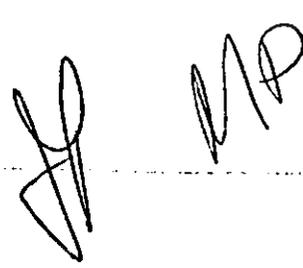
Telephone : 011 783 8020 Fax : 011 783 3842

Website: www.mhalaw.co.za

Name:

Address:

Capacity:



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"NM1"**IN THE DISCIPLINARY HEARING**

In the matter between:

THE MINISTER OF POLICE
(Independent Police Investigative Directorate)

Employer

and

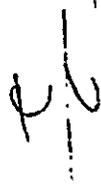
ROBERT McBRIDE

Employee

CHARGE SHEET**Charge 1**

1. During or about March to April 2014, you instructed and/or advised Mr Innocent Khuba to alter the recommendations contained in the final report dated 22 January 2014 to the National Prosecuting Authority ("the NPA") in respect of complaint number CCN2013030375 ("the report"). The report covered the issue of the rendition of Zimbabwean nationals to security officers of Zimbabwe by certain members of the South African Police Service. You also in addition to the alteration of the recommendations, deleted from the original report or omitted from the second report ("March 2014 report") incriminating facts or evidence implicating Dramat and Sibiya in the renditions of Zimbabwean nationals, alternatively you instructed Khuba or Sesoko or both to delete or omit such incriminating facts or evidence.



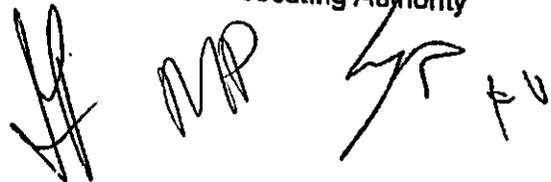
2. The specific respects in which you instructed and/or caused the alteration of the report are the following:

2.1 The findings and recommendations in respect of Mr Anwar Dramat. The original final report to the NPA recommended the criminal prosecution of Mr Dramat. After your improper interference, the "new report" recommended that there should be no criminal prosecution of Mr Dramat.

2.2 The findings and recommendations in respect of Mr Shadrack Sibiya. In the original final report to the NPA it was recommended that criminal charges be pursued against Mr Sibiya. Subsequent to your improper interference the "new report" recommended that there must be no criminal charges pursued against Mr Sibiya.

2.3 The findings and recommendations in respect of the other three junior officers, Makoe, Radebe and Nkosi that they be criminally charged were altered and no mention of their names is found in the "new report".

2.4 Your conduct aforesaid constituted an improper interference with the administration of justice as you intended to defeat the ends of justice by ensuring that Lieutenant-General Dramat; Major-General Sibiya and the three other junior officers are not criminally charged despite the recommendations by the IPID report that was signed by Innocent Khuba on 22 January 2014, and submitted to the National Prosecuting Authority

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("NPA") by Innocent Khuba and his investigation team for a warrant of arrest to be issued against the aforesaid officers and for criminal prosecution to be initiated against them.

Charge 2

3. During March 2014 you instructed Innocent Khuba to collect the docket which contained the IPID report dated 22 January 2014, and on 18 March 2014 another report which makes no reference to the original report of 22 January 2014 was signed by Khuba, yourself and Sesoka purporting to alter the findings of the original report. In the new report, critical and material information which implicated Lieutenant-General Dramat and Major-General Sibiya was omitted for no reason other than to unduly influence the decision of the NPA on whether or not to prosecute.
4. The altering of the original report and the deletion of material facts implicating Lieutenant-General Dramat and Major-General Sibiya without reference to the original report was intended to create the impression that the 18 March 2014 report was in fact the final report, when you knew or ought to have known that in law once the IPID had submitted its report to the NPA for a decision in terms of the IPID Act, the production of the new report contradicting the original report is unlawful and constitutes undue influence and therefore improper:
 - 4.1 You were aware that the report submitted by the Independent Police Investigative Directorate ("IPID") to the NPA in January 2014 was final.

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4.2 You were aware that the reason it had been handed over to the NPA was for a decision to be made as to the prosecution or otherwise of the persons implicated in acts of criminality mentioned in the report.

4.3 You were aware that the IPID had discharged its duty in relation to the investigation and the recommendations were final.

4.4 You failed to inform the NPA that you had altered the original report or that you have produced a new contradictory report; and

4.5 By failing to inform the NPA about your conduct aforesaid, you sought to mislead the NPA with the sole purpose of interfering with its administration of justice.

Charge 3

5. In your letter of 26 November 2014, purporting to reply to the request by the Minister of 24 November 2014, you withheld the existence of the original final report and created the false impression that the only report which existed was "the new report" which had been revised under your instruction. Your conduct was intended to misrepresent to the Minister the true state of facts which constitutes gross misconduct and/or gross dereliction of duty.

Charge 4

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6. After the Minister initiated an enquiry, having appointed Werksmans attorneys to conduct same, you instructed Mr Khuba not to attend an interview which had been arranged by Werksmans' attorneys. Your conduct aforesaid was intended to interfere with the investigation conducted by Werksmans.

Charge 6

7. During January and February 2015 respectively, you intentionally, alternatively, grossly negligently misrepresented to Lieutenant-General Dramat's and Major-General Shadrack Sibiya's attorneys that Dramat and Sibiya had been cleared by the IPID report in the Zimbabwean rendition investigation when you knew or ought to have known that IPID had submitted its final report in January 2014 to the NPA for NPA to prosecute or make a decision to prosecute Dramat, Sibiya and other officers implicated in the report.

Charge 7

8. You have lied to the investigators ("Werksmans") when they interviewed you in that you told the investigators that you have never seen the January 2014 report and that you only saw the second report ("March 2014 report") which you signed on 18 March 2014, whereas in your founding affidavit deposed to by yourself on 12 March 2015 you attached both reports and alleged that a thorough analysis of the evidence was done before the drafting of the second report and

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that the conclusions reached in the first report, which you called an interim preliminary report were not sustainable.

Charge 8

9. You have made yourself guilty of gross insubordination when you sought to bypass the Minister of Police by requesting permission from the Chairperson of the Parliamentary Portfolio Committee on Police for you to address the Portfolio Committee directly on the existence of the two IPID conflicting reports on the illegal rendition of the Zimbabwean nationals; similarly you made yourself guilty of gross insubordination when you instructed officials within IPID, i.e. Khuba and Sesoko not to cooperate with the Minister's commissioned investigation conducted by Werksmans Attorneys.

In respect of all the above allegations:-

- You violated section 206(6) of the Constitution, which guarantees the independence of IPID from the police. Your decision to instruct Khuba or Sesoko or both or made the alteration of the report was calculated to or likely to undermine the independence, impartiality and effectiveness of IPID in relation to the police.
- You violated sections 4(1) and (2) of the Independent Police Investigative Directorate Act 1 of 2011 ("the Act") which guarantees the independence of IPID from the police, in that the effect of your decision was to protect members

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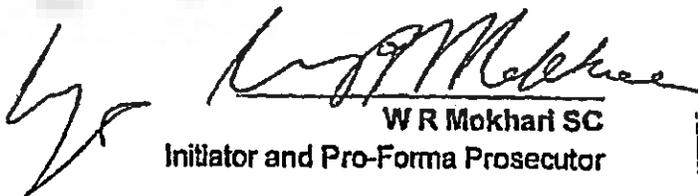
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of the South African Police Service implicated by the IPID original and final report dated 22 January 2014 from prosecution by the NPA.

- You attempted to defeat the ends of justice in that whereas you were aware that IPID has submitted its final report to the NPA in January 2014 for the NPA to make a decision on whether to prosecute those implicated in the report, you recalled the docket with the report from the NPA on or about 5 March 2014 with the sole purpose of altering the findings and recommendations of the original report and delete or omit incriminating evidence from the original report in order to project those implicated in the original report.
 - You violated the provisions of section 179 of the Constitution which guarantees the independence of the NPA in that you interfered and/or sought to interfere with the performance of prosecutorial functions by the NPA.
 - You abused the powers vested in you by virtue of the provisions of section 7 of the Act.
10. Accordingly, you should be found guilty of all of the above mentioned charges preferred against you.

Dated at Johannesburg on this the 6th day of May 2015


W R Mokhari SC
Initiator and Pro-Forma Prosecutor


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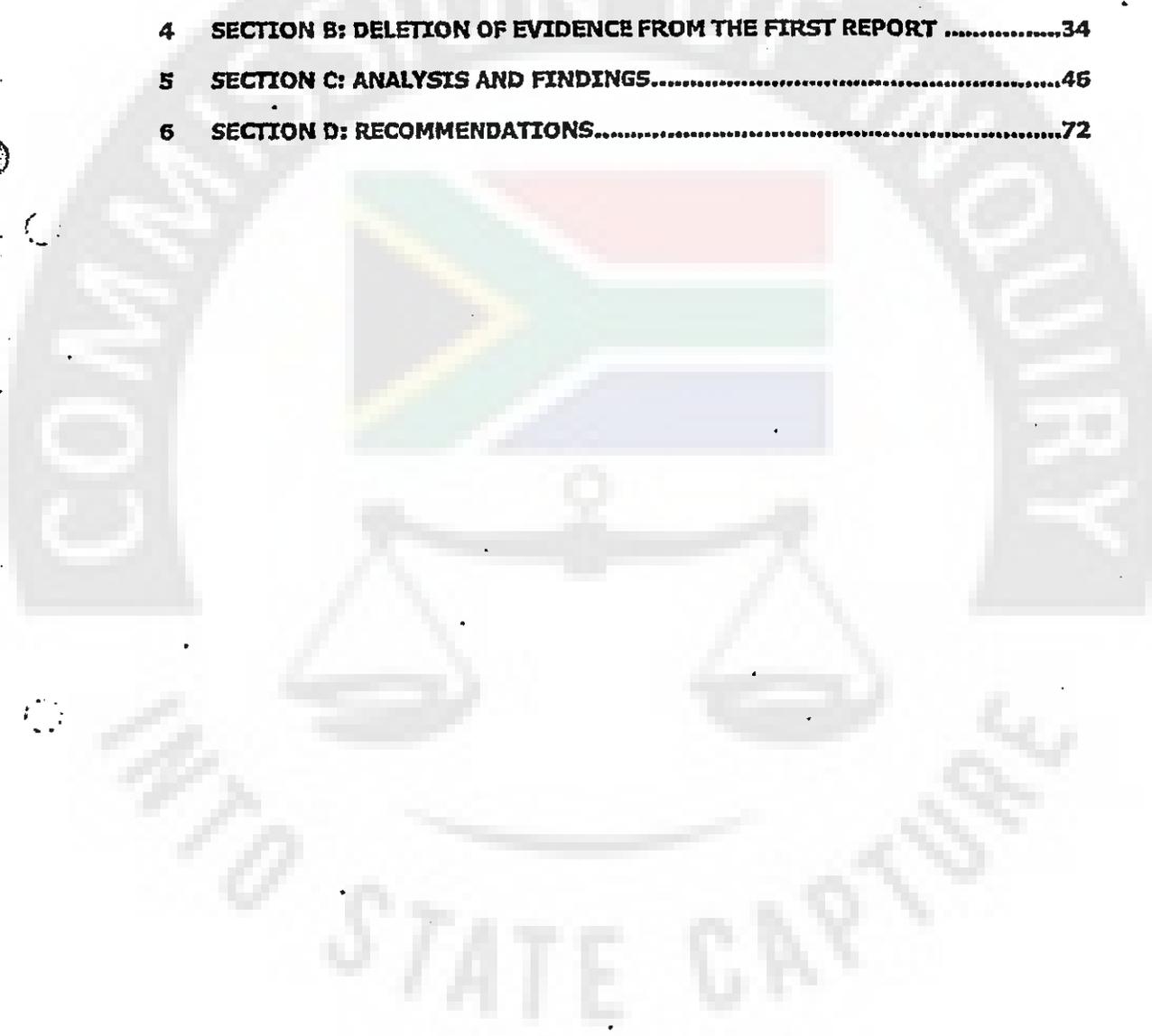
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- Initials "MP" written below the signature.
- Initials "PU" to the right of "MP".
- A small number "2" below "PU".

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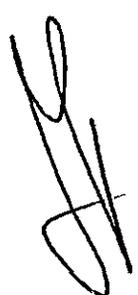
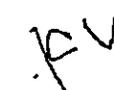
1 GLOSSARY OF TERMS

- Act - Independent Police Investigative Directorate Act 1 of 2011
- Angus - Glen Angus
- Baloyi - George Baloyi, Deputy Director of Public Prosecutions, North Gauteng
- Brig - Designated Rank of Brigadier in the SAPS
- Chauke - Advocate Chauke, DPP for South Gauteng
- Criminal Procedure Act - Criminal Procedure Act No.51 of 1977
- DDPP - Deputy Director of Public Prosecutions
- Docket- Dlepsloot 390/07/2012
- DPCI - Directorate for Priority Crime Investigation
- DPP - Director of Public Prosecutions
- Dramat - Lieutenant- General Anwa Dramat
- Dube - Gordon Dube
- DZP - Dispensation for Zimbabwean Project
- First Report - IPID Report dated 22 January 2015 signed by Khuba
- IPID - Investigative Police Investigative Directorate
- Immigration Act - Immigration Act No.13 of 2002
- Investigator - means a person appointed under Section 22 of the Act
- Jawuke - Mr Petrus Jawuke
- Jiba-Advocate Nomgcobo Jiba, Deputy National Director of Public Prosecutions
- Khuba - Mr Innocent Khuba.
- Lt. Con - Designated rank of Lieutenant Colonel in the SAPS
- Lt-Gen - Designated rank of Lieutenant General in the SAPS
- Maj-Gen - Designated Rank of Major General in the SAPS
- Maluleke - Captain Mashangu Lesley Maluleke
- McBride - Robert McBride -Executive Director: IPID.
- Moeletsi - Senior State Advocate at the NPA
- Mosing - Senior State Advocate at the office of the NDPP (Head of Special Projects Division)
- Moukangwe - Colonel Moukangwe
- Mzinyathi - Director of Public Prosecutions- North Gauteng
- National Prosecuting Authority Act - National Prosecuting Authority Act No 32 of 1998
- NDPP - National Director of Public Prosecutions
- NPA - National Prosecuting Authority
- Nyoni- Johnson Nyoni

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- Nxasana - Mxolisi Nxasana, National Director of Public Prosecutions
- Preliminary Report- the preliminary report drafted by Khuba and submitted to Mosing, dated 22 October 2013
- Rendition - the illegal deportation of five Zimbabwean nationals described at 2.2.5.1, 2.2.5.2 and 2.2.5.3
- SAPS - South African Police Service
- Second Report - the IPID Report dated 18 March 2014 signed by Khuba, Sesoko and McBride
- Selepe - W/O Selepe
- Sesoko - Matthews Sesoko, Head of Investigations: IPID
- Sibiya - Major- General Shadrack Sibiya.
- Success Report - Consolidated success report addressed to Maj General Sibiya, Lt Gen Dramat and Lt Gen Toka dated 4 February 2011.
- TOMS - Tactical Operations Management Section
- TRT - Tactical Response Team
- Werksmans - Werksmans Attorneys
- W/O - Designated Rank of Warrant Officer in the SAPS



2 INTRODUCTION

The offices of Werksmans have been mandated by the Honourable Minister of Police, Mr Nathi Nhleko, to conduct an investigation into the reports submitted by IPID which deal with the Rendition.

2.1 Terms of reference for the investigation

In conducting the aforesaid investigation, the Minister has provided Werksmans with the following terms of reference:

"5. Your terms of reference in the investigation are the following:

5.1 who and under what circumstances was the original report altered or how the Second Report came about with both reports signed by the same person; i.e Mr Khuba;

5.2 whether any misconduct or offence has been committed and if so by whom?;

5.3 whether there is prima facie evidence of misconduct and criminal liability by Lieutenant-Dramat; Major-Sibliya; and any other officers mentioned in the original report.;

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

5.5 any other matter that might come to your attention during the investigation which relevant to your conclusions and findings."

2.2 Factual background of the rendition

2.2.1 Based on an evaluation of the First and Second Reports as well as the documents and evidence before us, we have summarised the sequence of events of the Rendition as set out below.

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2.2.2 During the period November 2010 until January 2011, a number of Zimbabwean nationals were arrested by SAPS together with Zimbabwean police officials. The arrest of these individuals was explained by the DPCI, in response to a parliamentary question posed by a member of the Congress of the People. The DPCI, through Dramat, advised parliament that the individuals in question were deported as illegal immigrants and had been arrested on suspicion of having committed or been involved in certain crimes, such as ATM bombings. The DPCI in its parliamentary response, further stated that when it came to light that the arrested individuals could not be linked to specific crimes, the individuals were deported to Zimbabwe.

2.2.3 From the documentation provided for our review, it appears that the DPCI was aware that the response to the parliamentary question was not factually correct. It is our view that they deliberately misled parliament in this regard.

2.2.4 The circumstances surrounding the arrests appeared to be questionable and raised a number of legal considerations relating to, inter alia, the lawfulness of the process followed by the SAPS in deporting the relevant Zimbabwean nationals.

2.2.5 The arrests of the five Zimbabwean nationals was effected in three stages which will be summarised briefly, below.

2.2.5.1 *The first operation*

2.2.5.1.1 The first operation relating to the arrest of Zimbabwean nationals took place on 5 November 2010 where four Zimbabwean nationals (Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma) were arrested in Diepsloot and detained in the Orlando police station in Soweto. The reasons stated for their detention was that they were illegal immigrants. The operation was conducted by the DPCI head office and DPCI provincial office (TOMS). It is alleged that DPCI and TOMS were accompanied by two Zimbabwean police officers. The members of the operation

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were informed during a parliamentary briefing meeting that they were tracing suspects involved in a robbery committed in Zimbabwe during which a Zimbabwean police superintendent was fatally shot.

2.2.5.1.2

After the four Zimbabwean nationals referred to in 2.2.5.1.1 were booked into Orlando police station, Dumisani Witness Ndeya was booked out of Orlando police station in order to assist the SAPS with the tracing of a certain individual named John. John could not be traced and Dumisani Witness Ndeya was returned to Orlando police station. The four Zimbabwean nationals were detained over the weekend as illegal immigrants and on the morning of 8 November 2010 they were booked out of Orlando police station by Maluleke. Maluleke indicated at this time that the Zimbabwean nationals were to be transported to Belridge border post. Two of the Zimbabwean nationals were released and the remaining two were transported to Belridge border post and handed over to a contingent of Zimbabwean police.

2.2.5.1.3

The circumstances under which the Zimbabwean nationals were deported, is circumspect. The docket which was used during the deportation did not belong to the Department of Home Affairs, as it is required to in the case of deportations. Although there were documents which were presented as being documents issued under the auspices of the Department of Home Affairs in order to authorise the deportation, it appears from an analysis of such documentation by an expert in this regard, that the documents which purported to be issued by the Department of Home Affairs, were forged.

2.2.5.1.4

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

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2.2.5.2 *Second operation*

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

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

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

2.2.5.3 *Third operation*

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

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

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- 2.2.5.3.3 Dube did not appear in court as he was booked out of hospital on Maluleke's instructions. At the same time, Maluleke retrieved the gun that was found in Dube's possession when he was arrested from Weirbrug police station. The same gun was allegedly used in the robbery in Zimbabwe referred to at 2.2.5.1.1 which resulted in the death of the Zimbabwean superintendent.
- 2.2.5.3.4 Maluleke informed the investigating officer, Lean Meyer, that Dube would be dealt with through immigration channels. Maluleke then transported Dube to Beitbridge and Dube never returned to South Africa.
- 2.2.5.3.5 Maluleke once again enlisted the services of CIG in order to trace an additional Zimbabwean national, Johnson Nyoni ("Nyoni"). Nyoni was traced in Diepsloot and arrested by the CIG members and the TRT unit of the Johannesburg Central police station, on 26 January 2011.
- 2.2.5.3.6 Nyoni was taken to the DPCI head office where the members who participated in the arrest of Nyoni were congratulated by Dramat. Photographs depicting the members involved in the arrest, Nyoni, two Zimbabwean police members and their vehicle, and the gun retrieved from Dube's possession, were taken by a third Zimbabwean police officer.
- 2.2.5.3.7 Nyoni was thereafter booked out on 28 January 2011 by Maluleke and taken, together with Dube, to Beitbridge border post. The entry in the registers at the relevant police station reflect that Nyoni was booked out for the purpose of extradition to Zimbabwe through the Beitbridge border post. Nyoni was killed while in the custody of the Zimbabwean police.

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2.3 Relevant legislation

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

2.3.1.1 Immigration Act

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

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

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

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

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

2.3.1.1.4

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

2.3.1.1.5

The Immigration Act defines 'immigration officer' to mean -

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

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

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

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

...

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

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

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

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

2.3.1.1.8

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

2.3.1.1.9

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

2.3.1.1.10

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

2.3.1.2

The Act

2.3.1.2.1

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

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

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

2.3.1.2.2

Regulation 5(i) to the Act states:

"after collecting all evidence, statements and technical or expert reports, if applicable, submit a report on the investigation of the offence to the Executive Director or the relevant provincial head, as the case may be, containing recommendations regarding further action, which may include disciplinary measures to be taken against a member of the South African Police Service or the Municipal Police Service or criminal prosecution of such member." [own emphasis]

2.3.1.3

From a reading of the Act, and the above regulation, it is evident that both criminal and disciplinary recommendations may be made in relation to the conduct of members of SAPS and its directorates. This includes the DPCI as a directorate within SAPS. In addition, it appears that in terms of the regulations, the investigator must submit a report on the investigation of the offence to the executive director of IPID.

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2.3.1.4 **Relevant crimes and elements of such crimes**

2.3.1.5 The criminal offences referred to below are not statutorily defined but are understood in common law to constitute the conduct set out below.

2.3.1.5.1 ***Kidnapping:***

2.3.1.5.1.1 Kidnapping is defined as the unlawful and intentional deprivation of a person's liberty of movement and / or his or her custodians, of their control.

2.3.1.5.1.2 Elements of the Crime: (1) Unlawful, (2) deprivation of liberty or of custody, (3) of a person and (4) Intention.¹

2.3.1.5.2 ***Murder:***

2.3.1.5.2.1 Murder is defined as the unlawful and intentional causing of the death of another human being.²

2.3.1.5.2.2 Elements of the Crime: (1) Causing the death (2) of another person (3) unlawfully and (4) Intentionally.

2.3.1.5.3 ***Assault:***³

2.3.1.5.3.1 Assault is defined as any unlawful and intentional act or omission:

2.3.1.5.3.1.1 which results in another person's bodily integrity being directly or indirectly impaired; or

¹ J. Burchell 'Principles of Criminal Law' 2013

² CR. Snyman 'Criminal Law' 2008

³ See footnote 1

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2.3.1.5.3.1.2 which inspires a belief in another person that such impairment of her bodily integrity is immediately to take place.

2.3.1.5.3.2 Elements of the Crime: (1) conduct which results in another person's bodily integrity being impaired (2) unlawfulness (3) intention.

2.3.1.5.4 **Forgery and Uttering:**

2.3.1.5.4.1 Forgery and Uttering is defined as unlawfully making, with intent to defraud, a false document which causes actual or potential prejudice to another.

2.3.1.5.4.2 Elements of the Crime: (1) Unlawfulness (2) document (3) false and (4) (intention)⁴.

2.3.1.5.5 **Fraud:**

2.3.1.5.5.1 Fraud is defined as unlawfully making, with the intent to defraud, a misrepresentation which causes actual prejudice or which is potentially prejudicial to another.

2.3.1.5.5.2 Elements of the Crime: (1) Unlawfulness (2) intention (3) misrepresentation (4) prejudice⁵.

2.3.1.5.6 **Defeating the ends of justice or obstructing the administration of justice:**⁶

2.3.1.5.7 Defeating the ends of justice is defined as unlawfully and intentionally engaging in conduct which defeats the course or administration of justice.

⁴ *Ibid* at p733

⁵ *Ibid* at p721

⁶ *Ibid* 832

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2.3.1.5.8 Elements of the crime: (a) Conduct (b) which amounts to defeating or obstructing (c) the course or administration of justice and which takes place (d) unlawfully and (e) intentionally.

2.4 Methodology in conducting the investigation

2.4.1 In conducting the investigation and preparing this report we have-

2.4.1.1 had access to and have considered the First and Second Reports;

2.4.1.2 Interviewed the following people:

2.4.1.2.1 Khuba;

2.4.1.2.2 Moukangwe;

2.4.1.2.3 Angus;

2.4.1.2.4 Sesoko;

2.4.1.2.5 Mosing;

2.4.1.2.6 Mzinyathi;

2.4.1.2.7 Baloyi;

2.4.1.2.8 Chauke;

2.4.1.2.9 McBride;

2.4.1.2.10 Jiba,

and

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

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

2.4.2.1 Section A: Circumstances surrounding the compiling of each report;

2.4.2.2 Section B: Deletion of evidence from the First Report;

2.4.2.3 Section C: Analysis and findings; and

2.4.2.4 Section D: Recommendations.

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3 SECTION A: CIRCUMSTANCES SURROUNDING THE COMPILING OF EACH REPORT

3.1 Section A1: First Report

3.1.1 At the outset, it is critical to mention that prior to Khuba conducting any investigations into the Rendition, there were two investigations into the Rendition that had already been undertaken, as follows -

3.1.1.1 the DPCI had conducted and concluded an internal investigation into the Rendition, in terms of which the DPCI members involved in the Rendition were exonerated from any wrongdoing in the Rendition; and

3.1.1.2 a member of Crime Intelligence, Moukangwe, had commenced an investigation into the Rendition. According to the investigation conducted under the auspices of Crime Intelligence was never concluded, instead it was done jointly with IPID.

3.1.2 The First Report was compiled by Khuba with the assistance of Moukangwe and the guidance of Mosing and Moeletsi. In this section we elucidate the circumstances under which this report was produced by Khuba and Moukangwe. Our explanation of the circumstances under which this report was produced is based on the interviews conducted with Khuba, Moukangwe and Mosing.

3.1.3 It is important to state that the Special Projects Division in the office of the NDPP was tasked to provide guidance to Khuba and Moukangwe during the course of their investigation. The Special Projects Division is headed by Mosing assisted by Moeletsi. The role of Mosing and Moeletsi was never to make a decision on whether to prosecute or not.

3.1.4 On 23 October 2012 Khuba received a docket from Sesoko and an appointment letter to conduct an investigation of all cases of alleged assault in relation to Sibiyi. Upon perusal of the docket of Diepsloot 390/07/2012 he discovered that the DPCI had received a complaint relating to the Rendition.

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- 3.1.5 In light of the above, Khuba was instructed by the former Acting Executive Director of IPID Koekie Mbeki to conduct an investigation into the Rendition. He was further instructed to liaise with Moukangwe so that the latter could assist him to conduct the investigation.
- 3.1.6 Khuba briefed Moukangwe on the intended investigation and it was agreed that Moukangwe will assist Khuba in conducting the investigation into the Rendition. What was further agreed was that Moukangwe's name would not appear in the report once the investigation is finalised as the investigation was commissioned by IPID and Moukangwe was employed at Crime Intelligence.
- 3.1.7 Khuba began his investigation by interviewing certain members of the Department of Home Affairs. At this stage the docket already had statements obtained from the TOMS, Crime Intelligence and the Zimbabwean nationals who had been subject to the Rendition.
- 3.1.8 Subsequently, on 7 March 2013, Khuba visited the office Dramat. Moukangwe was a party to this meeting as well. At this meeting, Dramat stated that he did not recall meeting with the Zimbabwean Police. Khuba requested certain documents, including statements and documents related to the internal investigation into the Rendition conducted by DPCI, from Dramat. Dramat instructed Khuba that such request be made in writing.
- 3.1.9 When Khuba was finally provided with the requested documents, it appeared as if the statements provided recorded that the internal investigation conducted by DPCI was conducted properly and that everything was in order. Khuba, however, was unconvinced as to the correctness of the statement of a particular individual, being Madilonga, which statement was signed but not commissioned. Khuba met with Madilonga who provided a new statement detailing the actual events regarding his involvement in the Rendition.
- 3.1.10 Khuba conducted further investigations relating to the passage of individuals through the Beitbridge border post on the dates relevant to



the Rendition. In addition, Khuba spoke to Leonie Verster who was Maluleke's supervisor. Leonie Verster indicated that Maluleke did not respect the chain of command and would communicate directly with Sibiyi. Leonie Verster also drew Khuba's attention to the success reports directed to Dramat, Lebeya, Hlatwayo and others. Khuba perused the three success reports with which he had been provided and noted that one report dealt with the deportation or the arrest of Ndeya, and others that were connected relation to the murder of a Zimbabwean police officer in Zimbabwe.

3.1.11 One success report recorded that the Zimbabwean police came and met with Dramat on 5 November 2010 and requested assistance. The success report further recorded Maluleke's appointment to head the assignment to trace the Zimbabwean fugitives. Khuba obtained a laptop belonging to Maluleke and found that the success reports were generated from this laptop. The laptop also contained photographs of the operation as well as correspondence to Zimbabwean police officers.

3.1.12 Khuba's investigation continued. As part of the investigation, Khuba met with members of crime intelligence. At their offices, Khuba noticed that the photographs which he obtained from Maluleke's laptop relating to the operation were posted on the office walls of some members of crime intelligence. Khuba was informed by a member of crime intelligence, Mkasibe that during January 2011 when the arrests were completed, they went to DPCI's offices and Dramat personally came to the offices at House No. 3 and congratulated them for a job well done. According to Mkasibe, Dramat requested that they not tell anyone about the details of the operation. According to Khuba, Mkasibe confirmed that he has a historical relationship with Dramat due to their mutual involvement in Umkhonto We Sizwe.

3.1.13 Mkasibe's statement was corroborated by Mngwenya who confirmed that Dramat addressed the officers and congratulated them; however, Mngwenya did not mention Dramat telling them not to divulge the details of the operation. In addition, a third officer, Mokgobu, stated that she was out of the office at the time that Dramat attended to congratulate

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them; however, upon her return, she was informed that Dramat was congratulating the officers at House No.3.

3.1.14 Subsequently there was a leak of information regarding the investigation which was published in the Sunday times. At this time, Khuba and Mosing began drafting questions to Dramat enquiring about Dramat's involvement in the Rendition.

3.1.15 Khuba also interviewed Maluleke specifically regarding his promotion from captain to colonel. Khuba was not successful in obtaining the file regarding Maluleke's promotion.

3.1.16 Khuba records that Dramat sent a report, in response to the parliamentary question posed by a member of Congress of the People (COPE) regarding the Rendition, explaining the circumstances of the Rendition by stating that the Zimbabwean nationals were deported as illegal immigrants. This caused Khuba to investigate the matter further. He considered expense claims relating to the travelling to Beitbridge border post, as well as cell phone and vehicle tracker records positioning Maluleke, Makoe, Nkosi and constable Radebe at Diepsloot on the night of the arrests.

3.1.17 Khuba then investigated the booking in and out of certain police stations of the relevant Zimbabwean nationals following the arrests at Diepsloot. Khuba then began finalising the report but did so in the absence of an analysis of the cell phone records of Sibiyi. Although Khuba was in possession of cell phone records in relation to Sibiyi, such cell phone records had to be interpreted by an expert.

3.1.18 According to Khuba, as he was conducting the investigation with Moukangwe they would consult with Mosing and Moeletsi who were providing guidance in the process regarding the evidence to be collected in finalising the investigation. At some stage during 2013, Mosing and Moeletsi advised Khuba and Moukangwe as to which information in their draft investigation report dated October 2013 needed to be added. This information was the warning statements from Dramat, Sibiyi, Maluleke, Leonie Verster and analysis of cell phone records by an expert.

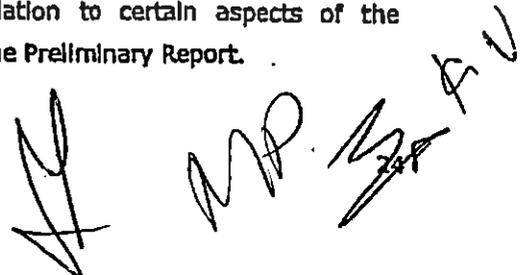
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- 3.1.19 Khuba advised that subsequent to the advice by Mosing and Moeletsi, he and Moukangwe conducted further investigations to address the concerns raised by Mosing and Moeletsi. According to Khuba all the individuals mentioned above refused to provide warning statements.
- 3.1.20 In light of that which is stated in the preceding paragraph, Khuba and Moukangwe finalised their investigation and provided a report with recommendations. This report was submitted to Mosing and Moeletsi on 22 January 2014. This report, being the first report, was, in the opinion of Moukangwe and Khuba, final. The recommendations made in this report were that Dramat, Sibiyi, Maluleke, Makoe, Radebe and Nkosi be criminally charged with defeating the ends of justice and kidnapping.
- 3.1.21 According to Khuba, the First Report was submitted as a final report and they expected the NPA to take further action as required by law, on the basis of their recommendations set out therein.
- 3.1.22 In our interview with Moukangwe, Moukangwe corroborated Khuba's version regarding his (Moukangwe's) involvement in the investigation and the compilation of the First Report.
- 3.1.23 Moukangwe explained why he, as a member of SAPS, was tasked with conducting an investigation on behalf of IPID. In this regard he stated that the majority of the work had already been done by Crime Intelligence and that his superiors were of the view that he should assist Khuba in finalising the investigation.
- 3.1.24 According to Moukangwe, when they (Moukangwe and Khuba) finalised the First Report on 22 January 2014, the only outstanding information was the warning statements from Dramat, Sibiyi, Verster and Maluleke who had all refused to provide these warning statements.
- 3.1.25 Moukangwe corroborated Khuba's testimony that Dramat, Sibiyi and Maluleke had refused to provide warning statements when they approached them pursuant to the advice of Mosing and Moeletsi:

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



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3.1.31 We are not able to confirm as to whether or not Nxasana had ever received a copy of the internal memorandum mentioned at 3.1.30 as he has failed to respond to our requests to meet.

3.1.32 Paragraph 4 of Mosing's memorandum specifies the outstanding investigations required at that stage to finalise the report. This includes-

3.1.32.1 the reports of analysis of cell phone records;

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

3.1.32.3 the statements from Dramat, Sibiya and Maluleke.

3.1.33 Khuba and Moukangwe continued with their investigation and requested warning statements from the above individuals, all of which refused to provide warning statements. The investigators thereafter obtained the analysis of cell phone records and finalised their report.

3.1.34 On 22 January 2014 Khuba met with Mosing and Moeletsi to submit the report as a final report. According to Mosing, Khuba and Moukangwe felt that they had now completed their work and that it was up to Nxasana to make a decision on the merits of the case.

3.1.35 Mosing advised Khuba to include his (Khuba's) statement as the investigator in order to explain how he conducted the investigation. This was the only outstanding statement in the report of 22 January 2014. Mosing further advised us that two days after 22 January 2014, Khuba included his statement into the report and subsequently signed same. Khuba did not change the date of the report to signal the exact date that the report was signed. The first report was complete and submitted to Mosing for further action.

3.1.36 On 13 February 2014, Mosing addressed an internal memorandum to Jiba and Chauke, indicating that the investigations have been finalised and that the report from IPID has been submitted for the purposes of considering the merits of the case. The first report was attached to this

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memorandum. Mosing further stated that the docket comprising of two lever arch files, together with other files containing the cell phone data and evidence obtained from a computer belonging to the DPCI, was also enclosed.

3.1.37 Jiba confirmed that the internal memorandum was drafted on her advice and she confirmed receipt of both internal memorandums (being the memorandums mentioned at 3.1.30 and 3.1.36) from Mosing.

3.1.38 After the docket was sent to Chauke, Chauke handed the docket to Adv. Van Zyl. On 7 March 2014, Khuba accompanied by Angus removed the docket from the possession of Adv. Van Zyl.

3.1.1 The First Report contains, inter alia, a summary of the material statements provided by the individuals interviewed during the investigation as well as an analysis of the evidence. This First Report recommends that Dramat, Sibiya, Maluleke, Radebe, Nkosi and Makoe be prosecuted for their involvement in the Rendition, specifically in relation to the crimes of kidnapping and defeating the ends of justice. The report further recommends that Maluleke, Radebe, Nkosi and Makoe be prosecuted for assault and theft.

3.2 Section A2: Second report

3.2.1 How the Second Report was compiled

3.2.1.1 Subsequent to the submission of the First Report, on 3 March 2014, McBride was appointed as executive director of IPID. At this stage, McBride requested an update of all the high profile matters that were being handled by IPID, including the Rendition.

3.2.1.2 As such, after McBride was appointed, Sesoko, McBride and Khuba began working on the Second Report. This was done in the absence of any consultations in this regard with Moukangwe and/or Mosing who were both active in the investigation and the submission of the First Report.

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- 3.2.1.3 At the outset, we believe that it is important for us to note that although we make reference to the so-called Second Report, we are of the view that this term is a misnomer. The Second Report is not an additional report in the matter of the Rendition, nor does it appear to be an update of the First Report, as implied by Khuba.
- 3.2.1.4 It is clear upon perusal of the First and Second Reports that the Second Report is actually a version of the First Report which has been altered by the deletion of certain evidence in order to arrive at a conclusion which is far removed from the conclusion of the First Report. There appears to be no valid explanation for this deletion of evidence, nor are we able to ascertain who is responsible for such deletions, even after having interviewed each of Khuba, Sesoko and McBride, being the co-signatories to the Second Report.
- 3.2.1.5 The First Report was drafted and submitted as set out in Section A1. As mentioned previously, the Second Report differs from the First Report in respect of the recommendations made by each report and the summary of evidence contained in each report.
- 3.2.1.6 While the First Report was signed by Khuba, the Second Report was signed by Khuba, McBride and Sesoko. It is the version of Khuba that the submission of the Second Report was necessitated by two things, namely the addition of new evidence and as a result of discussions with Sesoko.
- 3.2.1.7 Both Moukangwe and Mosing confirm that even though they were part of the investigation team in respect to the submission of the First Report, they were not consulted in the decision to amend the findings and recommendation of the First Report, which subsequently resulted in the drafting of the Second Report.
- 3.2.1.8 The sequence of events which led to the issuing of a Second Report are suspicious insofar as the dramatic change in the conclusion and recommendations of each report does not appear to have been occasioned by a substantial addition to the evidence, but instead, seems to be occasioned by a deletion of evidence.

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- 3.2.1.9 Khuba states that he met with McBride in order to discuss his investigation, however, prior to meeting with McBride, Khuba provided Sesoko with an email copy of his report to pass along to McBride so that McBride would be able to prepare for the meeting with Khuba. Although Sesoko confirms receipt of such email from Khuba, he is unclear of whether he provided McBride with a hard copy or a soft copy of the report.
- 3.2.1.10 Notwithstanding that Khuba states that he emailed a copy of the First Report to Sesoko for McBride's attention, and Sesoko confirms that he provided the report to McBride, both Sesoko and McBride are adamant in stating that they did not have knowledge of the First Report. This version by McBride is contradicted by Khuba who states that in his first meeting with McBride, it was evident from a discussion regarding the Rendition, that McBride had had regard to the First Report.
- 3.2.1.11 According to Khuba on 5 March 2014, McBride met with Khuba. It was evident from the discussions held between Khuba and McBride during this meeting, that McBride had had regard to the First Report. Subsequently Khuba briefed Sesoko on the matter.
- 3.2.1.12 The following day, being 6 March, Khuba met with McBride, Sesoko and Angus. It is alleged that McBride requested Angus to review the process of the investigation to ensure that the investigation had been conducted appropriately. Angus, however, advised McBride that he did not believe that it was appropriate for him to get involved at that stage of the investigation. It was on this day that McBride requested Khuba to retrieve the docket from the NPA and to provide McBride with every document Khuba possessed regarding this matter.
- 3.2.1.13 On 7 March 2014, Khuba attended at the offices of the DPP with Angus and specifically to Advocate Van Zyl who was in possession of the docket at the time. Khuba and Angus then removed the docket from the possession of Advocate Van Zyl. During our interview with

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Angus, he failed to disclose the fact that he attended at the offices of the NPA with Khuba in order to retrieve the docket. When this issue was subsequently raised with him, Angus states that he merely signed for the docket in the capacity of witness but he was allegedly not aware of the fact that he was signing for the removal of the docket. This is directly contradicted by Khuba who states that Angus was aware of the request by McBride for the docket to be retrieved, attended at the NPA and spoke with Advocate Van Zyl directly requesting the docket.

3.2.1.14

The first draft of the Second Report went to and fro amongst the Khuba, Sesoko and McBride. Khuba states that at no stage did McBride request that Khuba exonerate any particular individual in the Second Report.

3.2.1.15

Khuba states that he signed the last page of the Second Report once it was finalised and did not initial each page; as such, he would be incapable of knowing if any information was added or removed. He The Second Report was then submitted, and dated 18 March 2014.

3.2.1.16

During our interview with Khuba, his attention was drawn to the discrepancies between the recommendation of the First Report and the Second Report. Khuba's initial explanation for certain deletions was related to the fact that an evaluation of the evidence in relation to Sibiyá and in conjunction with his discussions with Sesoko, it was decided that it would not be possible to prove that Sibiyá was guilty of assault beyond a reasonable doubt.

3.2.1.17

Khuba later stated that he is strongly concerned about the removal of certain information, specifically the deletion of evidence which implicates Dramat. He states that the Second Report only went through three hands, being the three co-signatories to the report, including himself and that all that he did in respect of the report was to add information which was outstanding at the time.

3.2.1.18

Khuba is not able to adequately address the issue as to why the recommendation in respect of Dramat was changed, when initially

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the recommendation in the First Report was based on Dramat's knowledge of the events and not his physical participation.

3.2.1.19 Khuba stressed that if there were changes to the First Report; he had no way of knowing if the Second Report reflected such changes. According to Khuba he did not check whether the final version of the report was the same document that he emailed to Sesoko.

3.2.1.20 Furthermore according to Khuba, he signed the Second Report and provided it to the other two co-signatories for signature after which, he cannot advise as to how the report was presented to the NPA.

3.2.1.21 McBride's version is that the only input he had into the Second Report related to grammatical changes made by McBride and that he did not see the First Report nor did he make substantive changes. This version is contradicted by Khuba who states that McBride had seen the First Report and had given input into the report which was not just grammatical.

3.2.1.22 According to McBride, he was provided with the Second Report which was already signed by both Khuba and Sesoko.

3.2.1.23 As stated above, Sesoko alleges that he never had regard to the First Report and was not responsible for the deletion of evidence.

3.2.1.24 As will be further elucidated in Section B, below, the First Report and the Second Report differ in a number of aspects. In summary, the most dramatic differences between the two reports are the difference between the recommendations contained in each report. While the First Report recommends that Dramat, Sibiyi, Maluleke, Radebe, Nkosi and Makoe be charged criminally for their participation in the Rendition, the Second Report recommends that only Maluleke be charged criminally for his participation in the Rendition;

3.2.1.24.1 while the Second Report contains summaries of the statements given by all the relevant individuals whose statements were

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summarised in the First Report (but for the addition of statements from Dramat, Sibilya, Maluleke and Jennifer Irish Qhobosheane), the manner in which certain statements are summarised in the Second Report has been changed insofar as the portions of certain statements and/or evidence and even the analysis of findings which are reflected in the First Report, have been altered to remove wording which implicates Dramat as having knowledge of the Rendition..

3.2.1.24.2

although Khuba states that one of the reasons for the necessity of drafting the Second Report is the addition of new evidence, it is clear from an analysis of both reports, that the only addition to the Second Report relates to the addition of the statements mentioned above, and the addition of the analysis of Dramat's cell phone records. Other than the above, nothing additional was added. More importantly, as noted above, is that certain material portions of the individual statements found in the First Report have been removed from the Second Report

3.2.1.25

Pertinent information relating to the analysis of cell phone records has been removed and the records have been analysed in a way which falls short of the scrutiny contained in the First Report and which is required in an investigation process.

3.2.2

How the docket was dealt with after the submission of the Second Report

3.2.2.1

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

3.2.2.2

Chauke addressed a letter on 3 July 2014 to Nxasana informing him about the above sequence of events regarding the docket. The NDPP responded to the letter on 20 August 2014 indicating that the NDPP is in a process of considering the matter and that Advocate Chauke may close his file.

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3.2.2.3 In December 2014, after the suspension of Dramat, according to Chauke he received a call from the NDPP enquiring about the Rendition matter and was informed that Dramat had been suspended. The NDPP requested Chauke to proceed with dealing with the matter. Chauke advised the NDPP that he had since closed his file on the matter and was not dealing with it anymore.

3.2.2.4 Subsequently, on or about January 2015, the NDPP contacted Mzinyathi and advised Mzinyathi that the NDPP had received the docket from Chauke and that the matter fell under Mzinyathi's jurisdiction because Diepsloot, wherein the arrests of the Zimbabwean nationals took place, fell under the jurisdiction of the North Gauteng DPP. According to McBride, it was IPID (and not Chauke) that took the docket to the NDPP after McBride had signed the Second Report on 9 April 2014.

3.2.2.5 Shortly after his return from leave on 13 January 2015, Mzinyathi was furnished with the docket by the NDPP. At the time, Diepsloot did not fall under the jurisdiction of Mzinyathi which the NDPP was aware of. As such, this referring of the docket by the NDPP to Mzinyathi amounted to a transfer of jurisdiction, in terms of section 22(3) of the National Prosecuting Authority Act, from one DPP to another DPP.

3.2.2.6 Mzinyathi, together with Baloyi, perused the docket and engaged in discussions amongst themselves. In addition, Baloyi engaged in discussions with Khuba. Mzinyathi and Baloyi issued their recommendation in respect of this matter on 13 March 2015. In light of the transfer of jurisdiction mentioned at 3.2.2.5, the 'recommendation' made by Mzinyathi was a decision.

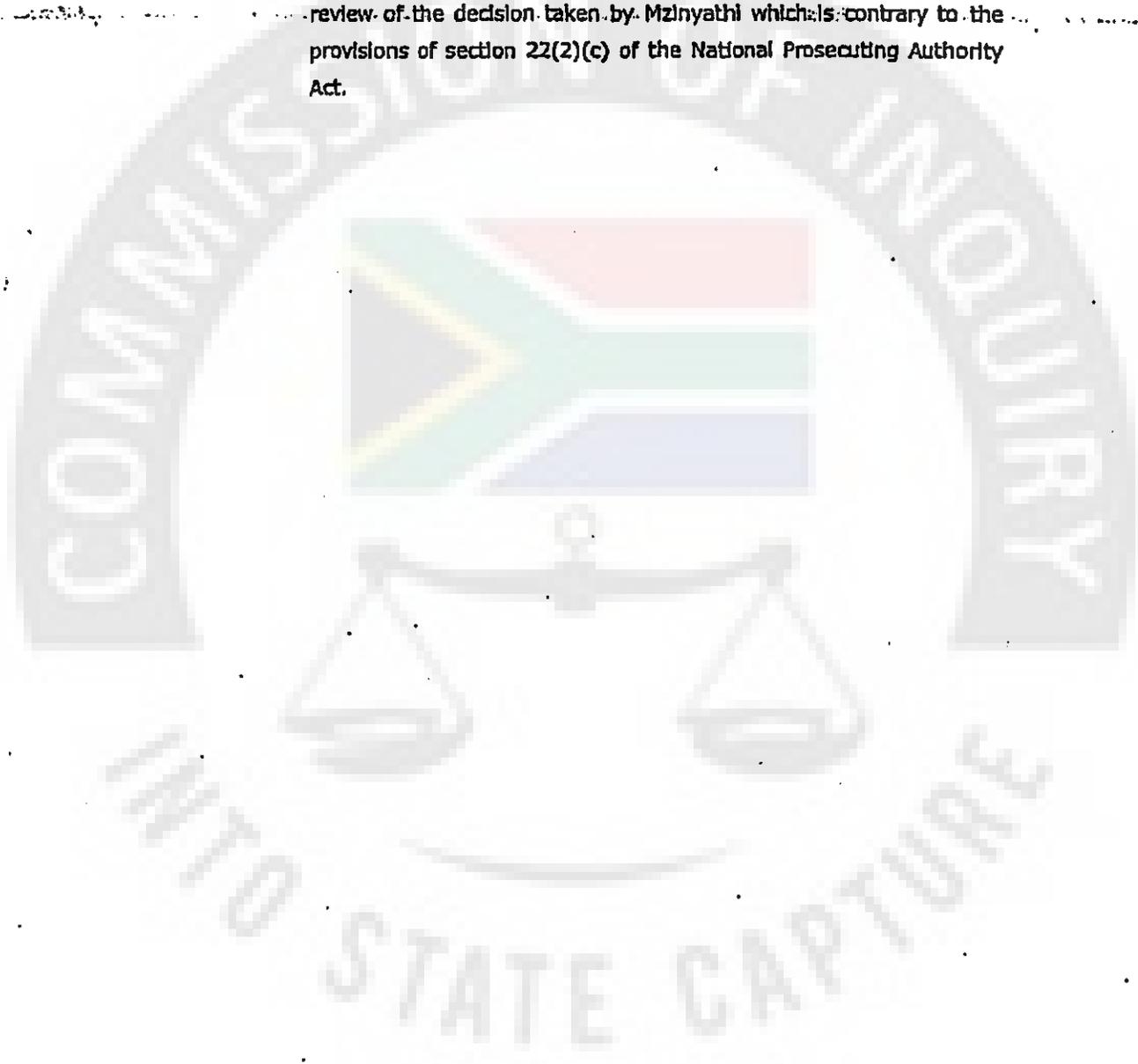
3.2.2.7 A decision as to whether or not to prosecute taken by a DPP is subject to review only by the NDPP, in terms of section 22(2)(c) of the National Prosecuting Authority Act. There is no authority in the National Prosecuting Authority Act which allows a DPP to review a decision taken by another DPP.

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3.2.2.8

Subsequently, on 1 April 2015, Chauke received the docket from the NDPP with a letter containing Mzinyathi's recommendations and was requested to make a decision on this matter. This amounts to a review of the decision taken by Mzinyathi which is contrary to the provisions of section 22(2)(c) of the National Prosecuting Authority Act.



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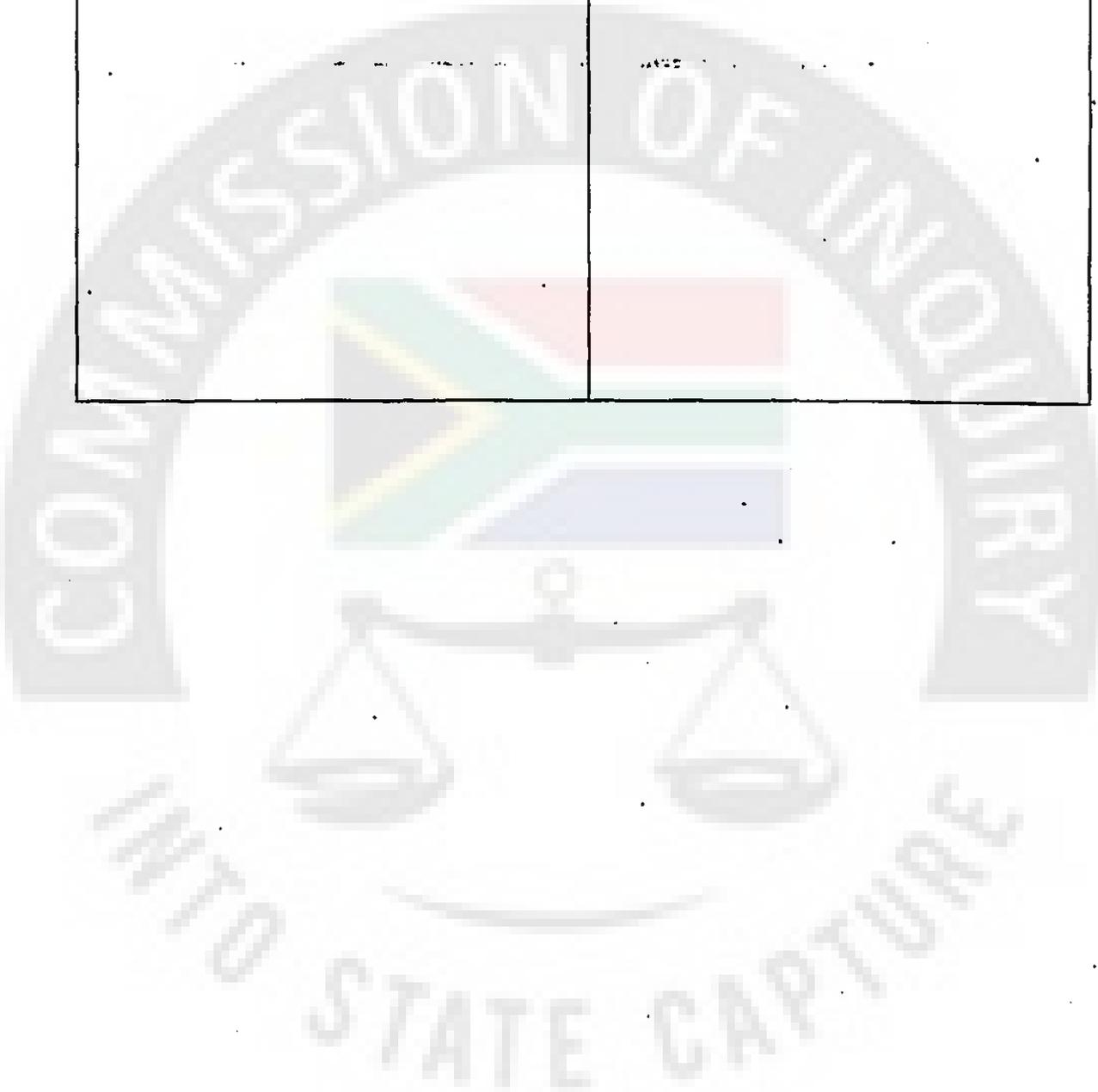
4 SECTION 8: DELETION OF EVIDENCE FROM THE FIRST REPORT

IPID REPORT 1	IPID REPORT 2
<p>Page 9: The statement of Ndanduleni Richard Madllonga</p>	<p>Page 9: statement of Richard Ndanduleni Madllonga</p>
<p>The statement of Madllonga states as follows in the relevant paragraphs :</p> <p><i>"Superintendent Ncube told him that he was going to Pretoria to meet General Dramat. He said to him that maybe he knew about the Chief Superintendent who had been murdered, He said that the suspects were in Gauteng and he had organized with General Dramat to assist them in tracing the suspects".</i></p> <p><i>"He will state that he told Superintendent Ncube that he has to verify with his seniors about the arrangements. He was given a number of General Dramat by Superintendent Ncube. He called Colonel Radzilani to verify the information but she requested that he should call Brigadier Makushu who was a Provincial Head Protection and Security Services. He then called him on his cell phone and explained to him that there are police from Zimbabwe who are intending to have a meeting with General Dramat. Brigadier Makushu told him that he was not aware of the visit but if the people are saying that they are going to meet the General, he should call General Dramat directly. He phoned General Dramat on his cell phone and</i></p>	<p>The following paragraphs are contained in this report in terms of Madllonga's statement:</p> <p><i>"Superintendent Ncube told him that he was going to Pretoria to meet General Dramat. He said to him that maybe he knew about the Chief Superintendent who had been murdered, He said that the suspects were in Gauteng and he had organized with General Dramat to assist them in tracing the suspects".</i></p> <p>(The paragraph that follows the above preceding paragraph has been deleted)</p> <p><i>"For the period of two weeks, he never heard anything from Superintendent Ncube and his group. After two weeks he received a call from Superintendent Ncube who told him that he was in town and he wanted to say goodbye. He went to town and met with them in front of Tops bottle store. They bought liquor and they left to the border. He did not escort them; they went to the border and crossed to Zimbabwe"</i></p> <p>The paragraph that begins with "He will state.." from the first report is deleted in the second report.</p>

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



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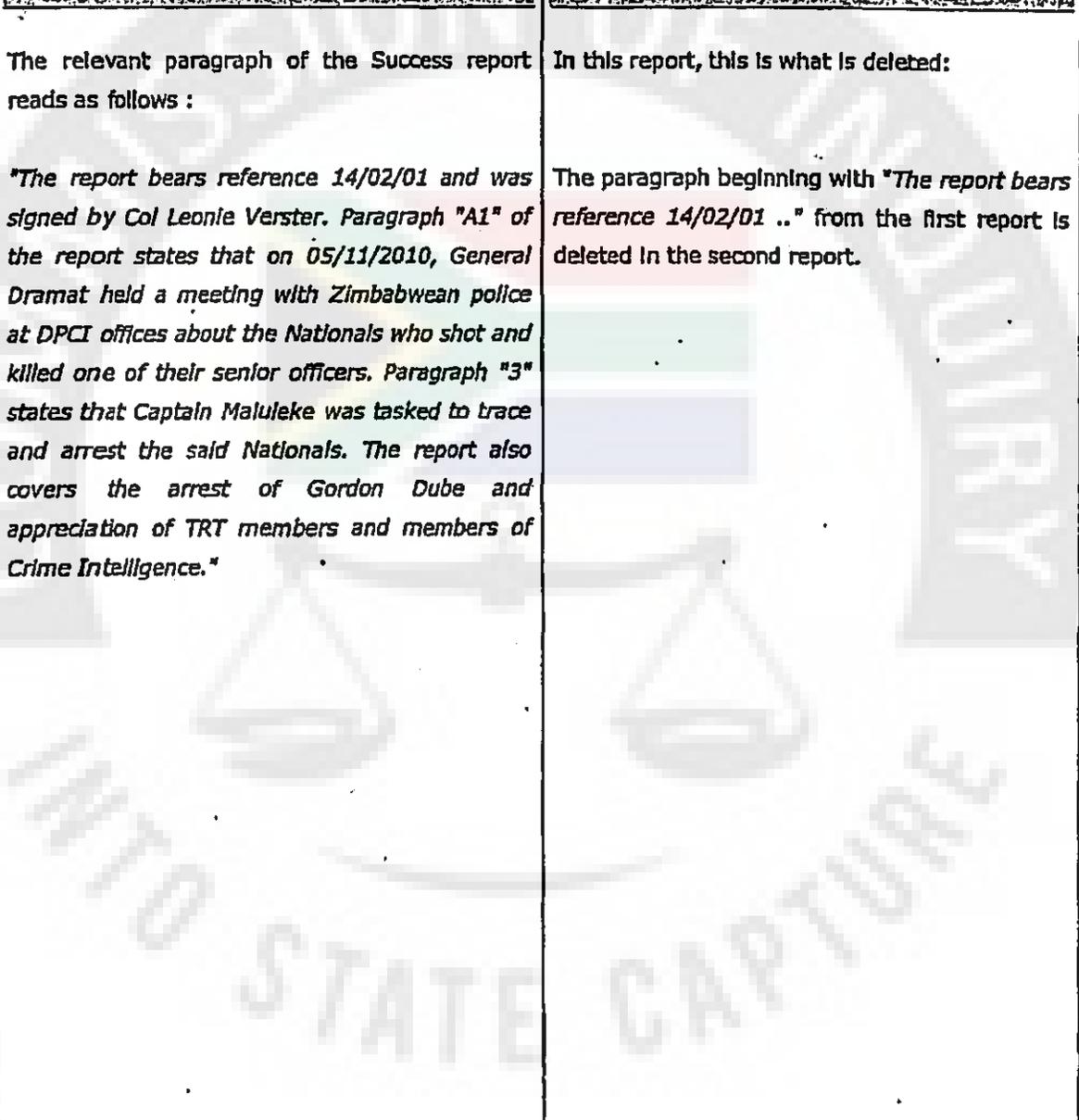
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<p>Page 21 para 5.2 reads Success report dated 04/02/2011 This report is addressed to Dramat Nlatshwayo and Toka</p>	<p>In page 20 para 5.2</p>
<p>The relevant paragraph of the Success report reads as follows :</p>	<p>In this report, this is what is deleted:</p>
<p><i>"The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI offices about the Nationals who shot and killed one of their senior officers. Paragraph "3" states that Captain Maluleke was tasked to trace and arrest the said Nationals. The report also covers the arrest of Gordon Dube and appreciation of TRT members and members of Crime Intelligence."</i></p>	<p>The paragraph beginning with "The report bears reference 14/02/01 .." from the first report is deleted in the second report.</p>





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<p>Page 21 para 53 Emails by Captain Maluleke</p>	<p>Page 21 para 53</p>
<p>The quoted email states the following :</p> <p><i>"He sent emails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. <u>The emails were sent to the PA of Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence</u>".</i></p>	<p>The same paragraph in this report does not mention all the individuals to which the emails were sent to, it reads:</p> <p><i>He sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. <u>He sent email to Zimbabwean police trying to find out how they travelled back home and that he is still tracing the remaining suspects...</u>"</i></p>
<p>Page 22 Letter to Stakeholders dated 20/08/2012</p>	<p>Page 21 Letter to stakeholders</p>
<p>The said letter states thus:</p> <p>"Letter to stakeholders dated 20/08/2012: <i>The letter was generated the same day indicating that in August 2010 <u>General Sibiva and General Dramat</u> went to Zimbabwe to discuss matters of cooperation on cross border crimes. <u>General Sibiva</u> was appointed as the coordinator on the cooperation issue between two countries. Other letters about the arrest of Zimbabwean national in connection with the murder of Zimbabwean police refers to the cooperation agreed during the same meeting.</i></p>	<p>In this report, the names of the people involved in the cooperation with Zimbabwean Police are no longer mentioned; The letter reads thus in this report :</p> <p>"Letter to stakeholders dated 20/08/2012: <i>The letter was generated the same day indicating the trip to Zimbabwe to discuss matters of cooperation on cross border crimes."</i></p>

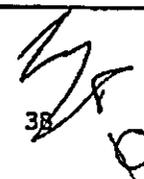
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<p>Page 22: Documents Regarding Moyo's case:</p>	<p>Page 21: Documents Regarding Moyo's Case:</p>
<p>Towards the end of this paragraph, Maluleke stated the following in a letter:</p> <p><i>"In a letter routed to General Dramat he stated that he went to Zimbabwe and conducted an operation with Zimbabwean police at Moyo's home village on 11/05/2011. Moyo was subsequently shot at transported to the border with the help of Zimbabwean police".</i></p>	<p>The letter referred to by Maluleke does not disclose to whom the letter was addressed: In this report, this is what is stated:</p> <p><i>" In a letter he states that he went to Zimbabwe and conducted an operation with Zimbabwean police at Moyo's home village on 11/05/2011</i></p>
<p>Page 23: Evidence in terms of Section 205 of CPA 51 of 1977:</p>	<p>Page 23: Evidence in terms of Section 205 of CPA 51 of 1977:</p>
<p>Evidence of Siblya's cell records show that he communicates with officers involved including Dramat, the analysis is put thus:</p> <p><i>"Cell phone record of Major General Siblya (0725953168): Upon perusal of the cell phone records it was discovered that Major General Siblya 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."</i></p>	<p>The analysis of Siblya's cellular phone records now only analyses Siblya's presence at the crime scene, not communicating with the officers involved., the analysis is as follows in this report:</p> <p><i>"Findings</i> <i>Major General Siblya was never at the crimes scenes or planning area as alleged by members of Crime Intelligence."</i></p>






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<p>Dramat's cellular phone records are not scrutinised nor mentioned in this report</p>	<p>According to this report Dramat's entire cellular phone record does not show any interaction between him and the Zimbabwean police. The findings are formulated thus :</p> <p><i>"The entire cell phone record of Lt General Dramat does show any interaction with the Zimbabwean counterparts. However the fact that Zimbabwean police might have entered the country is confirmed by photographs but there is no evidence that they were with Lt. General Dramat. The photos show them with members of the TRT, Captain Maluleke and members of Crime Intelligence</i></p>
<p>Cell phone Records of Maluleke are analysed in the following manner :</p> <p><i>"Cell phone records of Captain "Cowboy" Maluleke (08277295181 The interaction between Major General Sibiya and Captain Maluleke was also found in a form of</i></p> <p><i>received and outgoing calls. Captain Maluleke also communicated with General Dramat in terms of outgoing SMS at a very important milestone of the operation. However General Dramat never responded to the SMS which he received from Captain Maluleke at 23:12:15 on 05/11/2010.</i></p>	<p>There is no analysis of Maluleke's cell-phone records, only that there is a prima facie case against him</p>
<p>Cellular phone records of Col Neethling are analysed thus in this report :</p> <p><i>"Cell phone records of Lt Colonel Neethling (0827787624): He was directly reporting to Major General Sibiya. He contacted General Sibiya telephonically and in his statement he stated that he believed he reported the operation</i></p>	<p>There is no mention of this information and statement by Neethling in this report.</p>

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to Major General Sibiyi".	
<p>Telephone call made by Madilonga to Dramat. :</p> <p><i>"Cell Phone records of Lt Col Madilonga: He is police officer who was posted at the border during the operation. He assisted Captain Maluleke to cross the border with the suspects. He contacted Lt General Dramat when he welcome the Zimbabwean police the first time. His cell phone records his interaction with Captain Maluleke in line with his statement.</i></p>	<p>The report only tests the version of Madilonga making contact with Maluleke, the version by Madilonga in the first report that he contacted Dramat is obliterated and not discussed in the analysis.</p>
<p>Page 24: Cellular phone records of Nkosi Makoe and Radebe.</p>	<p>Page 24: Cellular phone records of Nkosi Makoe and Radebe:</p>
<p>This report does not contain the cellular phone records of these employees.</p>	<p>This report contains the cellular phone records of the above employees:</p> <p>" The record confirms that they were at the scene even though the allegation of theft is not corroborated"</p>
<p>Statement by Khuba explaining his findings, the relevant deleted paragraph in the second report is as follows</p> <p><i>" On 28/01/2013 he was called by the former Executive Director who gave him the following documents stating that she received them from the Secretary of Police, report on Illegal Renditions dated 25/06/2012 accompanied by Warrants of Detention (BI-1725) for the following Dumisani Witness Ndeya, Shepard Chuma, Nelson Ndlovu and three Notification of the Deportation of an Illegal Foreigner (DNA-1689) for Nelson Ndlovu, Shepherd Chums and t1.4aghwawe Sibanda. The documents are file in the docket as per A36. An enlarged copy of death</i></p>	<p>CAPTURE</p>

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<p>certificate was made from a copy of Sunday Times Newspaper he received from Brigadier Zangwa dated 23/10/2011 titled " journey to death in an unmarked car" and is filed as per A35.</p>	
<p>Khuba's findings on Dramat Page 29</p> <p>Analysis and Findings of Dramat's cell-phone records is recorded by Khuba as such:</p> <p><i>"Evaluation of the above findings: In the entire cell phone records of Lt General Dramat requested for the period 20/10/2010 to 28/02/2011, the number 0155346300 only appears once which rules out any form of communication before 04/11/2010 and after the said date. This supports his version that he called Lt General Dramat in connection with the Zimbabwean police.</i></p>	<p>Khuba's findings on Dramat</p> <p>Nothing is said about this issue</p>
<p>• Dramat held a meeting on 05/11/2010 with Zimbabwean police planning the operation. Khuba finds the following in this respect :</p> <p><i>"Evaluation of the above findings: The success report signed by Leonie Verster was traced to Lt Col Maluleke's laptop as picked from the retrieved deleted data. The report was amended on 26/01/2011 and 31/01/2011 before it could be emailed to a female officer, Warrant Officer Thabiso Mafatla on 09/02/2011 at 14h32. There is no material difference between the document retrieved from the laptop and that found at the Hawks offices during investigation. This proves that Leonie Verster did not generate success report but only signed the report drafted by Captain Maluleke. The date of the meeting</i></p>	<p>•Dramat held a meeting on 05/11/2010 with Zimbabwean police planning the operation</p> <p>Khuba states the following in respect of this allegation in this report:</p> <p><i>"The success report that claim that Lt General Dramat had a meeting with the Zimbabwean police lacks detail about the meeting itself. There is no indication of what was discussed and who was part of the meeting. It is on that basis that a prima facie case cannot be premised on speculation, but need corroborated facts".</i></p>

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

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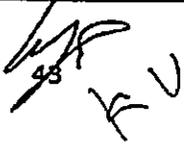
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<p>warned them not to tell anyone about it".</p>	
<p>He received communication regarding success reports and photos of the operation through his personal assistant Phumla</p> <p><i>"According to the information retrieved from the seized laptop, Captain Maluleke sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails were sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence.</i></p>	<p>Nothing is said about this issue</p>
<ul style="list-style-type: none"> • He was kept informed of the developments in the operations that led to the arrest of wanted Zimbabwean Nationals. • <i>"The cell phone records of General Sibiyá shows 30 SMS sent to General Dramat at various milestones of the operation. He also received an SMS from Captain Maluleke shortly after the arrest of Zimbabwean Nationals. He never responded to any of the SMS which may suggest that they were only informing him of the progress".</i> 	
<p>Report to parliament in response to the allegation:</p> <p><i>"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 Chatkobo of Bulawayo on 18th September 2010. It goes further to state that there was</i></p>	

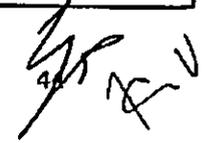




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<p><i>joined operation between South African Police and Zimbabwean police to trace and arrest the suspects."</i></p>	
<p>Innocent Khuba's findings on Sibiya page</p>	
<ul style="list-style-type: none"> • The meeting held between IPID and Dramat on 2013/03/07 <p><i>"There is evidence and witnesses corroborate each other that General Sibiya was both at the scene and planning venue. The meeting held between IPID and General- Dramat on 201-3/03/07 confirmed that General-Sibiya was appointed to be the Head of TOMS which he created to trace wanted suspects.</i></p>	
<ul style="list-style-type: none"> • Sibiya's presence at the scene <p><i>"Witness stated that he was seen during the operation that took place on 22/11/2010 which led to the arrest of Prichard Chuma"</i></p>	
<p>Cell phone Records Analysis</p> <p><i>"In other operations cell phone record of Warrant Officer Makoe, Captain Maluleke and Col Neethling clearly show continuous contacts with General Sibiya during and shortly after the operation. Col Neethling also stated that he should have reported progress to General Sibiya during the operation. However the cell phone records of General Sibiya does not place him at the scenes and planning venues as claimed by witnesses. It is also clear that some of the witness claim to have heard that General Sibiya was in the car rather than seeing him personally"</i></p>	
<ul style="list-style-type: none"> • The meeting with Zimbabwean Police for Cross-Border Crimes 	

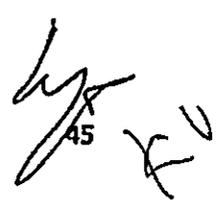




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<p><i>"The meeting held in Zimbabwe wherein General Sibiya was appointed as a coordinator on cooperation matters involving the two countries suggests that the operation could not have been done without his knowledge more-so because his Gauteng Team was involved in the operation. However this inference cannot provide prima facie case that he was involved"</i></p>	
<p>Recommendations</p> <p><i>Based on the available evidence, the Independent Police Investigative Directorate recommends that Lt General Dramat, Major General Sibiya, Lt Col M Maluleke, Constable Radebe, Captain S E Nkosi and Warrant Officer Makoe be charged criminally for;</i></p> <ul style="list-style-type: none"> <i>• Kidnapping</i> <i>• Defeating the ends of justice,</i> <i>• Assault and theft (only applicable to Captain M L Maluleke, Warrant Office Makoe, Constable P M Radebe and Captain S E Nkosi)</i> 	<p>Recommendations</p> <p><i>"Based on the available evidence, the Independent Police Investigative Directorate recommends that no charges should be brought against Lt General Dramat and Major General Sibiya. The investigation established that there is no prima facie case against them. However with regard Lt Col M Maluleke, there is a prima facie case to sustain charges of kidnapping and defeating the ends of justice".</i></p>

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5 SECTION C: ANALYSIS AND FINDINGS

For ease of reference in dealing with our analysis and findings, we will address each question posed in our terms of reference, separately below. We will make our recommendations in the context of an examination of the responses to each of the questions.

5.1 Who and under what circumstances was the original report altered and/or how the Second Report came about with both reports signed by the same person; i.e Mr Khuba

5.1.1 Necessity of drafting the Second Report

5.1.1.1 The First Report was drafted and signed by Khuba. In the circumstances set out at Section A1.

5.1.1.2 The Second Report was drafted in the circumstances set out at A2 and signed by Khuba, Sesoko and McBride.

5.1.1.3 Khuba was the lead investigator in the Rendition matter. He was assisted in conducting his investigation, by Moukangwe. During the investigation process, Khuba liaised with Mosing and Moeletsi from the NPA. Mosing confirms that when Khuba provided him with a copy of the First Report dated 22 January 2014, Mosing requested that Khuba add a summary of his evidence. Khuba then attended to adding his evidence and providing Mosing with a signed copy of the First Report.

5.1.1.4 Although the adding of Khuba's evidence was concluded a few days after 22 January 2014, the date of the First Report reflected 22 January 2014 nonetheless. The submission of the First Report was, in Mosing's mind a final submission of the report. In support of this version by Mosing, we have been provided with a memo addressed to the NDPP following from the consideration by Mosing of the First Report, wherein Mosing makes a recommendation to the NDPP to take certain action in this matter. It would not follow for Mosing to make such recommendation on the basis of the First

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Report extant at that time if, in his opinion, the investigation was not complete and or the First Report was not final at that time.

5.1.1.5 As outlined in Section A and B, above, it is apparent that the two reports differ significantly in respect of the recommendations made in each report. During an interview with Khuba he alleged that the Second Report was created as a result of two factors which necessitated the drafting of a Second Report. These factors were:

5.1.1.5.1 the surfacing of new information, being information regarding Siblya's cell phone analysis and a few outstanding statements; and

5.1.1.5.2 discussions between Khuba, McBride and Sesoko regarding the analysis of the evidence.

5.1.1.6 We find it difficult to reconcile ourselves with the reasons given by Khuba for the publication of the Second Report on the following basis-

5.1.1.6.1 It is the version of both Moukangwe and Mosing, that the evidence regarding Siblya's cell phone records were already known to Khuba before the submission of the First Report. As such, any additional analysis of the cell phone records, could not add any material evidence to the report;

5.1.1.6.2 upon perusing the Second Report, there is no material information which has in fact been added in respect of the cell phone analysis of Siblya's phone records;

5.1.1.6.3 contrary to there being no material evidence relating to Siblya's cell phone records, in fact material evidence regarding Siblya's cell phone records (specifically evidence relating to the smses sent by Siblya to Dramat and others who were involved in the operation) was deleted and did not appear in the Second Report;

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5.1.1.6.4 the additional statements contained in the report, namely that of Dramat, Sibliya, Maluleke and Jennifer Irish Qhobosheane, do not contain material evidence which is capable of justifying an alteration in the conclusion of the report;

5.1.1.6.5 Khuba states that in discussions with Sesoko, his attention was drawn to the fact that the evidence against Sibliya may not withstand scrutiny in court and that Dramat simply having knowledge of the operation was not sufficient to implicate him criminally. This version by Khuba is contradicted by Khuba himself who states that he agrees that the knowledge of a crime is sufficient. Furthermore Khuba's version is not consistent in that Khuba himself drafted the First Report recommending the prosecution of Dramat which report was drafted with input from Mosing and Moeletsi, who had more experience with the NPA itself, than Sesoko; and

5.1.1.6.6 as an IPID Investigator, Khuba would have to have a basic understanding of the workings of the law and would have or ought to have understood that his mandate is to investigate and to report and not to assume the role of the court in evaluating and testing evidence hypothetically.

5.1.1.7 Further to the above, both Angus, (who has substantial experience as an Investigator), and Mosing confirm that if a report is submitted and new evidence comes to light subsequent to the submission of such report, the report may be updated to include the additional information. Any such update would not affect the status of the First Report.

5.1.1.8 Should the actual reasons which necessitated the submission of the Second Report be as Khuba stated (being to update the report with new evidence) the logical conclusion would be that the *recommendations* of the First Report would not be amended unless the additional information was so material that it required the alteration of a recommendation contained in the First Report.

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

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

5.1.2 Discrepancies between the two reports

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

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

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

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

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

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

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5.1.3 Explanation for the discrepancies

5.1.3.1 We have interviewed each of the co-signatories of the Second Report and none of the co-signatories have been able to offer a valid explanation for the discrepancies listed above.

5.1.3.2 For ease of reference, we will address the responses of each of the three co-signatories separately below.

5.1.3.2.1 Khuba

5.1.3.2.1.1

Before the discrepancies between the reports were drawn to Khuba's attention, Khuba volunteered that he did not initial each page of the report and is therefore unable to determine if any information has been added or removed in the Second Report.

5.1.3.2.1.2

According to Khuba, he simply signed the First Report and provided Sesoko with a copy of the signed report and he is not aware of how the signed Second Report was provided to the NPA from that point.

5.1.3.2.1.3

Once the discrepancies had been drawn to Khuba's attention, Khuba explained that the analysis of the cell phone evidence had been changed in the Second Report in order to summarise the evidence in a concise manner.

5.1.3.2.1.4

However, he was unable to explain any of the discrepancies and he indicated that he was concerned by the deletion of information in the summary of individual statements.

5.1.3.2.1.5

Khuba states that he was not responsible for the deletions, nor is he able to indicate who was responsible for the deletions.

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5.1.3.2.1.6

On a weighing of the evidence before us and the testimonies of each individual interviewed, we accept Khuba's version of events. This acceptance is not without difficulty in light of Khuba's failure to explain the discrepancies between the First and Second reports considering that he is the author of the First Report and the co-author of the Second Report, as well as the fact that Khuba failed to disclose information during his interview with Werksmans, which information was relevant to the investigation.

5.1.3.2.1.7

The aforementioned information relates to the complaint made under sworn affidavits by Khuba and Viceroy Maoka to the NDPP in respect of Baloyi. In their affidavits the complainants state, inter alia, that Baloyi has failed to uphold his initial consideration not to prosecute Dramat. The purpose of this complaint is unclear and seems to illustrate that Khuba misinterprets his role as investigator required to make recommendations in an investigation report which is meant to be a tool to assist the NPA in deciding whether or not to prosecute. This complaint came to our attention through Baloyi and not Khuba himself.

5.1.3.2.1.8

Additional information which Khuba failed to bring to our attention, was that he sought the legal opinion of Advocate Barry Roux, in relation to the Second Report.

5.1.3.2.2

Sesoko

5.1.3.2.2.1

Sesoko stated that he was never given the First Report, hence the absence of his signature in that report.

5.1.3.2.2.2

According to Sesoko, the only report he has ever seen is the Second Report.

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5.1.3.2.2.3

This above version is contradicted by Khuba who states that he emailed a copy of the First Report to Sesoko to be provided to McBride before Khuba met with McBride.

5.1.3.2.2.4

It is further contradicted by Sesoko himself, who corroborates Khuba's version that he received an email copy of the First Report from Khuba to provide to McBride. Additionally, Moukangwe stated that Sesoko, Khuba and himself attended at the offices of the NPA in order to submit the First Report to the NPA.

5.1.3.2.2.5

Sesoko's version is that he is not aware of any discrepancies or deletions in the Second Report, and that his involvement in the drafting of the Second Report was only supervisory and he never actually worked on the report. This is directly contradicted by Khuba's version that he and Sesoko worked on the report together and Sesoko gave substantial input in the alteration of the recommendation on the basis of what could be proven in a court.

5.1.3.2.2.6

It is clear from Sesoko's responses that Sesoko did not take us into his confidence and his reaction to questioning in respect of the reports was a bare denial of any meaningful involvement in the submission of the Second Report, and any knowledge of the First Report.

5.1.3.2.3

McBride

5.1.3.2.3.1

McBride states that he had no input in the report other than to make grammatical changes. Conveniently, it is not possible to prove this with documentary evidence because the manuscript changes made by McBride were destroyed to prevent documents being leaked.

5.1.3.2.3.2

Notwithstanding that McBride vehemently confirms that he stands by the recommendation contained in the Second

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Report, he admits that he did not read any of the evidence contained in the docket, nor did he have sight of the First Report.

5.1.3.2.3.3

McBride's version of events is that he was provided with a Second Report which had already been signed by Sesoko and Khuba and that he then signed the Second Report himself. McBride was allegedly not aware of the First Report or any discrepancies in the reports and he did not allow us to draw his attention to same.

5.1.3.2.3.4

McBride accepts that generally an investigation report is signed by the investigating officer. However, in relation to the Second Report, McBride records his reason for signing the report as that the matter involved two provinces.

5.1.3.2.3.5

It is difficult to accept McBride's version for a number of reasons, including –

5.1.3.2.3.5.1

It is highly unlikely that as an executive director of IPID who requested an update on high profile matters within a week of his appointment, that McBride was not aware of the First Report;

5.1.3.2.3.5.2

Khuba states that upon first meeting with McBride on 6 March 2014, that it was evident from their discussions that McBride had had regard to the First Report;

5.1.3.2.3.5.3

McBride's version is contradicted by Khuba who states that McBride's input into the report went beyond just grammatical changes;

5.1.3.2.3.5.4

In addition, the reason given by McBride for signing the Second Report, being that the matter involved two provinces, is contradicted by Khuba who stated that this reason was never presented to him as being

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the reason for signature of the report by McBride but that McBride signed the Second Report as a result of his participation therein;

5.1.3.2.3.5.5

McBride states that he is not aware of any deletions in either report; nor was he interested in having his attention drawn to same. Considering that McBride in his capacity of executive director, is in the centre of the Rendition investigation, it is perplexing as to why he would not consider the discrepancies between the First and Second Reports in order to be in a position to address them;

5.1.3.2.3.5.6

McBride vehemently supports the conclusion in the Second Report which he personally signed, without having considered, on his own version, the contents of the First Report and more importantly, the evidence in the docket;

5.1.3.2.3.5.7

McBride's version that he did not have regard to the evidence in the docket is contradicted by Khuba who states that on 6 March 2014, a mere three days after McBride's appointment, McBride requested that Khuba retrieve the docket from the NPA and provide McBride with every document that Khuba had in relation to the matter. Khuba furthermore confirms that it was not necessary in his view for the docket to be retrieved in order to add any evidence to it;

5.1.3.2.3.5.8

quite significantly, there are a number of contradictions between the statement provided to Werksmans by McBride, and the statement of facts by McBride contained in a sworn affidavit by himself relating to the Rendition. For instance, in his sworn affidavit before the High Court of South Africa, Gauteng Provincial Division -

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5.1.3.2.3.5.8.1

on page 9 and page 11 (paragraphs 24.1 and 27, respectively), of his affidavit, McBride makes reference to the First Report as a "preliminary draft of the report (of 22 January 2014)" and as "the draft and leaked report". Not only is this contrary to his own version that he did not have sight of the First Report, but referring to the First Report as a preliminary report is contradicted by the testimony of Khuba (being the actual author of the First Report) and Mosing (being a member of the investigation team instrumental in submitting the First Report) who state that the First Report was considered to be final. Furthermore, as stated above, Angus states that in his experience as an investigator of IPID, a preliminary report does not contain recommendations. This view by Angus is given credence by the fact the Preliminary Report which itself records that it is not a final report, does not contain recommendations;

5.1.3.2.3.5.8.2

at page 10 (paragraph 24.2) of his affidavit, McBride states that "the provisional findings and recommendations were found to be unsustainable on the evidence and were, accordingly, not included in the final investigation Report (of 18 March 2014)". This is a further contradiction to the version put forth to Werksmans by McBride who stated that he did not have regard to the First Report, nor did he have regard to the evidence contained in the docket. As such, McBride would not be able to pronounce on whether or not the findings of the First Report were unsustainable on the evidence. Additionally, it would be difficult for McBride to draw such a conclusion if, as he stated, the only input he had into the Second Report was related

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to grammatical changes and that he was furthermore only provided with a copy of the Second Report for signature once Khuba and Sesoko had signed the report;

5.1.3.2.3.5.8.3

at page 22 (paragraph 51.2) of his affidavit, McBride states "I want to make it abundantly clear that the final report was the product of a thorough investigation process which included taking into account all the evidence gathered through the IPID investigation and making reasonable recommendations on the basis thereof". This statement appears to contradict McBride's version that he did not have regard to the evidence contained in the docket, and that his involvement in the Second Report was limited to grammatical changes and signature of the Second Report;

5.1.3.2.3.5.8.4

on page 23 (at paragraph 51.5) of his affidavit, McBride states that "The preliminary draft of the IPID Investigation Report was also still subject to consideration and review by Sesoko and myself". This statement is contradicted by both McBride and Sesoko. McBride stated that the only input he had into the Second Report related to grammatical changes and Sesoko said that his role was merely supervisory; and

5.1.3.2.3.5.8.5

a further and notable contradiction to McBride's version as put forth to Werksmans, is found on page 23 and 24 of his affidavit (paragraph 51.6) wherein McBride states "The IPID investigation was conducted in co-operation with Advocate Anthony Mosing and Advocate Billy Moeletsi, from the offices of the NDPP, both of whom were involved with the IPID investigation into the

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illegal rendition of Zimbabwean nationals, even before a complaint was lodged with IPID. They remained in the investigation throughout, and were provided with regular preliminary reports by the Investigating Officer, Mr. Khuba...". This statement is contradicted by Mosing who states that he was not involved in the submission and/or drafting of the Second Report.

5.1.4 The analysis and findings have also been altered to remove an analysis of evidence which may implicate Dramat and/or Sibiyia. The alteration of the recommendation seems to be a non sequitur in light of the fact that the so-called additional information added to the Second Report does not appear to be capable of justifying an altered conclusion.

5.1.5 In the absence of a valid explanation for the deletions by the co-signatories, the only logical conclusion which can be drawn from the circumstances detailed above, is that the Second Report was created for the purpose of exonerating the high ranking officials, specifically Dramat and Sibiyia, who were implicated in the First Report.

5.1.6 It is difficult to ascertain who is responsible for the deletion of the portions of the statements which appeared in the First Report and which do not appear in the Second Report. It is evident to us that none of the co-signatories to the report are being truthful in respect of their involvement in the submission of the Second Report.

5.1.7 Each of the co-signatories to the Second Report deny effecting the deletions. We are of the view that the deletion of material evidence which is likely to affect the decision of the NPA in determining whether or not certain individuals should be prosecuted, is a criminal offence, specifically, defeating the ends of justice or obstructing the administration of justice.

5.2 Whether any misconduct or offence has been committed and if so by whom?

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This question is dealt with within our responses to 5.3 below.

5.3 Whether there is prima facie evidence of misconduct and criminal liability by Lieutenant-Dramat; Major-Sibiya; and any other officers mentioned in the original report

5.3.1 Lieutenant-General Anwa Dramat

5.3.1.1 In his statement, Khuba cites the reasoning for the publication of the Second Report to be as a result of new evidence coming to light. This evidence, according to Khuba, related to the cell phone records of Sibiya as well as the discussions held amongst Sesoko, McBride and himself.

5.3.1.2 Notwithstanding that the purported reasons for the publication of a Second Report do not appear to relate to Dramat, it is clear from a perusal of the First and Second Report, that a large volume of information that relates to, and in fact incriminates, Dramat which appeared in the First Report, has been removed from the Second Report. These portions of the First Report which were removed have the effect of distancing Dramat insofar as his involvement with the Rendition is concerned.

5.3.1.3 Even if Khuba's version of events is to be accepted and the decision was taken to change the recommendation in respect of Dramat due to the view that there was not enough information to prosecute Dramat, this still does not explain why information relating to Dramat was deleted.

5.3.1.4 Khuba has not been able to provide us with a plausible explanation for the removal of the information, nor are we able to draw any inferences other than that the removal has been effected in order to justify the failure of the Second Report to recommend Dramat be prosecuted criminally, whereas the First Report made such a recommendation. When Khuba was confronted with the totality of the deletions during our interview with him, Khuba responded in part with surprise and concern.

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5.3.1.5 Upon perusal of the First Report, and specifically Khuba's analysis of findings in respect of Dramat, we agree and support Khuba's analysis of findings which resulted in the recommendation that Dramat be criminally prosecuted. Without replicating the basis of Khuba's findings, which is available in the First Report, we will summarise them briefly, below.

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

5.3.1.5.1.1 Madlonga's statement reflects that he was stationed at the border when Zimbabwean police officers attempted to cross into South Africa for the purposes of meeting with Dramat. Madlonga placed a call to Radzilani and Makushu, who both corroborate this evidence, in order to verify the averments by the Zimbabwean police. Madlonga was even provided with Dramat's cell phone number by Superintendent Ncube of the Zimbabwean police who identified himself to Madlonga as the leader of the group. Madlonga contacted Dramat in order to confirm the averment by the Zimbabwean police that they were going to meet with Dramat, and according to Madlonga, Dramat confirmed that he was aware of the Zimbabwean police's presence and that Madlonga should let them cross the border into South Africa.

5.3.1.5.1.2 In addition to the above, the success report dated 4 February 2011, addressed to, inter alia, Dramat and signed by Leonie Verster, records as its first point that on 5 November 2010, the Zimbabwean police visited the office of DPCI and engaged in a meeting with Dramat regarding Zimbabwean nationals who allegedly shot and killed a senior Zimbabwean police officer. The success report furthermore gives information relating to the arrest of two of the wanted Zimbabwean nationals. This success report was addressed to Dramat and there is no record of

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Dramat contradicting any statement of fact within the success report.

5.3.1.5.1.3

The above information should be viewed in the context of the fact that, as mentioned in the summary of Khuba's evidence above, in a meeting with Khuba and Moukangwe, Dramat stated that he did not remember meeting with the Zimbabwean police.

5.3.1.5.2

Dramat received communications during and after the commissioning of the Rendition

5.3.1.5.2.1

The cell phone records of Sibiyi show that 30 smses were sent to Dramat at various milestones in the operation. Dramat also received an sms from Maluleke shortly after the arrest of the Zimbabwean nationals. Although Dramat never responded to these smses, when viewed in the context of Dramat's meeting with the Zimbabwean police, the success reports received after the operation and Dramat's congratulating of the crime intelligence officers, the smses lead to the conclusion that Dramat was aware of the operation as it happened.

5.3.1.5.2.2

In addition to the above, there is evidence that emails circulating 20 photos of both the Zimbabwean nationals and the police members involved in the operation, were sent by Maluleke to Dramat's personal assistant. We believe that it is reasonable to deduce in the circumstances, that these emails were brought to the attention of Dramat through his personal assistant.

5.3.1.5.3

Dramat congratulated members of crime intelligence after completion of the operation

5.3.1.5.3.1

According to the testimony of Mkasibe and Mgwenya, Dramat attended at the offices of the DPCI and thanked the officers present for their participation in arresting the

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Zimbabwean nationals. Mkasibe went further to state that Dramat warned them not to tell anyone about the operation. Mgwenya did not confirm Dramat's warning. It is recorded that Mgwenya admitted to Khuba that he knew Dramat from their mutual time in Umkhonto we Sizwe. In addition, a third officer, Mokgobu, testifies that she was not at the office when Dramat attended; however, upon her return she was informed by her colleagues that Dramat had attended in order to congratulate them on a job well done.

5.3.1.5.4

Dramat's statement to Acting National Commissioner of SAPS

5.3.1.5.4.1

According to the erstwhile Acting National Commissioner of SAPS, Lieutenant General Mkhwanazi ("Mkhwanazi"), in late 2011 news of the Rendition came to light. He contacted Dramat who confirmed that members of his unit transported the Zimbabwean nationals as illegal immigrants. Mkhwanazi then summoned Dramat to his office. Dramat arrived with Maluleke. Maluleke informed Mkhwanazi that he was investigating a case of ATM bombings which led him to the Zimbabwean nationals. Once he realised that they were not linked to the ATM bombing case, he decided to deport them after getting the necessary documentation from Home Affairs. When Mkhwanazi asked whether it was necessary to transport illegal immigrants, Dramat could offer no explanation.

5.3.1.5.4.2

Not only does the above display that Dramat had knowledge of the events, but his failure to offer a valid response to the question of whether it was necessary to transport the Zimbabwean nationals illustrates that either Dramat did not exhibit the level of control and oversight that he is required to by virtue of his position, alternatively, Dramat was attempting to cover up the Rendition operation as he was aware that it was unlawful.

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5.3.1.6 In our view, the above information is sufficient to create a prima facie impression that Dramat is guilty of both criminal and disciplinary misconduct and that the circumstances surrounding his involvement in the Rendition and the decision of whether or not to prosecute Dramat, bears further consideration by the NPA.

5.3.2 **Sibiya**

5.3.2.1 We have perused and considered the contents of both the First and Second Reports in order to establish whether there is prima facie evidence of misconduct and potential criminal liability against Sibiya. It is alleged that Sibiya, was involved in the operation of 5 November 2010 and well as the operation of 22/23 November 2010.

5.3.2.2 Sibiya is the head of the TOMS unit. From our reading of the two reports regarding TOMS, we have gathered that the main objective with the establishment of TOMS was to fight priority crimes, this includes inter alia, combating armed robberies by dangerous criminals, investigating and arresting those responsible for ATM bombings.

5.3.2.3 Sibiya states as follows:

"The reality of the matter is that the operation in question was conducted under the auspices of DPCI National Head Office and they requested the services of my team because of their training and capacity".

5.3.2.4 This revelation by Sibiya confirms his knowledge of the operation that led to the Rendition of Zimbabwean Nationals. He provided TOMS personnel to assist DPCI National Head Office to carry out the Rendition.

5.3.2.5 Furthermore, in terms our reading of the annexures and two reports, Maluleke carried out the operation on instructions of his superiors.

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5.3.2.6 The Rendition was carried out by the members of TOMS under the leadership of the Maluleke. The First Report suggests that Sibiya not only sanctioned the operation, but also that he actually participated in the Rendition. Several statements and affidavits from various witnesses confirming the participation of Sibiya in the Rendition were obtained. We deal with these statements herein below for the sake of completeness.

5.3.2.7 Bongani Henry Yende whose statement is annexed as A4 to the both reports, states:

"During October 2010 I was nominated to be part of the Task Team called "TOMS". In full TOMS means Tactical Operations Management Section led by Major Sibiya who is the Provincial Commander of Hawks in Gauteng Province. The members of Crime Intelligence who worked with me at the Task Team were W/O Jawuke, W/O Ndobe and Constable Campbell.

On 2010-11-05 in the evening I received a phone call from W/O Makwe of DPCI in Gauteng who was also part of the Task Team "TOMS" that Major General wanted us to meet at Fourways to go and search for suspects in a case which a colonel was killed.....

At our arrival at Fourways Shopping Centre W/O Makwe introduced two African Males as our police counterparts from Zimbabwe Police.

At the time W/O Makwe introduced the two policemen from Zimbabwe, I realised that the Colonel that was killed was from Zimbabwe and not from South African Police. W/O Makwe informed us that the two police officers came to us via the office of Dramat who is National Head of DPCI. Maj Sibiya was sitting in a navy BMW vehicle busy on his cell phone and I could not greet him".

5.3.2.8 Petros Jawuke whose statement is attached as A5 to both reports. At paragraphs 2, 9 and 10 of his statement, Jawuke states:

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"During 2010 I was nominated to be part of a Task Team called "TOMS" in Gauteng Province and the team operated under the command of Major Sibiyi who is the Head in Gauteng Province.

Four suspects were detained at Orlando SAPS on 2010-11-06. I do not know how Pritchard TSHUMA and Shepherd TSHUMA are related. The operation of the 2010-11-23, started during the night of the 2010-11-22 until early hours of the 2010-11-23.

I saw Maj Gen. SIBIYA in the second operation, however I also heard that he was present in the first one. I also never saw Maj. Gen SIBIYA assaulting any of the suspects. That's all I can state at this stage."

5.3.2.9

Shepard Tshuma whose statement is annexed as A1 to the both reports. Shepard was giving an account as to what transpired during the operation of 5 November 2010. Shepard states the following in relation to Major Sibiyi.

"Few minutes Cowboy asked where must we be detained and one police officer said we must be taken to Randburg and the other one said we must be taken to Krugersdorp. Whilst they were busy arguing about the place to be detained, one police officer said they better ask Sibiyi at that time, I didn't know who Sibiyi is, but later I saw him coming out from a certain black BMW and he gave them instructions to take us to Orlando SAPS."

5.3.2.10

Maqhawe Sibanda whose statement is annexed A2 in both reports. He states the following in relation Sibiyi's involvement in the operation of that 5 November 2010.

"I later knew some of the police officers who were busy assaulting us. They call themselves with their name, it was cowboy the one who was wearing a cowboy hat, Nkosi, Leburu who was a coloured. I only manage to know the above but I can able to identify others if given permission to do that.

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After we were beaten by the police, they started arguing about the place to be detained. One of the police mentioned Randburg the other mentioned Krugersdorp until the other decided that Sibiya must give directions."

I saw Sibiya coming out from the Black BMW and gave instructions to be taken to Orlando SAPS and they took us to Orlando SAPS. Arrived at the Police station in the yard I was following Shepard and saw Leburu. (coloured police officer) taking the money at the back pocket of the trouser of Shepard."

5.3.2.11

The aforesaid statements by the eye witnesses from Crime Intelligence confirm that the operations on 5, 22 and 23 November 2010 were carried out in connection with the murder and robbery case that took place in Zimbabwe where a Police Superintendent was killed. This conclusion is confirmed by the presence of Zimbabwean Police officials during operations.

5.3.2.12

The above statements were made under oath and are from the Zimbabwean nationals as well as members of Crime Intelligence who claim that they all saw Sibiya at either the first or second operation of the Rendition.

5.3.2.13

As mentioned earlier in this report, an analysis of the cell phone records of Sibiya purportedly does not place him at the scene at the first operation in which he is alleged to have participated. However, it is not clear whether, solely on the basis of the aforesaid analysis of cell phone records, that Sibiya can be said to be placed in Pretoria in respect of both the first and second operations, in light of the consistent eyewitness testimony which places at the scene of both operations. Although the inference is drawn from the analysis of cell phone records that Sibiya was in Pretoria, the most that can be concluded in this regard is that Sibiya's cell-phone was located in Pretoria at the relevant times. Whether Sibiya was in the same location at that time is an assumption, and given the weight of eyewitness evidence to the contrary, would be a questionable conclusion.

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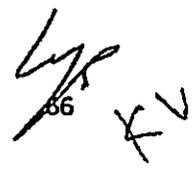
5.3.2.14 It is our view that there is a clear contradiction between the conclusion to be drawn from the evidence of the eye witness discussed above, which places Sibiyi in Diepsloot at the time of the operations, and the analysis of cell phone records which infers that Sibiyi was located at Pretoria in Sunnyside at the time relevant times.

5.3.2.15 It is our view that this contradiction should be tested and weighed by the NPA and or a court of law. We cannot discount one piece of evidence against the other. Neither can we recommend that certain weight be placed on certain evidence or recommend that certain piece of evidence be disregarded, without it having been tested in a court of law or some forum.

5.3.2.16 Further to the above, the mere allegation that the members of Crime Intelligence have conspired against Sibiyi by giving their eyewitness testimony can never be a rational basis to discount their evidence, or to fail to test the credibility of these witnesses or the veracity of their versions against the contrary evidence and conclusions which lead from the analysis of cell phone records.

5.3.2.17 According to our investigation we have established that the analysis of cell phone records serve two purposes. First, to assess the specific location of a phone at a certain time and secondly to assess the trail of communications for which the cell phone was utilised. In terms of the first assessment, Sibiyi's cell phone records place his cell phones at Sunnyside in Pretoria. According to this, Sibiyi was not present at any of the operations as alleged by the eye witnesses.

5.3.2.18 The second assessment of Sibiyi's cell phone records shows that Sibiyi communicated with officers who were involved in the operation, one of which is Maluleke and sent 30 smses to Dramat at the 0825515311 number during various milestones of the Rendition. Khuba records in the First Report that Dramat never responded to any of the smses from Sibiyi.

  
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5.3.2.19 In our view there is a prima facie case of kidnapping and defeating the ends of justice or obstructing the administration of justice to be made against Sibiya. It is our view that he knew about the operation that led to the Rendition. He provided a team of police officers to search and arrest the Zimbabwean nationals suspected of killing the Superintendent from Zimbabwe. As the provincial head of DPCI he sanctioned the Rendition. He allegedly gave directions to the members of TOMS on where to detain the Zimbabwean nationals. The cell phone records show detailed communications between Sibiya and Maluleke and Dramat despite the latter not responding to the smses.

5.4 **The circumstances under which the Second Report and the docket was handed to the NPA and what happened to the docket whilst in the NPA's possession**

5.4.1 According to Mosing the NPA's involvement in the matter was called for in the early possible stages of the Investigation into the Rendition. Further, the former Minister of Justice and Constitutional Development, the Honourable Jeff Radebe addressed a conference of Senior Managers of the NPA during 2012 wherein he called for the allegations into the Rendition to be investigated, as the Government was concerned about the possible violation of international law during the Rendition.

5.4.2 It is against this backdrop that the Special Projects Division in the office of the NDPP was requested to provide guidance to the IPID investigating team led by Khuba. The Special Projects Division team was headed by Mosing assisted by Moeletsi. The team met with Khuba sometime in July 2013. The team produced the Preliminary Report into the Rendition on 22 October 2013. Mosing and Moeletsi advised Khuba to conduct further investigations into certain aspects of the report.

5.4.3 On 12 November 2013, Mosing addressed an internal memorandum to the NDPP and the DNDPP. This memorandum sought to provide an update on the progress made by the Special Projects team and the investigating team led by Khuba. The memorandum goes on to say that

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there was outstanding evidence that Khuba and the team had to obtain or gather in order to finalise the Preliminary Report.

5.4.4 According to Mosing, the outstanding information related to the warning statements from Dramat, Sibiyi and Maluleke, an analysis of the cell phone data, as well as a report on the analysis of vehicle tracking information of the members involved in the operation during the Rendition.

5.4.5 The investigation team finalised its investigation on or about 22 January 2014 and compiled a report with final recommendations. This was a final report on the investigation in the Rendition. It was handed to the Special Projects team so that the NDPP could make a decision to either prosecute or not prosecute those implicated in the report.

5.4.6 On 13 February 2014 Mosing addressed another internal memorandum to Jiba and Chauke, indicating that the investigations had been finalised and that the report from IPID had been submitted for the purposes of considering the merits of the case. This internal memorandum also enclosed the docket comprising of two lever arch files, together with other files containing the cellular phone data and evidence obtained from a computer belonging to the DPCI.

5.4.7 According to Chauke the receipt of the internal memorandum from Mosing on or about 14 February 2014 was preceded by a meeting wherein the NDPP advised Chauke to consider the docket and take a decision in regard to same. Chauke was assisted by Advocate Van Zyl who is the Deputy Director of Public Prosecutions for South Gauteng. Subsequent to the internal memorandum from Mosing, the docket was handed to the office of Chauke for a decision on whether to prosecute on the matter. According to Chauke before his office could even make a decision on the matter Khuba and Angus from IPID collected the docket from Advocate Van Zyl's office on 7 March 2014 and signed a receipt thereof. It bears mention that this occurred shortly after McBride was appointed as the executive director of IPID. According to Khuba, he collected the docket following an instruction from McBride for him to do so.

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- 5.4.8 On 18 June 2014 Advocate Van Zyl telephoned Khuba requesting the docket from the latter. Khuba told him that McBride had instructed him to return the docket to the NDPP and that this has been done. Khuba did not give or specify the date by which the docket was returned to the NDPP by himself. We are advised that Advocate Van Zyl telephoned Khuba, for the second time, to enquire about the docket which his office has not received. Khuba told Advocate Van Zyl that it was never his (Khuba) intention to return the docket to Advocate Van Zyl anyway.
- 5.4.9 We are advised that in light of this information from Khuba, Advocate Van Zyl telephoned Mosing to enquire whether the docket had been returned to the office of the NDPP. Mosing advised him that the dockets were never returned to him.
- 5.4.10 According to Chauke he addressed a letter on 3 July 2014 to the NDPP informing him about the above sequence of events regarding the docket. We are advised that the NDPP officially responded to the letter on 20 August 2014 indicating that the NDPP is in a process of considering the matter and that Chauke may close his file.
- 5.4.11 Sometime in December 2014, the NDPP enquired from Chauke about the case and wanted to know whether the latter was still involved in the matter. Chauke was surprised by this enquiry from the NDPP as according to him (Chauke) he was instructed by the same NDPP to close his file on the matter. Chauke advised the NDPP that he had since close his file on the matter and was not dealing with it anymore.
- 5.4.12 We also consulted the DPP for North Gauteng, Mzinyathi in relation to this aspect of our investigation. Mzinyathi told us that he received a telephone call from the NDPP on or about 10 January 2015 asking him about his knowledge of the Rendition. Mzinyathi told the NDPP that he did not have a clue of what the NDPP was talking about. According to Mzinyathi the NDPP told him that he had received the docket in the matter from Chauke and that the matter fell under Mzinyathi's jurisdiction because Diepsloot was under Atteridgeville which fell under North Gauteng DPP. On the day this call was made, Mzinyathi was on leave. He only returned from leave

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on or about 13 January 2015. Shortly after his return, the docket was delivered to his offices.

5.4.13 Mzinyathi spoke to his colleague the DDPP for North Gauteng, Baloyi regarding the docket and informed him that they must formulate a view on the matter. According to Mzinyathi sometime in March 2015 he received a report (being the Second Report) from the NDPP. This report summarised the statements in the docket and made its own recommendations as to who should be charged. Before Mzinyathi made his own recommendations, he approached the NDPP to understand certain things. The NDPP told him that there was a First Report and that he should read it as well. The NDPP provided him with a copy of the First Report. Mzinyathi shared this First Report with Baloyi and they discussed the potential charges to be brought against those implicated in the report.

5.4.14 Mzinyathi and Baloyi finalised their reading of the docket and the two reports and made recommendations on who should be charged and prosecuted. They sent their recommendations to the NDPP on 13 March 2015.

5.4.15 We are advised that on 31 March 2015 the NDPP wrote another letter to Chauke informing him that matter has been referred to Mzinyathi, who has recommended that all the accused including Dramat and Siblya be prosecuted for inter alia kidnapping and defeating the ends of justice. This letter attached the letter addressed by Mzinyathi to the NDPP on 13 March 2015.

5.4.16 We are advised that the aforesaid letter from the NDPP inter alia states that the matter must be returned to the DPP South Gauteng because it now falls under the jurisdiction of the DPP South Gauteng since 1 December 2014. As from that date Diepsloot fell under the South Gauteng in terms of the Government Notice No 861 of 31 October 2014.

5.4.17 According to Chauke on 1 April 2015 he received a box consisting of the docket with a letter containing Mzinyathi's recommendations. On even

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date he received a letter from the Head of National Prosecution Services to conduct specific investigations in the matter.

5.5 Any other matter that might come to your attention during the investigation which is relevant to your conclusions and findings

5.5.1.1 In the context of the sequence of events described at 3.2.2, we have specific concerns that remain unanswered, as to how the docket was dealt with after it was received by the NDPP. These concerns are as follows-

5.5.1.1.1 In February 2014 the NDPP referred the matter to Chauke, the DPP for South Gauteng at a period when Diepsloot fell under the jurisdiction of the DPP for North Gauteng. This amounted to a transfer of jurisdiction in terms of section 22(3) of the National Prosecuting Authority Act;

5.5.1.1.2 In April 2014, the NDPP accepted the docket back from McBride without having withdrawn the jurisdiction from Chauke;

5.5.1.1.3 In January 2015 the NDPP referred the matter to the DPP for North Gauteng after he was aware the jurisdiction in respect of Diepsloot had been changed to fall under the jurisdiction of the DPP for South Gauteng. This amounted to another transfer of jurisdiction in terms of section 22(3) of the National Prosecuting Authority Act; and

5.5.1.1.4 the NDPP failed to take action in respect of the recommendation made by Mzinyathi on 13 March 2015 but rather sent the docket back to Chauke to make a decision on the matter. This amounts to a review by Chauke of the recommendation made by Mzinyathi. This was done despite the fact that in terms of section 22(2)(c) of the National Prosecuting Authority Act, the NDPP himself is authorised to review a decision to prosecute or not to prosecute taken by a DPP. There is no authority in the National Prosecuting Authority

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Act which allows a DPP to review a decision taken by another DPP.

5.5.1.2 The reason that the concerns mentioned at 5.5.1.1 have not been addressed relates to the fact that the NDPP failed to respond to our request to meet with him. Interestingly, the NDPP is the only employee of the NPA involved in this matter who failed to meet with us in response to a request to meet.

5.5.1.3 In the absence of any explanation regarding the questions raised at 5.5.1.1, it is our view that the role of the NPA in dealing with the First and Second reports, should be investigated.

6 SECTION D: RECOMMENDATIONS

6.1 Maluleke

For the reasons set out in the First Report, we recommend that both criminal charges (contravention of the Immigration Act, kidnapping, fraud, forgery and uttering, defeating the ends of justice or obstructing the administration of justice, and assault) and disciplinary charges (in his capacity as employee) be brought against Maluleke in his capacity as an employee.

6.2 Dramat

For the reasons set out at 5.3.1 above, we recommend that both criminal charges (contravention of the Immigration Act, kidnapping, and defeating the ends of justice or obstructing the administration of justice) and disciplinary charges be brought against Dramat in his capacity as an employee.

6.3 Siblya

For the reasons set out at 5.3.2 we recommend that both criminal charges (contravention of the Immigration Act, kidnapping, and defeating the ends of justice or obstructing the administration of justice) and disciplinary charges be brought against Siblya in his capacity as an employee.

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6.4 Others

- 6.4.1 We recommend that W/O Makoe be charged criminally for assault and that disciplinary action be taken against him in his capacity as an employee.
- 6.4.2 We recommend that 'Leburu' Radebe be charged criminally for assault and disciplinary action be taken against him in his capacity as an employee.
- 6.4.3 We recommend that Nkosi be charged criminally for assault and disciplinary action be taken against him in his capacity as an employee.
- 6.4.4 We recommend that anyone involved in the fraud and forgery of the Home Affairs documents which were submitted in support of the deportation during the Rendition, be charged with forgery and uttering as well as fraud.
- 6.4.5 In the absence of any information as to which of the three co-signatories were responsible for the deletion of information from the First Report, we recommend that Khuba, McBride and Sesoko be charged criminally for defeating the ends of justice or obstructing the administration of justice, and that disciplinary charges be brought against them in their capacity as employees.

7 Benefit of report

- 7.1 The views expressed herein are given solely for the benefit and information of the Minister of Police, to whom it is expressly addressed.
- 7.2 The views expressed herein are given only -
- 7.2.1 with respect to South African law in force as at the date hereof; and

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7.2.2 In the context of practices and standards developed under South African law which have been applied and observed in light of our experience as South African attorneys.

7.3 No opinion is expressed or implied as to the laws of any jurisdiction other than South Africa and we express ourselves not to be experts on, or even generally familiar with, any laws other than the laws of South Africa.

8 Limitation of liability

This report is given strictly on the basis that all and any claims of whatsoever nature arising as a result of reliance on this report shall only be capable of being brought and/or instituted (and may only and exclusively be brought and/or instituted) against Werksmans Inc and its assets, including the proceeds of the professional indemnity insurance held by it ("PI Insurance"). The directors, partners, professionals with similar status, consultants and other employees of Werksmans Inc or any of its affiliates shall not be liable in their personal capacities for any claim whatsoever arising, directly or indirectly, in connection with the opinions given in this letter, and no such claims shall be enforceable against their respective personal estates.

This report was signed on 24 April 2015 at Sandton


 Sandile July
 Werksmans Attorneys



"NM3"

SAP 21

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag X 1500 SILVERTON 0127

Verwysing Reference	14/2/1
Navne Enquiries	Lt Col L. Verster Capt ML Maluleke
Telefoon Telephone	(012) 846 4307 082 772 8518
Faksnommer Fax number	(012) 846 4428

THE SECTION HEAD
TACTICAL OPERATIONS MANAGEMENT SECTION
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
ORGANISED CRIME
HEAD OFFICE
SILVERTON

2011-02-04

- A. The Head
Directorate for Priority Crime Investigation
Head Office
SILVERTON
Att: Maj Gen Hlatshwayo
- B. The Deputy National Commissioner
Directorate for Priority Crime Investigation
Head Office
SILVERTON
Att: Lt Gen Dramat
- C. The Deputy Provincial Commissioner
Crime Intelligence
Head Office
Att: Lt Gen Toka

CONSOLIDATED SUCCESS REPORT: MOST WANTED FUGITIVES: WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010 AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI @ NDEYA: ZIMBABWEAN NATIONAL AND OTHERS

- A. 1. On 2010-11-05, Zimbabwean Police visited office the Directorate for Priority Crime Investigation (HAWKS) and held a meeting with the Deputy National Commissioner Dramat about their Nationals who shot and killed one of their Senior officers and robbed his service firearm and are suspected to be in South Africa.
2. Five (5) suspect were alleged to be involved in the murder of the Senior official, and seriously wounded more than five patrons who were in the restaurant.
3. Captain ML Maluleke was tasked to trace and arrest the suspects around Johannesburg and other parts of Soweto.
4. TACTICAL OPERATIONS MANAGEMENT SECTION: GAUTENG
- 4.1 Captain ML Maluleke with the assistance of TOMS Gauteng Province managed to track and trace most wanted fugitives namely: DUMISANI WITNESS NDEYA VUDHLA who was arrested. Three (3) sleepless nights in succession were utilised to effect arrest and the suspect was later successfully taken to Zimbabwe.

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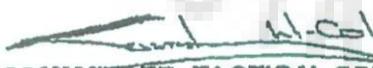
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5. CRIME INTELLIGENCE PRETORIA CENTRAL CLUSTER

- 5.1 On 2011-01-12, members of Crime Intelligence Pretoria Central Cluster traced the third suspect, GORDON @ GUUDEN DUBE and upon the arrest of the suspect, a firearm believed to be linked was recovered. Ballistics results established that the firearm is that of the murdered senior Superintendent in Zimbabwe.
6. This office will request the SAPS management to recognise the outstanding work performed in assisting the Zimbabwean Police to finalise their matter.
7. The following members participated in successfully arresting the wanted suspects and assistance to Zimbabwean Police:

PERSONAL NUMBER	RANK	INITIALS AND SURNAME
DPCI: TOMS: HEAD OFFICE		
0627239-8	Captain (Team Leader)	ML Maluleke
CRIME INTELLIGENCE: PRETORIA CENTRAL CLUSTER		
0537881-8	Constable	ED Mkasibe
7109683-3	Constable	M Rikhotso
2117679-5	Constable	PR Mokgobu
7070860-6	Constable	SDD Sombhane
TACTICAL RESPONSE TEAM: GAUTENG PROVINCE		
7003546-6	Constable	TJ Seletela
7039850-0	Constable	SJ Phaswana
7039751-1	Constable	JM Moatshe
7039467-9	Constable	MN Mehale
7038469-0	Constable	NH Tshabalala
7039559-4	Constable	LA Kgopa
7039430-0	Constable	A Nxumaio
7039533-1	Constable	MS Mokoatlo
7039606-0	Constable	AD Takalani

B & C 1. For your information.


 LIEUTENANT COLONEL
 COMMANDER: TACTICAL OPERATIONS MANAGEMENT SECTION
 DIRECTORATE FOR PRIORITY CRIME INVESTIGATION: HEAD OFFICE
 L VERSTER



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Ref: 3/2/1

INFORMATION NOTE

- A. The Deputy National Commissioner
Directorate for Priority Crime Investigation
- B. Divisional Commissioner
Directorate for Priority Crime Investigation
- C. The Head
Directorate for Priority Crime Investigation
- D. The Project Centre
Directorate for Priority Crime Investigation

*Col Verster,
Thanks
Convey our gratitude
to Capt Maluleke
for excellent job.
E. K. ...
BRIGADIER
E.A. ADWA*

**SUCCESS REPORT: TACTICAL OPERATIONS MANAGEMENT SECTION
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION**

1. On 5/11/2010 a legal mutual request from Zimbabwean police was received for the tracing of fugitives.
2. Captain Maluleke was assigned the task to assist in tracing fugitive who committed Armed Robbery and attacked Zimbabwean police official..
3. On the 2010-11-23 the team succeeded in arresting the following:

STATION & CAS NO.	CHARGE	SUSPECTS ARRESTED	SEIZURES
Ref no. 26/3/6	Murder and Robbery	Prichardt Tshomo alia Chuma	N/A

4. A, B and C for your information.

L. Verster
**LIEUTENANT COLONEL
 SECTION HEAD: TACTICAL OPERATIONS MANAGEMENT SECTION
 PRIORITY CRIME INVESTIGATION: HEAD OFFICE: SILVERTON
 L VERSTER**

Information note compiled by:
 Telephone number:
 Date:

Captain ML Maluleke
 012 848 4226/082 772 9518
 2010-11-24

Information note perused by:
 Telephone number:
 Date:

Lt Colonel L Verster
 012 846 4307/ 082 778 2838
 2010-11-24

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EV*

2: 68

"NM5"

Ref: 3/2/1

INFORMATION NOTE

- A. The Deputy National Commissioner
Directorate for Priority Crime Investigation
- B. Divisional Commissioner
Directorate for Priority Crime Investigation
- C. The Head
Directorate for Priority Crime Investigation
- D. The Project Centre
Directorate for Priority Crime Investigation

**SUCCESS REPORT: TACTICAL OPERATIONS MANAGEMENT SECTION
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION**

1. On 5/11/2010 a legal mutual request from Zimbabwean police was received for the tracing of fugitives.
2. Captain Maluleke was assigned the task to assist in tracing fugitive who committed Armed Robbery and attacked Zimbabwean police official.
3. The team succeeded in arresting the following:

STATION & CAS NO.	CHARGE	SUSPECTS ARRESTED	SEIZURES
Ref no. 26/3/3	Murder and Robbery	Dumisani Witness Vudhla @ Ndeya or Nkosi - ID unknown Shepherd Duma ID unknown	2 x cellular phones

4. Interpol is already notified.
5. A, B and C for your information.

[Signature]
LIEUTENANT COLONEL
SECTION HEAD: TACTICAL OPERATIONS MANAGEMENT SECTION
PRIORITY CRIME INVESTIGATION: HEAD OFFICE: PJ SELUNDU

Information note compiled by:
 Telephone number:
 Date:

Cap.
 012 4
 2010-

Information note perused by:
 Telephone number:
 Date

Lt Colo.
 012 848
 2010-11

*Noted
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 SG Lebeya
 2010-11-18*

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[Signature]

MP
[Signature]
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STATEMENT OF LIEUTENANT COLONEL NDANDULENI RICHARD MADILONGA

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

(1)

I am a police officer in the South African Police Service holding a rank of Lieutenant Colonel with persal No 0481932-2, stationed at Thohoyandou SAPS as a commander of crime prevention, contact number 015960 1049 or 0766 906 426.

(2)

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

(3)

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

(4)

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

(5)

When I approached them, one of them introduced himself to me as the leader of the group and he said to me he is a Superintendent Ncube from the Homicide Unit in Harare. He then requested me if they could not find a place and sit down and discuss. I then took them to my office and set down for discussion. We then went to my office together with his colleagues. Superintendent Ncube told me that he is going to Pretoria to meet General Dramat. He said to me maybe I knew about the Chief Superintendent who had been murdered. He said that the suspects are in Gauteng and he had organised with General Dramat to assist them in tracing the suspects.

(6)

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

(7)

I phoned General Dramat on his cell phone and he responded by saying that he is aware of the Zimbabwean police and I must let them come. I used my landline if I did not use my official cell phone. I took the Zimbabwean police's passports and taken them to the immigration office to be stamped. The registrations of their vehicles were also documented. I handed their stamped passport and gate pass and they cross the entry gate into South Africa.

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(8)

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

(9)

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

(10)

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

(11)

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

(12)

When we arrived at the Zimbabwean side the vehicle stopped and immediately all the vehicles were surrounded by Zimbabwean police. They then pulled the suspects from the back seat of the vehicle behind us. We could not even hand the documents that Captain Maluleke gave me to the immigration officers of Zimbabwe because of the commotion. I knew that they were police officers because I had been working at the border for a long time and I knew them. I even saw the vehicles that crossed two weeks ago when Superintendent Ncube entered the country. One of the Zimbabwean police came and thanked us and said that we must not use the other gate but use the one we used when we entered.

(13)

Captain Maluleke told me that what happened is top secret and people must not know of what happened. Captain Maluleke drove me back to where he found me and I entered into my car and drove home. In 2012 of which I cannot remember the month and date, Captain Maluleke phoned and told me that there is a person from Head Office who will be coming for investigation and that I must cooperate with him. Later a person came to

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 YS
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Tohoyandou and he had draft statement. He told me that there is a problem with the operation which was once done by the Hawks and they would like my statement to be in a particular format. He told me that the statement is for covering up and the parliament has some issues about the operation. I read the statement and realize that it was to close the gaps and not a true reflection of what happened.

(14)

I know and understand the content of this statement

I have no objection in taking the prescribed oath

I consider the prescribed oath to be binding on my conscience

Deponent's signature: *AK Muthoye* ^{CPA}

Date: 2013-04-08

I certify that the above statement was taken down by me and the deponent has acknowledged that he knows and understand the content of this statement which was swomed or affirmed before me and the deponent's signature was placed thereon in my presence at Tohoyandou on the 2013-04-08 at 14:50.

Commissioner of oath: INNOCENT HUMBULU KHUSA

Signature: *Innocent Humbulu Khusa*

Rank: A. PROVINCIAL HEAD

Business Address: 54 LIMBEY BUILDING, IPID

Area: THOHOYANDOU



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ZGD
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«NM 7»



ipid
Department of Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

CASE NUMBER: _____

FULL FIRST NAMES AND SURNAME: Mantosh Potela

STATE UNDER OATH IN: English

IDENTITY NUMBER: 760822 5367088

GENDER: Male

OCCUPATION: Self Employed

RESIDENTIAL ADDRESS: 42 Broadland, Rosewood Road

BUSINESS ADDRESS: Same as above

TEL (H): _____ TEL (W): _____ CELL: 079 563 1625

From December 2010 to May 2013 I was employed by South African Police Services as a spokesperson for DPCI. I was reporting directly to General Dramat and Brigadier Mashigo.

I remember that I was introduced to Zimbabwean police who were having a meeting with General Dramat. I cannot remember when and how the meeting was conducted. It was not necessary for me to know the details. The Zimbabwean police were introduced by Lt General Dramat. On 2011 there was an enquiry from Folzilezi wa Africa working for Sunday Times seeking clarity about the renditions of Zimbabwean Nationals. The meeting was held between Lt General Dramat, Colonel Zuma Basi, Captain

SIGNATURE OF DEPONENT: x Potela

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I know and understand the content of this statement.

I have no objection in taking the prescribed oath.

I consider the prescribed oath binding on my conscience.

I swear that everything I said is the truth, so help me God.

SIGNATURE OF DEPONENT: *M. Polela*

PRINT SURNAME AND INITIALS: Polela M

DATE: 02 August 2013

I certify that the above statement was taken down in my presence and the deponent acknowledges that he/she knows and understands the contents of this statement. This statement was sworn/confirmed before me and the deponent's signature was put in my presence.

DATE: 02/08/2013 COMMISSIONER OF OATH: *[Signature]*

TIME: 11400 NAME AND SURNAME: INNOCENT H KHUMBI

PLACE: FOURWAYS RANK: A P H

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"NM 8"

DEPARTMENT OF HOME AFFAIRS
PRIVATE BAG X9046
CAPE TOWN 8000
2010-08-19
RSA
DIRECTOR-GENERAL'S SECRETARIAT



MINISTRY
HOME AFFAIRS
REPUBLIC OF SOUTH AFRICA

DEPARTMENT OF HOME AFFAIRS
PRIVATE BAG X9046
CAPE TOWN 8000
2010-08-11
RSA
DIRECTOR-GENERAL'S SECRETARIAT

Private Bag X741, PRETORIA, 0001, Tel: (012) 810 0098, Fax: (012) 810 2312
Private Bag X9102, CAPE TOWN, 8000, Tel: (021) 464 1800, Fax: (021) 461 4191

File: M3/2/10/37

11 August 2010

TO ALL PARLIAMENTARY OFFICERS / ADMINISTRATIVE SECRETARIES

Dear Colleagues

CABINET MEMORANDUM 08/2010 : THE ENDING OF SPECIAL DISPENSATION FOR ZIMBABWEAN NATIONALS ANNOUNCE IN APRIL 2009

The Minister of Home Affairs has requested me to distribute the above-mentioned Cabinet Memorandum for the information and attention of the Members of Cabinet and Deputy Ministers.

This cabinet memorandum will be discussed at the meeting of Justice, Crime Prevention and Security Cabinet Committee on the 25th August 2010.

The Ministry is aware of all decisions relating to the timely and correct distribution of Cabinet memoranda as well as of the Cabinet requirements for the drafting of Cabinet memoranda as set out in the document entitled "Guide for the drafting of Cabinet Memoranda". I hereby declare that the attached memorandum adheres to the guidelines.

I also declare that the Cabinet Memorandum was distributed to all Ministries on time and not only to Cabinet Secretariat.

Kind regards

DINEO MALAO
OFFICE OF THE MINISTER OF HOME AFFAIRS

I, in the Ministry of wishes to inform the Cabinet Secretariat that we did not receive the abovementioned memorandum by the required cut-off time. We only received this memorandum on (date) at (time).

We discussed the matter with the relevant Ministry and did not receive a satisfactory explanation.
(Depending on where the Cabinet Office is, please fax to (012) 323 8292 or (021) 464 2163).

.....
Signature

.....
Date

(Please remove this letter from the memorandum)

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DEPARTMENT OF HOME AFFAIRS

CABINET MEMORANDUM NO. : 8 OF 2010

DATE : 10 AUGUST 2010

FILE NUMBER : M3/2410/37

1. SUBJECT

The Ending of Special Dispensation for Zimbabwean nationals announced in April 2009.

2. PURPOSE

To obtain Cabinet approval of the proposal and process for the ending of the Special Dispensation for Zimbabwean Nationals.

3. SUMMARY

3.1 In April 2009 the Department of Home Affairs announced a Special Dispensation for Zimbabwe Nationals, as well as the suspension of the deportation of Zimbabweans for the period May 2009 to April 2010.

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3.2 At a Bilateral meeting held on 17 June 2010 the Ministers of Home Affairs from RSA and Zimbabwe agreed that the moratorium on deportations should come to an end and that officials from both countries should meet and come up with proposals on the ending of the moratorium.

4. STRATEGIC FOCUS OF THE MEMORANDUM

The proposal is aimed at ending of the Special Dispensation for Zimbabwean Nationals.

5. DISCUSSION

The proposal and process is as follows:

Phase 1: End of the Special Dispensation and the resumption of the deportation process of undocumented Zimbabwean nationals in the RSA

5.1.1 This phase signals that the Zimbabwean nationals must be in possession of valid passports or permits to remain in the country.

5.1.2 The Department will issue the following permits to Zimbabwean Nationals who are working, conducting business or studying in the RSA, as a result of the Special Dispensation, complying with the set requirements and having proof of employment, proof of conducting business (whether registered or not) or proof of registration at an educational institution or alternatively being holders of section 22 permits when the Special Dispensation came into existence:

- (a) Work Permit;
- (b) Business Permit; or
- (c) Study Permit.

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5.1.3 In all instances, a full set of fingerprints and a valid Zimbabwean passport or travel document which is machine readable on the Department of Home Affairs' systems will also be required.

5.1.4 There will furthermore be an amnesty for those persons who obtained the South African Identification documents fraudulently, on condition that they return such documents to the Department. Those who return them will be issued with the relevant permit to regularise their stay in the Republic.

Phase 2: Extension of Phase 1 to nationals of neighbouring countries

5.2 The proposal regarding the Zimbabwean nationals will be extended to nationals from neighbouring countries at a later stage.

Reasons

5.3.1 The proposal is aimed at ensuring that every person who is in the Republic is documented and his or her stay is regularised.

5.3.2 The proposal is furthermore aimed at ensuring that all persons who acquired South African Identification documents are given amnesty upon surrendering such identification documents.

5.3.3 However, following the amnesty period, those persons who have not surrendered their fraudulently acquired identification documents will be arrested and those found to be illegal will be deported, as the Dispensation was about the moratorium on deportation.

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5.3.4 This would give an improved estimate of the total number of nationals from the neighbouring countries who are residing in the Republic of South Africa.

6. IMPLEMENTATION PLAN

- 6.1 The proposal and process for the ending of the Special Dispensation for Zimbabwean Nationals will be implemented through a dedicated team consisting of officials from the RSA and the Republic of Zimbabwe, called Joint Monitoring and Evaluation Committee.
- 6.2 The Government of the Republic of Zimbabwe has agreed and committed to issue passports or travel documents to all Zimbabwean Nationals.
- 6.3 Prior to the issuance of any of the permit mentioned in paragraph 5.1.2 above, fingerprint checks will be conducted on different fingerprint systems in different Government Departments.
- 6.4 The Department of Home Affairs will utilize its Regional Offices for receiving applications for permits and the Zimbabweans their High Commission and Consulates for the issuance of passports or travel documents. However, the adjudication will be made nationally or centrally.
- 6.5 The implementation of the above process must be completed by 31 December 2010. After this cut-off date the provisions of the Immigration Act, 2002 will apply with the resumption of deportations for those Zimbabwean Nationals in the RSA without the correct documentation.

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8.5 The Joint Monitoring and Evaluation Committee will ensure that targets and time frames are realized.

7. **ORGANISATIONAL AND PERSONNEL IMPLICATIONS**

There will be no organisational and personnel implications.

8. **FINANCIAL IMPLICATIONS**

The Department will use its baseline budget.

9. **COMMUNICATION IMPLICATIONS**

A comprehensive public communication strategy will need to be developed, both in respect of the target community and the South African community.

10. **CONSTITUTIONAL IMPLICATIONS**

The proposal is not in conflict with any constitutional rights or freedoms of individuals.

11. **IMPLICATIONS FOR VULNERABLE GROUPS**

The proposal seeks to protect the interest of vulnerable groups.

12. **SECURITY IMPLICATIONS**

The proposal aims at minimising the security implications of undocumented migrants in the Republic of South Africa.

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13. DEPARTMENTS AND PARTIES CONSULTED, RESPONSES AND COMMENTS

- 13.1 No Department has been consulted.
 13.2 The Immigration Advisory Board was consulted.
 13.3 The Cabinet Memorandum was discussed at the JCPS Cluster.

14. RECOMMENDATIONS

It is recommended that Cabinet approves the proposal and process for the ending of the Special Dispensation for Zimbabwean Nationals.

15. OFFICIAL RESPONSIBLE FOR THE MEMORANDUM

I declare that the memorandum adheres to the guidelines provided by the Cabinet for the drafting of memoranda.

Name: Mr J W McKay
 Designation: Deputy Director-General: Immigration Services
 Contact details: 270 Maggs Street, Walfloo, Pretoria, 0001
 Telephone: (012) 810 8109
 Cellular: 072 354 1729

16. HEAD OF DEPARTMENT

Mr M Apleni
 Director-General
 Department of Home Affairs
 (012) 810 8033

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17. AUTHORISATION FOR PROCESSING THE MEMORANDUM

NE Zuma
Dr N C Dlamini Zuma, MP
Minister of Home Affairs
Date: 10/08/2010

Is there a need for an electronic presentation to be done in addition to the memorandum? No



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home affairs

Department
Home Affairs
REPUBLIC OF SOUTH AFRICA

BI-57

270 Meggs Street, Walford, Private Bag X114, PRETORIA, 0001
Parliamentary Office, 120 Plein Street, Private Bag X9048, Cape Town, 8000

Tel: (012) 810-8388 (Mr B Makhalemele) Fax (012) 810-8388
E-mail: Ben.Makhalemele@dha.gov.za

DEPARTMENT OF HOME AFFAIRS: HEAD OFFICE
DOMESTIC OFFICES
FOREIGN OFFICES

IMMIGRATION DIRECTIVE NO 37 OF 2010

**SUBJECT: CLARIFICATION ON DOCUMENTATION OF ZIMBABWE NATIONALS
GENERAL PROCEDURES, REQUIREMENTS AND CRITERIA.**

In April 2009 the Department of Home Affairs announced a Special Dispensation for Zimbabwe Nationals as well as the suspension of the deportation of Zimbabweans for the period May 2009 to April 2010.

The Ministers of Department of Home Affairs, RSA and Zimbabwe met on the 17 June 2010 and resolved that the Special Dispensation and moratorium on deportation must come to an end. This means that Zimbabweans in South Africa must be in possession of a valid passport and a permit to remain in the Republic and if they are undocumented they must be deported.

Following Cabinet approval and recent announcement by the Minister of Home Affairs in the National Assembly on the 2 September 2010, all undocumented Zimbabweans may apply in the prescribed manner for temporary residence permits. As the Cabinet Memorandum does not contain any date on which the said Zimbabweans had to enter the Republic, all undocumented Zimbabweans may apply until 31 December 2010, irrespective of the date that they entered the Republic.

Department of Home Affairs • Cetapha le Merero ya Selegae • Cetapha le Oitshaba le Laha • IdiNyango wezael'Chaya • Mhachho we zwa Mung • Department van Binnelandse Sake • Kgoro ya Mamo ya Selegae • Ndzawulo ya ta le Kaya • LITCO le Tseletshaya • ISebe la zasetel'Chaya • IdiNyango we zwa Mung

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KV

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Zimbabwe Nationals have been invited to apply for work, study and business permits with relaxed requirements as follows:

1 WORK PERMITS

No processing fee

- 1 Application form BI-1738B, duly completed;
- 2 A valid passport;
- 3 Proof of employment (Official letter by employer with business address in instance of registered business and employment contract. Instances of unregistered business a Police sworn affidavit/declaration confirming employment
- 4 Full set of fingerprints BI-9 form and SAPS 91 form.

2 BUSINESS PERMIT

No processing fee

- 1 Application form BI-1738B, duly completed;
- 2 A valid passport ;
- 3 Full set of fingerprints on BI-9 form and SAPS 91 form;
- 4 Confirmation of the existence of self employment and proof of business address; e.g trading licence issued in terms of Municipal By-laws, proof of company registration with CIPRO, or proof of registration of business with SARS

3 STUDY PERMITS

No processing fee

- 1 Application form BI-1738 B, duly completed;
- 2 A valid passport;
- 3 An official letter of registration of acceptance & duration of the course with a primary; secondary school or tertiary institution; e.g. School letter on the letter head of institution
- 4 Letter of guardianship in case of a minor
- 5 Full set of fingerprints BI-9 form and SAPS 91 form.

It is important that all the required supporting documents are obtained before an application for a permit is accepted.

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Your co-operation in the above regards will be appreciated.

Yours sincerely

M RADEBE
CHIEF DIRECTOR: PERMITS
DATE:

This Immigration Directive follows Immigration Directive No 36 dated 13 October 2010, which deals with: Implementation of visa requirements for Diplomatic and Official Passport holders of the United Kingdom of Great Britain and Northern Ireland.



[Handwritten signatures and initials]
MP
FV

Tel: (012) 810-8388 (Mr B Makhalemele) Fax (012) 810-8388
E-mail: Ben.Makhalemele@dha.gov.za

DEPARTMENT OF HOME AFFAIRS: HEAD OFFICE
DOMESTIC OFFICES
FOREIGN OFFICES

14/10/10

31
IMMIGRATION DIRECTIVE NO 99 OF 2010

**SUBJECT: CLARIFICATION ON DOCUMENTATION OF ZIMBABWE NATIONALS
GENERAL PROCEDURES, REQUIREMENTS AND CRITERIA.**

In April 2009 the Department of Home Affairs announced a Special Dispensation for Zimbabwe Nationals as well as the suspension of the deportation of Zimbabweans for the period May 2009 to April 2010.

The Ministers of Department of Home Affairs, RSA and Zimbabwe met on the 17 June 2010 and resolved that the Special Dispensation and moratorium on deportation must come to an end. This means that Zimbabweans in South Africa must be in possession of a valid passport and a permit to remain in the Republic and if they are undocumented they must be deported.

Following Cabinet approval and recent announcement by the Minister of Home Affairs in the National Assembly on the 2 September 2010, all undocumented Zimbabweans may apply in the prescribed manner for temporary residence permits. As the Cabinet Memorandum does not contain any date on which the said Zimbabweans had to enter the Republic, all undocumented Zimbabweans may apply until 31 December 2010, irrespective of the date that they entered the Republic.

MP 58
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Zimbabwe Nationals have been invited to apply for work, study and business permits with relaxed requirements as follows:

1 WORK PERMITS

No processing fee

- 1 Application form BI-1738B, duly completed;
- 2 A valid passport;
- 3 Proof of employment (Official letter by employer with business address in instance of registered business and employment contract. Instances of unregistered business a sworn affidavit/declaration confirming employment)
- 4 Full set of fingerprints BI-9 form and SAPS 91 form.

2 BUSINESS PERMIT

No processing fee

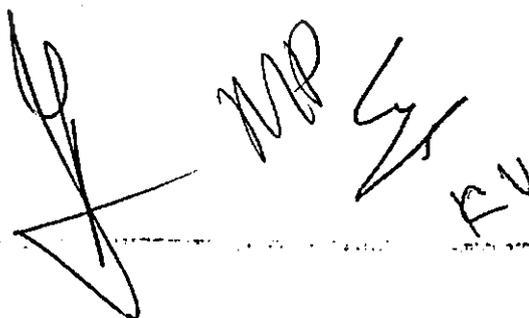
- 1 Application form BI-1738B, duly completed;
- 2 A valid passport;
- 3 Full set of fingerprints on BI-9 form and SAPS 91 form;
- 4 Confirmation of the existence of self employment and proof of business address; e.g. trading licence issued in terms of Municipal By-laws, proof of company registration with CIPRO, or proof of registration of business with SARS

3 STUDY PERMITS

No processing fee

- 1 Application form BI-1738 B, duly completed;
- 2 A valid passport;
- 3 An official letter of registration of acceptance & duration of the course with a primary, secondary school or tertiary institution; e.g. School letter on the letter head of institution
- 4 Letter of guardianship in case of a minor
- 5 Full set of fingerprints BI-9 form and SAPS 91 form.

It is important that all the required supporting documents are obtained before an application for a permit is accepted.

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

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Your co-operation in the above regards will be appreciated.

Yours sincerely

M RADEBE
CHIEF DIRECTOR: PERMITS
DATE:

36 13 October '10

This Immigration Directive follows Immigration Directive No 29, dated ~~28 August 2010~~, which deals with: Visa exemption for the holders of Diplomatic, Official or Services Passports for the Republic of Switzerland

Implementation of 1159 requirements for Diplomatic and Official Passports. Holders of the United Kingdom of Great Britain and Northern Ireland.

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Documentation of Zimbabweans Project

Presentation to JCPS
Date: 07/09/2010



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Part A

Background

- Early April 2008, the Department introduced Special Dispensation to respond to the high inflow of Zimbabweans given the socio-political situation in that country. This meant monitoring on the departure, introduction of a special permit and documentation of Zimbabweans. Special Dispensation was for the period April 2008 to April 2010.
- A bilateral meeting was held on 17 June 2010 between the Ministers of Home Affairs from RSA and Zimbabwe to review the Special Dispensation. It was agreed that the Special Dispensation should end because it has run its course. This therefore meant that the monitoring on departures will be lifted. A way has to be found to document Zimbabweans in terms of the Immigration Act.
- Officials from both countries met and agreed on a joint project to document Zimbabwean nationals. It was also agreed that Zimbabwe will issue to all its nationals passports and South Africa will issue to qualifying Zimbabwean nationals with permits in terms of the Immigration Act on relaxed requirements.

External Environment

- The Special Dispensation was implemented for the period of 12 months and it has to expire.
- Whereas The Department does not have accurate and reliable data on the number of undocumented Zimbabweans, the National Immigration Information System recorded a total number of 288 000 asylum applications for the period 2006 to 2010.
- During the period 2009 to 2010 all Refugee Reception Centres issued 3282 (1%) Section 24 permits to Zimbabwean nationals. This shows that a small percentage of Zimbabweans are genuine asylum seekers. This confirms that a majority of Zimbabweans are coming to South Africa to seek economic and study opportunities and use asylum system to regularise themselves.
- In the short term there is a need to document this category of Zimbabweans and the long term solution is to review the immigration regime to find a way to accommodate economic migrants especially low and unskilled.
- It is estimated that 350 000 Zimbabweans are undocumented in South Africa (based on NIS data it is estimated an additional 22000 of those who did not present themselves to the Refugee Reception Centres). This is based on the assumption that the number of those who presented themselves at Refugee Reception Centres far exceed the number of those who did not.

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Main Goal
-Registration of undocumented Zimbabweans currently residing in RSA and to relieve pressure from the Asylum Seeker Management system
Objectives
<ul style="list-style-type: none"> • Issue Business Permits to self employed/ Entrepreneurs. • Issue Study Permits to registered students • Issue Work Permits to those employed • Grant Amnesty to those with fraudulently acquired documents
Customer/Target
<p>All Zimbabwe Nationals with valid passports, who were in the country before 30 April 2010 and without criminal record or fugitive from Justice in SA with:</p> <ul style="list-style-type: none"> • Proof of employment • Proof of Study with Registered Provider • Self employed/ Entrepreneurs with proof of registration of business/ Tax, Certificate or Certificate/Proof of terms of Municipality laws (e.g. Hawkers) • Section 22 asylum seeker permit holders (unresolved cases) complying with any of the above and seek to lodge their asylum application elative <p>Zimbabweans who have declared that they have fraudulently acquired South African enabling documents will qualify for amnesty from prosecution. These documents will be confiscated and the persons removed from the National Population Register.</p>


Non-Qualifying Category
<p>All Zimbabwe National in South Africa without:</p> <ul style="list-style-type: none"> • a valid passport, • proof of employment • proof of study • proof of registered business/self employment • Refugees <p>Section 22 asylum seeker permit holders (unresolved cases) without any of the above</p>
Product/Services with certain Terms and Conditions
<p>Work permits</p> <ul style="list-style-type: none"> -Validity period: In line with the employment contract up to a maximum of four years -No processing fee <p>Study permit</p> <ul style="list-style-type: none"> -Validity period: In line with the duration of the study course -No processing fee <p>Business permit</p> <ul style="list-style-type: none"> -Validity period: In line with the application period specified or up to a maximum of four years. -No processing fee.






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Part B: Implementation Plan / Execution
Channels / Outlets for Application
Front Office: All the 46 Regional Offices in 8 Provinces Back Office: H&A to be created at head office for contracted adjudication
Project Life Span
Start: 20 September 2010 Completion date: 31 December 2010 Total number of Days: 92
Governance Structure... Cont.
<p>Project SteerCo Has been established to be constituted by Core Units (MS & CS) and Support Units. However only the MS and HR has nominated officials to the SteerCo.</p> <p>Mandate: to oversee and monitor implementation of the DZP, prepare reports to EXCO and EMC</p> <p>Frequency of meetings: SteerCo will meet weekly on Tuesdays at 14h00 and Thursdays at 09h00</p>


Governance Structure
<p>EXCO Has been established constituted by DG and all DDG's to guide the implementation of the project and receive reports from the SteerCo.</p> <p>Mandate: to guide and receive reports on the implementation of the Projects.</p> <p>Frequency of meetings: EXCO will meet weekly on Tuesdays at 17h00.</p>



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Key Activities / Deliverables
<p>• Project Initiation / Mobilisation of DHA resources (setting up)</p> <ul style="list-style-type: none"> • Appoint Steer-Com and Project Manager • Setting up programme office • Internal DHA Work shop with all key players (role definition and responsibilities) • Consultation with External Stakeholder (consultation Meetings) • Resource Mobilisation (France) <p>Time Allocated: 1 week</p>
<p>• Documentation Process Work-stream</p> <p>Convenor, Mr. Martin Matthews</p> <p>Finalisation of the SOPs and Process Note - 8 Sept 10</p> <p>Permits, Annulment cases, Asylum and Inspectorate SOPs and</p> <p>Permits, Asylum and Inspectorate Process</p> <p>Appeals process</p> <p>Readiness of the Front (Regional Offices) and Back Office (Head Office Adjudication H.O.) 10 Sept 10:</p> <p>Sufficient stock of application forms</p> <p>Dedicated desks with clear signage</p> <p>Set-up Centralised Adjudication Hub with a dedicated Registry</p> <p>Completion of deskloads and stock - daily and weekly</p> <p>Monitor implementation of the SOP and Process Notes - on-going</p> <p>Set up enquiry desk with dedicated telephone nr and email address - 14 Sept 10</p>

Risks/Issues	
Documentation Process Work-stream	
Risks/Issues	Mitigation
Failure to finalise SOPs	Continues engagement with relevant Units
Failure to rollout track and trace system by IS	Closely monitor implementation of the rollout plan
Lack of buy-in by Provinces	Engagement with the Provinces
Lack of sufficient stock of application forms and Permit labels	Stock Control and engagement with GPW to stock sufficient labels
<p>8/10/2010 8</p>	



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Key Deliverables and Progress to date

Communication Work-stream:
 Convenor: Mr. Rohan Manjappa

- Development of the Communication Plan/ strategy - 8 Sept 10
- Mobilisation - Notify the target group on the starting and completion dates, requirements and qualifying groups, places of application/outlets - 10 Sept 10.

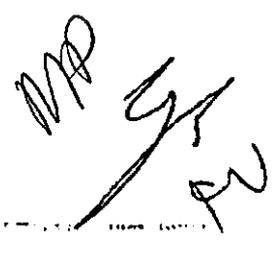
9/10/2010 8

Risks

Communication Work-stream:

Risks/Issues	Mitigation
Failure to develop communication strategy.	Engagement the Unit
Failure to have a clear message to the target group.	Ensure the implementation of the plan

9/10/2010 10

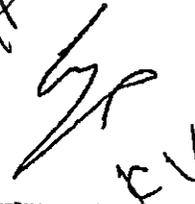



694

Key Deliverables	
□ Support Work-stream:	Convenor: Mr Willie Krige
- Human Resources	<ul style="list-style-type: none"> > Appointment and deployment of staff to Head Office Hub (40 staff – 30 level 8 and 10 at level 6) by the 13 September 2010. > Appointment and deployment of staff to Front Offices (48 staff at level 8) by the 15th Sept 10.
- Property Management	<ul style="list-style-type: none"> > Identify facility to host the Hub by 7 Sept 10
- Procurement	<ul style="list-style-type: none"> > Fast-track ordering and payments – on-going
9/10/2010	11

Key Deliverables	
□ Support Work-stream:	
- Legal services	<ul style="list-style-type: none"> > Prepare for Litigations – on-going > Provision of legal advice – on-going
- Security	<ul style="list-style-type: none"> > Pre-screening staff – on-going > Security Plan for the Front Offices – 10 Sept 10
- Finances	<ul style="list-style-type: none"> > Resource Mobilization – 8 Sept 10 > Special Responsibility Code – 8 Sept 10
- Learning Academy	<ul style="list-style-type: none"> > Training Programme and Implementation – 17 Sept 10
- IS	<ul style="list-style-type: none"> > Rollout of Track and Trace to 12 offices – 10 Sept 10 > Track and Trace with sms to applicants in all 36 offices – 10 Sept 10 > Set-up a enquiry email address and telephone rx – 14 Sept 10 > Open teleconference account for daily and weekly briefing with RD's and Provinces – 14 Sept 10
9/10/2010	12





685

Risks	
<input type="checkbox"/> Support Work-stream:	
Risks/Issues:	Mitigation:
Delays to appoint and deploy staff	Use current staff from Permitting and Inspectorate
Delays in Pre-Screening of staff	Issue contract subject outcome of screening
Delays in process orders and payments	Identify needs and engage Procurement
Delays in responding to litigations and provision of legal advice	Legal Plan and Implementation
Delays in securing funds	Identify funds from the IMS baseline
Delays in securing place for the Hub	Use current Hub
8/10/2010	13

Key Deliverables	
<input type="checkbox"/> Stakeholder Management Work-stream: Convenor: Ms Jane Razwiedani	
<ul style="list-style-type: none"> - Engagement with internal and external stakeholders – 10 Sept 10 <ul style="list-style-type: none"> ➢ Engagements with SAPS (Criminal Records), State Security (Analysis of Amnesty cases), HE & BE (verification of educational institutions) - Convene Joint Task Team with Zimbabwe – BI-weekly 	
8/10/2010	14

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Risks/Issues	
Stakeholder Management Work-stream:	
Risks/Issues	Mitigation
Lack of cooperation from stakeholders	Continuous engagement with stakeholder
9/10/2010	15

7, Budget	
9/10/2010	16



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DEPARTMENT OF HOME AFFAIRS

IMMIGRATION SERVICES

STANDARD OPERATING PROCEDURE (SOP)

TYPE OF PERMIT/APPLICATION/DOCUMENTATION OF ZIMBABWEANS (Regularisation)

TYPE OF PERMIT/APPLICATION/DOCUMENTATION OF ZIMBABWEANS (Regularisation)

Effective Date: 20 September 2010 until 31 December 2010

GENERAL PROCEDURES, REQUIREMENTS AND CRITERIA PERTAINING TO REGULARISATION OF UNDOCUMENTED ZIMBABWE NATIONALS FRONT OFFICE

1. REGULARISATION OF ZIMBABWEAN CITIZENS

In order to regularise a number of Zimbabwean nationals residing in South Africa the Government of the Republic of South Africa undertook to implement a special project for ordinary passport holders of the Republic of Zimbabwe, provided that the Republic of Zimbabwe provides the necessary travel documents to its citizens.

Section 9(3)(a) of the Immigration Act, 2002 (Act No 13 of 2002), stipulates that no person shall enter the Republic of South Africa unless in possession of a valid passport.

A passport is defined in section 1 of the Act as any passport or travel document containing the prescribed information and characteristics issued-

- (a) under the South African Passport and Travel Documents Act, 1994 (Act No 4 of 1994);
- (b) on behalf of a foreign state recognised by the Government of the Republic to a person who is not a citizen;

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(c) on behalf of any international organisation as prescribed, including regional or sub-regional organisations, to a person who is not a citizen, or any other document approved by the Minister and issued under special circumstances to a person who cannot obtain a document contemplated in paragraphs (a) to (c).

The information and characteristics of a passport are contained in Regulation 2 of the Immigration Regulations and are as follows:

- (a) Full name, date and place of birth of the holder;
- (b) A photograph clearly and correctly depicting the facial features of that holder;
- (c) The name of the issuing authority;
- (d) The date upon which and place where it was issued;
- (e) At least one unused page when presenting the passport for purposes of endorsing a visa or permit; and
- (f) The expiry date thereof.

The Regional Offices of the Department of Home Affairs are responsible for the acceptance of the applications for regularisation of undocumented Zimbabwe Nationals.

2. THE CRITERIA FOR APPLICATIONS

2.1 WORK PERMITS

Validity period: In line with the employment contract up to a maximum of four years
No processing fee

- 1) Application form BI-1738B, duly completed;
- 2) A valid passport;
- 3) Proof of employment (Official letter by employer with business address in instance of registered business and employment contract. Instances of unregistered business, a sworn affidavit/declaration confirming employment)
- 4) Full set of fingerprints;

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2.2 BUSINESS PERMIT

Validity period: In line with the application period specified or up to a maximum of four years.

No processing fee

- 1 Application form BI-1738B, duly completed;
- 2 A valid passport;
- 3 Full set of fingerprints;
- 4 Confirmation of the existence of self employment and proof of business address; e.g. trading licence issued in terms of Municipal By-laws, proof of company registration with CIPRO, or proof of registration of business with SARS
- ~~5 Two photos (Passport size).~~

2.3 STUDY PERMITS

Validity period: In line with the duration of the study course for a period of four year. No processing fee

- 1 Application form BI-1738 B, duly completed;
- 2 A valid passport;
- 3 An official letter of registration of acceptance & duration of the course with a primary; secondary school or tertiary institution; e.g. School letter on the letter head of institution
- 4 Letter of guardianship in case of a minor
- 5 Full set of fingerprints.
- ~~6 Two photos (Passport size).~~

3. APPLICATION PROCESS (REGIONAL OFFICES)

An application form can only be submitted by an applicant in person. This means that each and every applicant must be subjected to an interview during which an explanation is given concerning the application. In view of the above, the main functions of Front Office will be to:

- receive the applications;
- scrutinise documents to see that they are correct, complete and true;

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701

- control the visa and entry stoplist;
- verify doubtful information
- keep records of applications;
- Issue outcome of application and endorsement of permits

• *keeping Track & Trace*
 All documents furnished by the applicant must be originals or a certified copy (by a Commissioner of Oath) of an original document. All copies made as supporting documents to accompany the application must be certified by the front desk officers as true copies of the original document. All affidavits/ declarations accompanying the application must be originals.

The designated office will open the case file for every application received from a principal applicant. The referencing will read e.g. 1000/2010 DBN (P) i.e., case file number-year-regional centre code-code for a principal applicant OR 100/2010 DBN(D) The applications must be entered into the Track and Trace computerised system and submitted to Head Office for adjudication purposes within 48 hours from the date of application.

Standard Operating Procedure

"NM 9"
STWATWA CAS 25/07/12

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BONGANI HENRY YENDE 36 years old ID no. 7506165879080 residing at 381 Thafeni Section Tembisa with Tel. no. 082 487 6008 and no. 7058391-9 Sergeant in South African Police Service stationed at Johannesburg Crime Intelligence Office at no.1 Commissioner Street, Tel.: (011) 497 7125 states under oath in English:

1.

During October 2010 I was nominated to be part of the Task Team called "TOMS". In full "TOMS" means Tactical Operations Management Section led by Major General Sibiya who is the Provincial Commander of Hawks in Gauteng Province. Members of Crime Intelligence who worked with me at the Task Team were W/O Jawuke, W/O Ndobe and Constable Campbell.

2.

On 2010-11-05 in the evening I received a phone call from W/O Makwe of DPCI in Gauteng who was also part of the Task Team "TOMS" that Major General Sibiya wanted us to meet at four ways to go and search for suspects in a case which a Colonel was killed. I went to four ways with Constable Desmond Campbell who was also part of "TOMS" Task Team. On our arrival at fourways Shopping Center W/O Makwe introduced two African Males as our police counterparts from Zimbabwe Police.

3.

The time W/O Makwe introduce the two policemen from Zimbabwe, I realized that the Colonel that was killed was from Zimbabwe and not of South African Police. W/O Makwe informed us that the two police officers came to us via the office of General Dramat who is National Head of DPCI. Maj. General Sibiya was sitting in a navy BMW vehicle busy on his cellphone and I could not manage to greet him.

4.

While still waiting at our meeting point at Diepsloot, Capt Cowboy Maluleke went to the residential area of the wanted suspects with W/O Jawuke and Constable Leburu Radebe to identify the house of the suspects. Captain Cowboy Maluleke is based at DPCI Head Office and Constable Leburu Radebe is based at the DPCI Gauteng under Major General Sibiya and they were also in "TOMS" Task Team.


 B H M P G P U

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SIWATIWA CAS 25/07/12

5.

Captain Cowboy Maluleke came back to where we were gathered to collect us to the identified place of the suspects and said that he left Cst. Leburu Radebe and W/O Jawuke to observe the car which was standing or parked outside the suspect's house. While Captain Cowboy Maluleke was still informing us how to drive to the shack, Cst. Radebe called him and said that we should hurry and come because they have already arrested the suspects.

6.

On our arrival where the suspects were arrested, Captain Cowboy Maluleke searched the men and took their passports. We found four (4) A/Men lying down and the two policemen from Zimbabwe said that the four men were their suspects who robbed and killed a police Colonel in Bulawayo.

7.

The four arrested Zimbabwean men were asked about the outstanding suspects and there was address to be visited and that address was shown by a suspect who was with Captain Cowboy Maluleke and we all followed Captain Maluleke to trace the outstanding suspect.

8.

On our arrival at the pointed address at Meadowlands, we found the wife of the wanted suspect and she said that it was a while that her husband did not come home and she did not know where he could be found. We search the shack but also nothing was found. We then met next to the road in Soweto and Captain Cowboy Maluleke said the suspect should be detained at Orlando SAPS as illegal immigrants and not as wanted in Armed Robbery and Murder in Zimbabwe.

9.

On 2010-11-23 I was called by W/O Makwe that we should meet at Shoprite of Diepsloot to go and trace the outstanding suspects in the Zimbabwe Case. On our arrival at Diepsloot Shoprite, Captain Cowboy Maluleke briefed us that the first four suspects that were arrested on 2010-11-05 were killed by police in Zimbabwe and that Zimbabwe is not like South Africa because if you kill a police official there you got killed too.

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AETWA TWA CAS 25/07/12

10.

I started being worried that people that we arrest in South Africa hoping that they will get fair trial got killed in Zimbabwe and that was not what I wanted. Captain Cowboy Maluleke, Constable Campbell and Constable Leburu-Radebe went to identify the place of the outstanding suspect and they returned after ± 30 minutes and took us to the identified address.

11.

The wanted suspect was not found at the given address but a woman who was found there did show us another address and the suspect by the name of Pritchard Tshuma was arrested.

12.

The suspect Pritchard Tshuma was searched by Captain Cowboy Maluleke and thereafter we drove to Fourways Shopping Center where we met on the first operation on 2010-11-05. Captain Cowboy Maluleke then requested Constable Campbell to go and detain the suspect at Alexander SAPS. Captain Maluleke wrote the particulars of the Zimbabwe Case in Const. Campbell's diary and he said that they must be detained on that Zimbabwe Case and not as illegal immigrant like the first four suspects who were detained at Orlando SAPS.

13.

I was later informed by Warrant Officer Makwe that the four suspects who were detained at Orlando SAPS were transported to Messina by Captain Cowboy Maluleke and handed over to Zimbabwe Police. That was illegal operation conducted by Captain Maluleke but I believe he was sanctioned by his superiors. He should not have handed the suspects to Zimbabwe Police himself because there are extradition regulations in South Africa that should have been followed. The suspects who were killed in Zimbabwe would be alive if Captain Cowboy Maluleke did not conduct his own illegal extraditions.

14.

Major General Sibiya who is the commander of Captain Cowboy Maluleke should also have intervene in such situation but it seemed he enjoyed the work done by his juniors and condoned it. I would like to further say that Major General Sibiya enjoyed when suspects were tortured and he was always encouraging us to torture suspects when working at "TOMS" Task Team. He uses to say suspects were drinking "muti" when they were tortured or suffocated by plastic bags.

B.H

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ETWATWA CAS 25/07/12

I know and understand the content of this declaration.

I have no objection to the taking the prescribed oath.

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

B.H. YEMBE

I certify that the above statement was written by me and that the deponent has acknowledge that he knows and understand the contents of this declaration. This statement was sworn before me and the deponent's signature was therefore placed in my presence at Pretoria on 2012-05-02 at 15:00.

[Signature]

COMMISSIONER OF OATH

ALFRED BOTSOTSO MOUKANGWE

SOUTH AFRICAN POLICE SERVICES

PROVINCIAL DETECTIVES

MPUMALANGA

COLONEL

[Signature]

MP
[Signature]



"NM 10"
ETWATWA CAS 25/07/12

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PETROS JAWUKE 38 years old ID: 740929 5330 084 residing at no 5778A Zone 5 Diepkloof Mpendulo Street Soweto with Telephone number: 078 331 3282. States under oath in English

1.

I am No: 1866540-3 Warrant Officer In South African Police Service stationed at Crime Intelligence at No: 01 Ndaba Drive Protea Glen Soweto.

2.

During October 2010 I was nominated to be part of Task Team called 'TOMS' in Gauteng Province and the team operated under the command of Major General Sibiya who is the DPCI Head in Gauteng Province.

3.

On 2010-11-05 in the evening I received a call from Warrant Officer Makwe that our commander Major General Sibiya wanted all 'TOMS' members to meet in Fourways because there was a Colonel who was murdered. I drove to collect Warrant Officer Ndobe and rush to Fourways to meet with other members. On arrival at Fourways Warrant Officer Makwe instructed me to join Captain Cowboy Maluleke and Constable Leburu Radebe to identify the suspects address.

4.

On arrival at the identified house we found a car standing or parked outside the house but there was nobody inside the car. I then held observation with Constable Leburu Radebe and Captain Cowboy Maluleke went back to where we met to collect other members. Before Captain Maluleke could return with other members, the four men came to the vehicle and we arrested them, we ordered the four men to lie down and Constable Radebe called Captain Maluleke and informed him that we have executed the arrest. The four suspects were then searched by Captain Maluleke and their passport confiscated. One of the four suspect said that he was to show the outstanding wanted suspect at Meadowlands and we followed Captain Maluleke's car. On arrival at Meadowlands the suspect could not be found and his wife said that it was long that her husband went away and that she did not know his whereabouts.

5.

The suspects were then detained at Orlando Police Station as illegal immigrants but not on the Zimbabwe murder case as indicated at the beginning of tracing them.

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E. Tswa Tswa CAS 25/07/12

6.

On 2010-11-23 the second operation was arranged and I also got the call from Warrant Officer Makwe that our Commander Major General Sibhya wanted us to meet at Diepsloot Shoprite. I also participated in the second operation but I did not collect Warrant Officer Ndobe on the second operation. Major General Sibhya was also present on the second operation but the two police officers from Zimbabwe were not present.

7.

We went to Diepsloot and the suspect was not found at the pointed house but the woman who was found there took us to the other house further were one African male Pritchard Tshuma was found and arrested for murder of the Colonel in Zimbabwe.

8.

The suspect was then taken to Alexander Police Station by Constable Campbell and detained there on the Zimbabwean murder case and not as illegal immigrant like the first four suspects who were detained at Orlando Police Station in Soweto.

9.

On the second meeting on 2010-11-23 before we could start with the operation we were briefed by Captain Maluleke that the first four suspects that we arrested on 2010-11-05 were killed in Zimbabwe by the Zimbabwean police. He said that it was a good thing because Zimbabwe is not like South Africa where we play with criminals who kills policemen.

10.

On 2011-03-29 I was sick and I did not go to work. During that day I got message from Constable Campbell that he wanted us to meet so that he could brief us about the meeting that was held in Major General Sibhya's Office at Park Town that day. I met with Constable Campbell and he said Major General Sibhya told them that they have obtained warrant of arrest for Lieutenant General Mdluli and that he was just waiting for President to give him a go ahead. Constable Campbell further said that Major General Sibhya instructed them to go to Vosloorus and harass Colonel Killer Ximba and disarm him while still with Constable Campbell, I got a call from Warrant Officer Makwe that Major General Sibhya wanted us to meet at Vosloorus and I told Warrant Officer Makwe that I was ill and that I will not participate in illegal activities of harassing another policemen.

11.

Warrant Officer Makwe was very angry that I told him that I would not participate in unlawful procedures of harassing and disarming Colonel Ximba, and he dropped his phone at my ears. He phoned again after a while and asks me what I was saying and I told him that I know that his phone was on a speaker and I did not want to speak with him anymore. Warrant Officer Makwe said that what he was


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STIMATIWA CAS 25/07/12

telling me it was an instruction from Major General Sibiyi and it must be carried out, after I refused to go to disarm and harass Colonel Killer Ximba a case docket was registered against me that I wanted to kill Major General Sibiyi.

I know and understand the content of this declaration.

I have no objection to the taking the prescribed oath.

I consider the prescribed oath to be binding to my conscience

P. S. [Signature]

I certify that the above statement was written by me and that the deponent has acknowledged that he knows and understand the contents of this declaration. This statement was sworn before me and the deponent's signature was therefore placed in my presence on 2012-05-02 at Pretoria at 15:30.

[Signature]

COMMISSIONER OF OATH

ALFRED BOTSOTSO MOUKANGWE

SOUTH AFRICAN POLICE SERVICES

PROVINCIAL DETECTIVES

MPUMALANGA

COLONEL

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"NM II"

STANDARD CAS 25/07/17

DESMOND CAMPBELL 41 Years Old Id No. 710507 5191 080 residing at no. 20 Second Avenue Alexandra Township, Johannesburg tel. no. 082 822 7199 states under oath in English:

1.

I am no. 0538037-5 a Sergeant in SAPS Stationed at Crime Intelligence Offices at no. 1 (one) Commissioner Street Johannesburg with tel. no. (011) 497-7125.

2.

On 2010-11-05 in the evening I was part of the police officers who met at Fourways Shopping Center to assist two Zimbabwean Police Officers to trace their suspects who were wanted for Armed Robbery and Murder of a Police Colonel. The instruction from W/O Makwe was that Maj. General Sibiya wanted all "TOMS" Task Team members to conduct that operation. On my arrival at Fourways Shopping Center I found other Task Team members already there. W/O Makwe informed us that the two men who were with us were police officers from Zimbabwe and were from Lt. General Dramat Office and Lt General Dramat wanted us to assist them. Maj General Sibiya was also present leading the team.

3.

Captain Cowboy Maluleke and W/O Jawuke, Cst. Leburu Radebe went to identify the address and thereafter Captain Cowboy came back to show us the way and while busy talking to us Constable Radebe called Captain Cowboy Maluleke and said that the suspect were already arrested. We then drove to the said address and on our arrival we found four suspects lying down; Captain Cowboy Maluleke then searches the four suspects and took their passports and cellphones. One of the four arrested suspect said that the other outstanding suspect was in Meadowlands, Soweto. We followed the vehicle of Captain Maluleke to Meadowlands but the suspect could not be traced. The search was done at the suspect's shack but nothing was found.

4.

After searching the shack at Meadowlands, Captain Cowboy Maluleke paraded us on the street at Meadowlands and said that the suspect should be detained at Oriando SAPS as Illegal Immigrants and not on the Murder and Robbery Case of Zimbabwe. I did not know why Captain Maluleke said we should detain suspect as Illegal Immigrants because they were said to be suspects in a Murder case of a Police Colonel in Zimbabwe.





ETWATWA CAS 25/07/12

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5.

On 2010-11-23 I received a call from Sergeant Yende that I must collect him for the operation to trace outstanding suspects in a Murder and Robbery case of Zimbabwe. On our arrival at the meeting point, Captain Cowboy Maluleke informed the parade. That the four men that we arrested on the first operation were all killed by police in Zimbabwe and that's good because in Zimbabwe is not like South Africa where we play games with criminals.

6.

On the second operation I went together with Captain Cowboy Maluleke and Constable Radebe to identify the hiding place of the suspect and return after a while to the other group to inform them that we have already found the hiding place of the suspect. We did not find the suspect at the house that we identified as hiding place but one African Woman who was found there took us to another house and in that house the suspect Pritchard Tshuma was found and arrested. Captain Maluleke was the arresting officer. Captain Cowboy Maluleke instructed me, Sergeant Yende and Captain Nkosi to go and detain Pritchard Tshuma at Alexandra Police Station, I then asked Captain Maluleke to sign my diary in the presences of Sergeant Yende and Captain Nkosi and to provide me with a case number which he did as Murder and Robbery Zimbabwe CASE348/11/2010. On my arrival at the Alexandra SAPS, I completed SAPS 14(a) of Pritchard Tshuma and Captain Nkosi detained the suspect and completed SAPS 10.

7.

On 2011-03-29 I was called by W/O Makwoe that Maj. General Sibiya is calling us for a meeting at Park Town. On my arrival I found W/O Makwoe, W/O Mokwena, CST Nkabinde, CST Plaaajtje, CST Radebe sitting in the boardroom. W/O Makwoe went to call Maj. General Sibiya, when Maj. General Sibiya arrived he told us that he (Sibiya) has secured a warrant of arrest for Lt. General Mdluli and that we should go to Vosloorus and harass Colonel Ximba and disarm him. Colonel Ximba should feel that the HAWKS is there. Maj. General Sibiya was then called by Maj. General Toka and meeting was adjourned.

8.

I then called my other colleagues Bongani and Jawuke and we met at Xavier Nandos and I informed them that instruction was given by Major General Sibiya that we should start harassing Colonel Ximba. I was totally against that and so was my other colleagues Bongani and Jawuke. Maj. General Sibiya said he was waiting for approval from the State President to execute the warrant of arrest for Lt General Mdluli whom he accused of being the one who

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STWATWA CAS 25/07/17

spoiled Colonel Killer Ximaba. Maj General Sibiya was very autocratic to us and there was no way one could correct him even if he was doing wrong things. Most suspected foreigners were detained as illegal immigrant after being tortured to confess armed robbery cases in South Africa and if they could not be linked they got deported by taking them to Messina and handed over to Zimbabwe Police without necessary deportation and extradition documents.

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I further state that after I refused to take instructions to harass and disarm Colonel Ximba, I received a call from W/O Makwe intimidating me that if I fail to carry orders there was going to be a war and he drop the phone on my ears.

10.

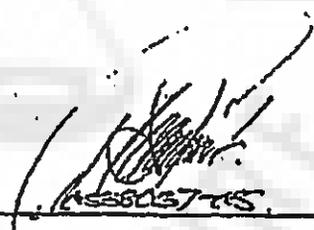
The case of conspiracy to kill Maj.General Sibiya was open against me and W/O Jawuke. This was a false allegation against me because I failed to carry orders. I was later called by Lt.Colonel Lebeya who introduced himself as an investigating officer to the case of conspiracy to kill Mj.General Sibiya, I was not informed up until now what happened to the case.

11.

I know and understand the content of this declaration.

I have no objection to the taking the prescribed oath.

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


ASSISTANT

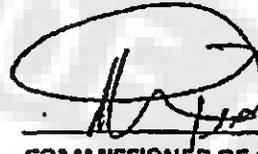
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Stuurman CAS 25/07/12

I certify that the above statement was written by me and that the deponent has acknowledge that he knows and understand the contents of this declaration. This statement was sworn before me and the deponent's signature was therefore placed in my presence at Pretoria on 2012-05-02 at 15:00.



COMMISSIONER OF OATH

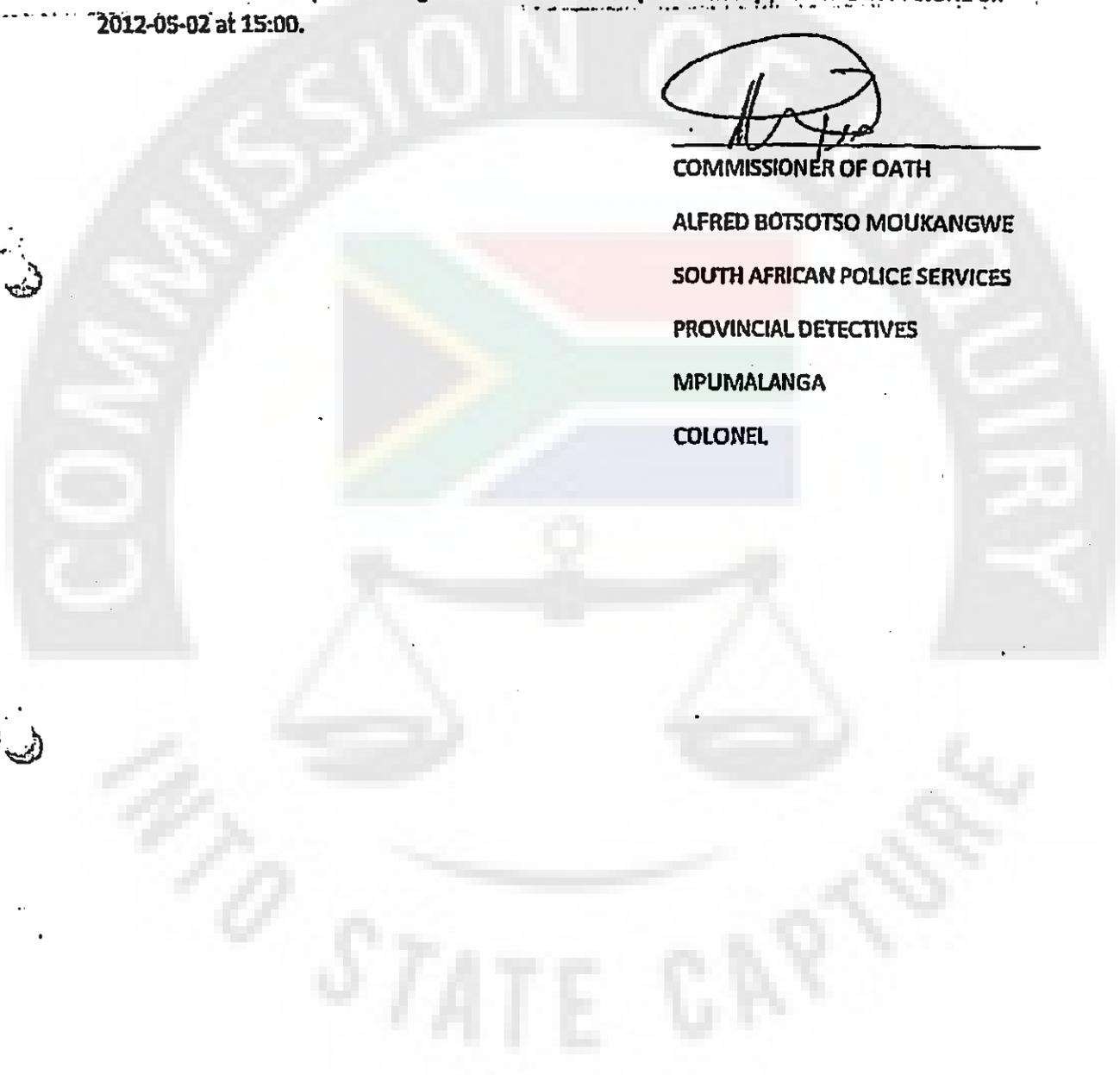
ALFRED BOTSOTSO MOUKANGWE

SOUTH AFRICAN POLICE SERVICES

PROVINCIAL DETECTIVES

MPUMALANGA

COLONEL



EV

Day of week and date
Dag en datum

"NM12"

SAKUNDA 2010-11-06

Serial number Volg-nommer	Time Tyd	Nature of occurrence Aard van voorval
278	04:10	<p>Suspect transferred to Booysen street combi to the byronyama of Orlando court transferred suspect by sample Dubule SAP14/1044/11/2010 CA 179/11/2010</p> <p>He left at 11/4 to Booysen street. He was under guard at lower hospital and he was handed over to policemen of Booysen street because the scene is at Booysen street.</p>
279	04:20	<p>Area of the no. 082 772 9518, Force 0627239 - P of D.P.C.I. HQ Pretoria arrested suspects 1. Aunon Witwaters area of house no. 6954 suspects</p>



MP

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G.P.-S. 002-0216

SAPS to SAPD

Day of week and date
Dag en datum

Saturday 2010-11-06

Serial number Volg-nommer	Time Tyd.	Nature of occurrence Aard van voorval
279	cont ext 10	<p>Immigrant 2 no: 9232 midrand immigrant 3 number, 6954 ext 10 immigrant 4 number, 5465 ext 10, immigrant. Their right will be to them. They have been arrested for any police state with no name case.</p>
280	05:00	<p>cells visited, sergeant K. Choje and K. Kelce visited the cells and and of H/C P. laws</p>

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"NM14"

Journey to death in an unmarked car

Special report by investigation staff | 23 October, 2011 02:23



REGISTRATION AND DEATHS REGISTRATION ACT (CHAPTER 502)

Certificate of Death

Nr 467283 DD

1	Place of death: <u>Dumibani</u>	Witness: <u>NEE O A.</u>
2	Number of deceased: <u>02</u>	Sex: <u>MALE</u>
3	Place of residence: <u>11/11/11</u>	Occupation: <u>UNEMPLOYED</u>
4	Date of death: <u>26/10/11</u>	Time of death: <u>11:00 AM</u>
5	Age: <u>30</u>	Occupation: <u>UNEMPLOYED</u>
6	Place of death: <u>11/11/11</u>	Place of death: <u>BULAWANG</u>
7	Place of death: <u>11/11/11</u>	Place of death: <u>BULAWANG</u>
8	Place of death: <u>11/11/11</u>	Place of death: <u>BULAWANG</u>
9	Place of death: <u>11/11/11</u>	Place of death: <u>BULAWANG</u>
10	Place of death: <u>11/11/11</u>	Place of death: <u>BULAWANG</u>
11	Place of death: <u>11/11/11</u>	Place of death: <u>BULAWANG</u>
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23	Place of death: <u>11/11/11</u>	Place of death: <u>BULAWANG</u>
24	Place of death: <u>11/11/11</u>	Place of death: <u>BULAWANG</u>
25	Place of death: <u>11/11/11</u>	Place of death: <u>BULAWANG</u>

55 Suspect taken to Beit Bridge!
 Captain ML Maluleke taken the following suspects of illegal immigrant
 ① Dumibani W. Hlelya SAP 14 4002/11/2010
 ② Nelson Malovu SAP 14 4003/11/2010
 ③ Maghawe Sibanda SAP 14 4004/11/2010
 ④ Shepard Duma SAP 14 4005/11/2010
 and all Free From injuries

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8/11/2015

TimesLIVE - Print Article

[Print this page \(#\)](#)

"NM 15"

Sent to die

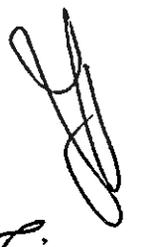
Shocking fate of suspects in alleged rendition deal with Zim cops

Oct 23, 2011 | Special report by Investigation staff

Hawks and SA police arresting suspects and sending them over the border to be murdered.



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5/11/2016

TimesLIVE - Print Article



"They said they are going to kill us for murdering a policeman [and] they'll start by chopping off our hands and feet"

SENIOR officials in the Hawks and SA Police Service are conducting illegal "renditions" with their Zimbabwean counterparts - by arresting "suspects" and illegally sending them across the Beit Bridge border to be murdered.

Explosive intelligence reports - listing at least three deaths - are understood to be in the possession of Minister of Police Nathi Mthethwa.

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5/11/2015

TimesLIVE - Print Article

They detail a "renditions" operation led by officers reporting to Hawks boss Anwa Dramat and Gauteng police commissioner Lieutenant-General Mzwandile Petros.

Rendition is the illegal kidnapping and transfer of a prisoner from one country to another.

Dramat yesterday confirmed that at least three individuals identified by the Sunday Times as having been "renditioned" to a grisly fate in Zimbabwe were, in fact, taken across the border by the police. But he claimed they were properly "deported". He was unable to provide any documentary proof of this.

In just one case, the Sunday Times has evidence that Zimbabwean Witness Ndeya, 26, who was suspected of shooting a policeman in that country, was "renditioned" by the Hawks and then murdered, apparently by Zimbabwean police.

The occurrence book at Soweto's Orlando police station confirmed that Ndeya was arrested, along with his nephew and two friends, for being "illegal immigrants" on November 5 last year.

But, unlike other illegal immigrants sent to Lindela detention centre, police records show the four men were discharged at 11.55am on November 8 and driven to the Beit Bridge border by police.

In a sworn statement by one of the four, Shepard Tshuma, he named General Shadrack Sibiyi and Captain Cowboy Maluleke as having arrested them.

The Zimbabwean police met their South African counterparts at the border and, according to Tshuma, "told us that we are under arrest for the murder of police officers".

Tshuma and Ndeya were detained at a Bulawayo police station before the former was released a week later.

A few days later, Tshuma said, the Zimbabwean police told the family "that Witness Ndeya was killed by other police officers".

Ndeya's death certificate confirmed he died at "Hippo Valley Farm" in Bulawayo on November 20, with the cause of death listed as "multiple gunshot wounds".

Tshuma, along with the other two surviving "renditioned" suspects, are now hiding in South Africa, after allegedly being threatened by Maluleke.

This week, the Sunday Times met the three at a secret location. They said they feared being "deported and murdered".

Tshuma said: "As soon as we were handed over to the policeman, they said they are going to kill us for murdering a policeman [and] they'll start by chopping off our hands and feet."

The Sunday Times is aware of several other individuals who have also been renditioned to Zimbabwe.

In another case, intelligence reports say Pritchard Tshuma, 24, was arrested in November last year for "murder and robbery" in Alexandra in Johannesburg and "deported" to Zimbabwe. He has since gone missing.

Another man, Gordon Dube, was arrested in Diepsloot and "renditioned" to Zimbabwe, where, sources say, he was killed by police after first having his hands chopped off.

Dramat confirmed that Ndeya, Dube and Tshuma were "all arrested as illegal immigrants" and were "deported".

But he denied these were illegal renditions, saying everyone "followed protocol", whereby deported individuals must be handed over to an immigration official from Zimbabwe.

His spokesman, McIntosh Polela, said: "At no point did we simply hand over people to authorities without [an immigration official present], because that would constitute rendition."

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5/11/2015

TimesLIVE - Print Article

This, however, is contradicted by Tshuma's statement. He said: "We passed the SA side of the border, and we parked the car inside ... I saw five African males jumping out from their cars, and they introduced themselves as Zimbabwe police officers ... [who] told us we were under arrest for [the] murder of police officers."

Such behaviour is a contravention of the Immigration Act and flouts a "special dispensation" by the government at the time that prevented Zimbabweans from being deported from South Africa.

The high court also recently ruled that authorities "acted unlawfully" in extraditing someone without guaranteeing they would not face death.

Dramat said: "We are not aware of what happened to them in Zimbabwe. It is not our mandate to do follow-ups on deported [people]."

Zimbabwean police spokes-man Oliver Mandpaka said he "can't confirm or deny that Ndeya was arrested or killed".

General Sibiba, who agreed to meet the Sunday Times, but later cancelled, said: "I don't know [Ndeya, and] I'm not in a position to sanction this."

General Petros said he "did not sanction, neither did [I have] knowledge of any illegal renditions".

Captain Maluleke refused to answer questions.

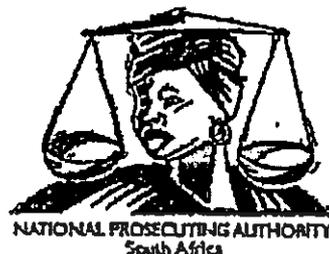


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"NM 16"

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



INTERNAL MEMORANDUM

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

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

FROM: ADV. A MOSING
HEAD: SPECIAL PROJECTS DIVISION

SUBJECT: PROJECT X CASE – RENDITION

DATE: 12 NOVEMBER 2013

Dear Mr Nxasana and Adv Jiba

1. PURPOSE

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

2. BACKGROUND

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

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

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

3. SUMMARY OF FUTURE EVIDENCE

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

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



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

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

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

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

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

4. OUTSTANDING INVESTIGATIONS

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

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

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

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

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

5. DISCUSSION AND RECOMMENDATION

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

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

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

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

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

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

I trust that you will find the above in order.

Kind regards.

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

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"NM 17"

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



INTERNAL MEMORANDUM

FROM: ADV A. MOSING
HEAD: SPECIAL PROJECTS DIVISION

TO: ADV N JIBA
DEPUTY NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

AND TO: ADV A CHAUKE
DPP: SOUTH GAUTENG

SUBJECT: PROJECT X:

DATE: 13 FEBRUARY 2014

1. PURPOSE

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

2. BACKGROUND

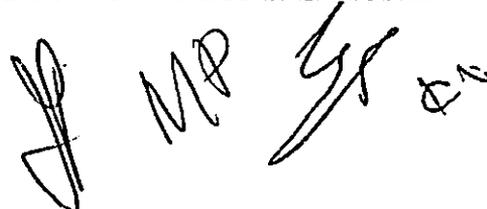
The investigations has now been finalised and a report from the IPID has been submitted for purposes of considering the merits of the case. The case docket comprising of two lever arch files, together of other files containing the cellular phone data and evidence obtained from a computer belonging to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

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3. SUMMARY OF FACTS

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

3/2 The second operation was conducted on 22/23 November 2010 by the same police units. One victim (Pritchard Chuma) was arrested in Diepsloot and detained at Alexandra police station. The next day on the 23 November 2010 Warrant Officer Selepe of the Gauteng TOMS unit of the DPCI, on instructions of Col Maluleke booked out the victim and transported him to Beit Bridge border post accompanied by Col Maluleke, where he was handed over to Col Maluleke at the border and the victim has never been seen since. It is presumed that he also died in Zimbabwe



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

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

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

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

4. SUMAMRY OF EVIDENCE

4.1 The above facts are supported by the following evidence:

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

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5. ANALYSIS

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

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

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

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

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

6. CHALLENGES

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

7. RECOMMENDATIONS

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

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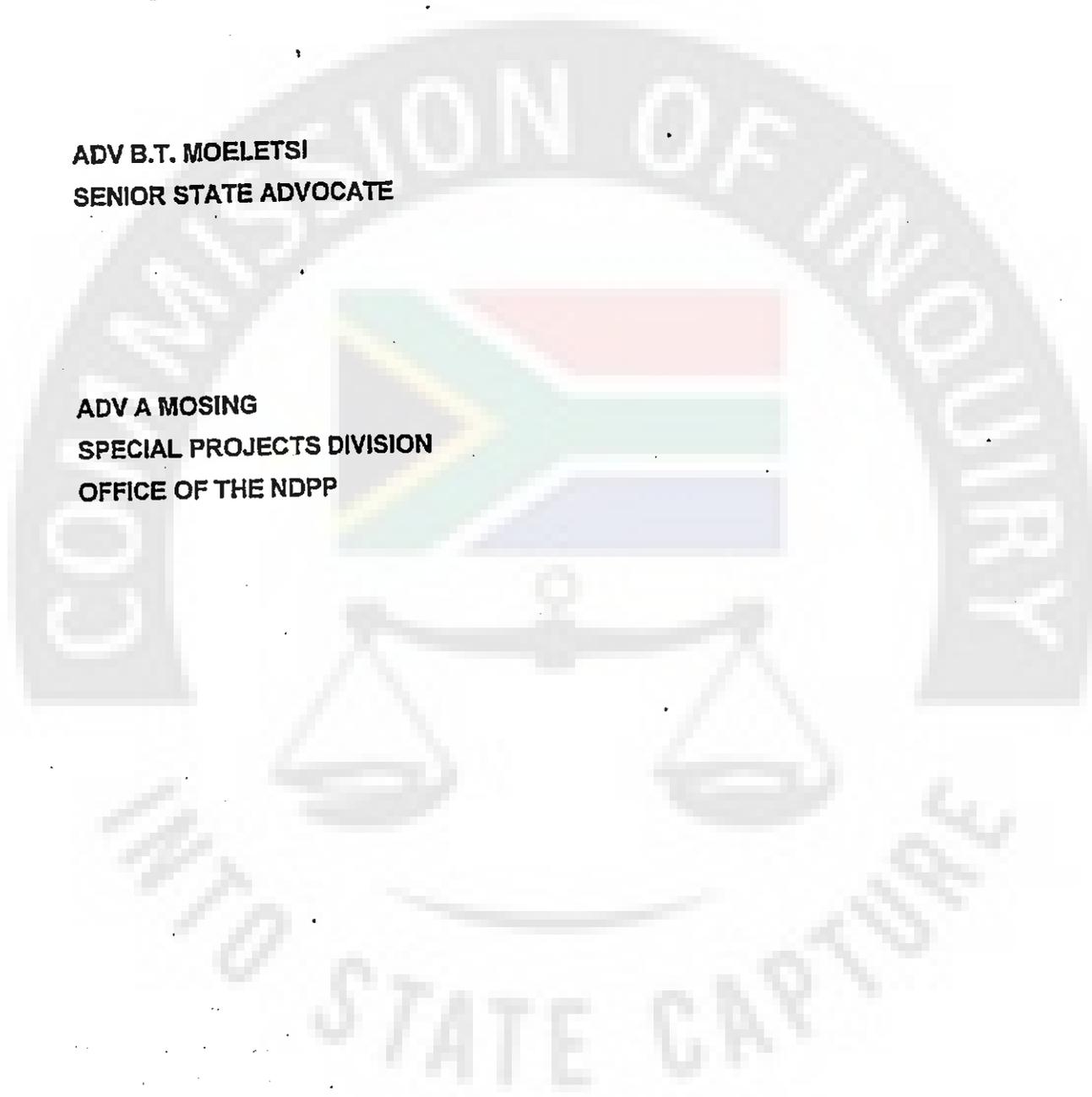
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uttering in respect of the home affairs documents that were submitted to the Civilian Secretariat and others.

Kind regards

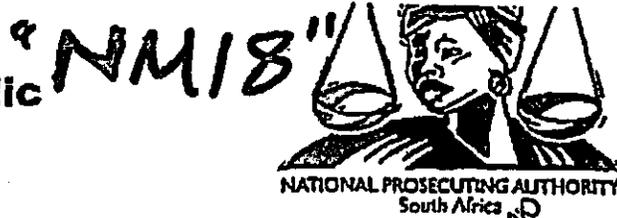
ADV B.T. MOELETSI
SENIOR STATE ADVOCATE

ADV A MOSING
SPECIAL PROJECTS DIVISION
OFFICE OF THE NDPP



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Office of the National Director of Public Prosecutions



736

INTERNAL MEMORANDUM

TO : ADV. A. M. CHAUKE
DIRECTOR OF PUBLIC PROSECUTIONS: SOUTH GAUTENG
FROM : ADV. A MOSING
HEAD: SPECIAL PROJECTS DIVISION
SUBJECT : DIEPSLOOT CAS 390/07/2012

DATE : 14 FEBRUARY 2014

* 15/6 Khulra : Mc Bile gave decision, took back to NDPP. Had meeting there. Will phone back

Handwritten notes: 'Need banking.', '27/6 informed DPP', 'Khulra handed to top secretary of NDPP (Lady)'. 'Attempts to getting it with no return.'

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

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

Handwritten notes: 'Planned to call on 30/5. I left messages. 13/6 got message from Khulra sent back to out HO. 11/6'

2. I trust you find the above in order.

6x Lever Arch files and 1x thin file handed to I H Khulra from IPII 084 7022741

Kind Regards (18763685) (Adv. Mosing: Linpop)

ADV. A MOSING
SPECIAL PROJECTS DIVISION
OFFICE OF THE NDPP
DIEPSLOOT CAS 390/07/2012

accompanied by Glen Angus 083 5655320

on 7 March 2014

Signed

2014/02/07

Handwritten signature and date: 07/03/2014

"NM19"

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Office note

IN RE: SO-CALLED RENDITION MATTER (PROJECT X)-DIEPSLOOT CAS 390/07/2012

DPP JHB REF: 9/2/4/1 (2014/236)

1. BACKGROUND -TIMELINE

- a. Received internal memorandum from the Head Special Projects Division, Office of the NDPP dated 14 February 2014. The exact date of receipt is unclear as no official stamp or date had been affixed to this effect.
- b. According to office note by adv Van Zyl SC this must have been late in February 2014.
- c. Before any decision could be taken by this office messrs Khuba and Angus from IPID collected all the dockets from Van Zyl SC on 7 March 2014 and signed for receipt thereof.
- d. On 18 June 2014 Van Zyl SC phoned mr Khuba who told him that his head mr McBride had instructed him that the dockets must be returned to the NDPP and it was duly done
- e. On 23 June 2014 Van Zyl SC once again spoke to mr Khuba who informed him that it was never his intention to return the dockets to him.
- f. On 27 June 2014 adv Mosing of the Special Projects Division of the Office of the NDPP told Adv Van Zyl SC that the dockets were never returned to him.
- g. These series of events were then brought to the attention of the NDPP by letter dated 3 July 2014.
- h. On 20 August 2014 the NDPP officially responded to the letter by the DPP Adv Chauke, by apologizing for the late response and indicating that he, the NDPP, is in the process of considering the matter and that Adv Chauke may close his file.
- i. On 31 March 2015 the NDPP wrote another letter to the DPP informing him that he had subsequently referred the matter to the DPP North Gauteng who recommended that the accused including Dramat and Sibiya be prosecuted for *Inter alia* kidnapping and defeating the ends of justice. The letter of the DPP Pretoria is dated 6 March 2015.
- j. This letter of the NDPP *Inter alia* states that the matter is now returned to Johannesburg because the matter now resorts under the jurisdiction of the DPP Johannesburg since 1 December 2014 as from that date Diepsloot falls under Johannesburg North (Ranburg) in terms of Government Notice No 861 of 31 October 2014. The NDPP also indicated that further investigation should be conducted in the matter.
- k. On 1 April 2015 the Head: National Prosecution Services (NPS) send a letter to the DPP Johannesburg to conduct specific further investigation.
- l. On 10 April 2015 Adv Chauke requested me to advise him on certain aspects after I have looked at the documentation in this matter.

2. It is clear that this matter is being regarded as a "hot potato" and therefore the case is being sent from pillar to post.

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3. There are certain legal issues that need to be address before we even go to the facts of the matter.

4. DISCUSSION OF MATTER

a. JURISDICTION

- i. It is trite law that jurisdiction cannot be conferred retrospectively.
- ii. When these crimes were committed during 2011 all these crimes resorted under the jurisdiction of the DPP North Gauteng. Even the court appearances were done at Attridgeville falling under the DPP Pta's area of jurisdiction.
- iii. The demarcation altered the position as from 1 December 2014. It does not alter the jurisdictional position prior to 1 December 2014, which to my mind remains with the DPP Pretoria. This fact cannot now conferred jurisdiction on the DPP Jhb for all crimes committed prior to 1 December 2014 especially where decisions were previously take by the DPP Pta or prosecutors resorting under him.
- iv. Furthermore the majority of crimes were committed under the jurisdiction of Pretoria and not Johannesburg. It furthermore seems that crucial phone calls implicating Dramat, were also made between Beit Bridge and Pretoria, falling within the jurisdiction of Pretoria.
- v. We must also clearly distinguish between Court jurisdiction and Prosecutor jurisdiction. The best way to explain this is by way of example. The Regional Court jurisdiction is in accordance with the boundaries of the provincial province, Gauteng. This means for instance that it will be within the jurisdiction of the court being the Regional Division of Gauteng (meaning the whole province). On the other hand the prosecutors' jurisdiction has been divided with reference to the seats of the two High Courts in this province of Gauteng. The fact that the DPP of Pta is appointed in the provincial division of the High Court, does not give him more or concurrent jurisdiction over the cases falling within the jurisdiction of the DPP of Jhb being the Local Division. These areas are two distinct areas and the DPP Pta cannot overrule decision taken by the DPP of Jhb merely because he is appointed at the Provincial Division of the High Court in Pta. If that would have been the case, it would never have been necessary for the DPP Pta to request permission to centralize matters from Jhb within his area of jurisdiction. Therefore it means that a specific court might have jurisdiction to do the trial based on the principal of concurrent jurisdiction but that the prosecution's jurisdiction must also be established through with reference to the specific area of jurisdiction. There is no such thing as "concurrent jurisdiction" with reference to the jurisdiction of a DPP. In the old days there were indeed instances where two cities would have concurrent jurisdiction. However at that stage only one DPP or Attorney-General was appointed for the whole area and the smaller area was being controlled by a Deputy who fell under the control and supervision of the AG of DPP. That is a totally different

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scenario than the current one. It is therefore my opinion that the DPP Pta has no concurrent jurisdiction on any matters falling under the DPP Jhb and that the DPP Jhb is totally independent from any interference by his Pretorian colleague.

b. FUNCTUS OFFICIO

- i. I am also of the view that a prosecutor can very seldom resort to a claim of being *functus officio*. Prosecutors are frequently taking decisions and by virtue of this they can alter their decision at any stage, especially in view of new evidence coming to their attention or representations being lodged. This happens on a dally basis at all prosecutor's offices and is nothing strange.
- ii. The fact that a file has being closed therefore does not bar the DPP or prosecutor to revisit the decision initially taken. This can be done and in fact is being done frequently at this office.

c. POWERS OF NDPP

- i. It must be established whether the NDPP has any inherent powers to prosecute or not. Are the powers of the NDPP curtailed to reviewing decision taken by his subordinates, the DPPs or does he possess inherent power to prosecute.
- ii. In order to answer this we must look at the relevant legislation empowering the NDPP.
- iii. The Constitution dictates in sec 179(1)(a) that the NDPP heads the national prosecuting authority. Sec 179(2) states that the national prosecuting authority has the power to institute criminal proceedings on behalf of the state ect.
- iv. Sec 179(5)(c) gives him the power to Intervene in a prosecution and subsection (d) the power to review any decision of a DPP after consulting the relevant DPP.
- v. The NPA act, no 32 of 1998 echoes these provisions. Sec 20 states that the power to institute and conduct prosecutions vests in the prosecuting authority and all subordinate officials shall exercise these powers under the control and direction of the NDPP.
- vi. Sec 22 of the NPA Act specifically deals with the powers of the NDPP.
- vii. He heads the national prosecuting authority
- viii. Have authority over ALL the powers conferred or imposed by the Constitution or any other Act.
- ix. It is therefore clear that the NDPP has inherent and original powers to prosecute.
- x. Sec 22(2)(c) of the NPA act gives the NDPP the power to review a decision to prosecute or not after consultation with the relevant DPP and after taking representations of the accused, the complainant and ANY other person or party whom the NDPP considers to be relevant.

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- x. The question now is whether the NDPP may consult other DPPs and not only the relevant DPP, when reviewing the decision? In principle there can be no objection for the NDPP in order to take a decision, to ask other DPPs for a recommendation provided that the relevant DPP is also consulted as required. In terms of the sec 22(3) he may even direct that an offence be decided and prosecuted within the jurisdiction of another DPP.
- xii. Sec 22(4)(a)(i) and (ii) gives the NDPP wide powers to ask for reports and submissions from a DPP.
- xiii. It therefore seems that the NDPP is entitled to request a report from this office in order to assist him in taking a final decision in this matter.
- xiv. In para 3 of his letter to Adv Chauke dated 31/03/2015, he request the DPP to urgently advise him on his decision. Although the phrase is a bit ambiguous it is capable of a construction that the DPP make a recommendation to the NDPP in the same vain as the DPP of North Gauteng has done. This matter is one of those matters where the NDPP has to exercise his inherent and original powers and where he should take the final decision.

5. RECOMMENDATION

- a. I therefore am of the view that this office cannot pass the bug back to the NDPP on the score of jurisdiction or even that the DPP Pta has taken a decision because it is clear that Pretoria only made a recommendation to the NDPP.
- b. However before any decision is taken the required further investigating must be conducted as instructed by the NDPP as well as the subsequent letter from the Head of the NPS.
- c. The way forward is to draft a letter to the new investigating officer, apparently now someone at the DPCI, to investigate further in line with the queries issued by the NDPP and the NPS. How any subordinate I/O from DPCI can investigate a case against the National and Provincial Heads of the DPCI, is beyond comprehension.

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5 July/IPID
17.04.15

ROBERT McBRIDE

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

ROBERT McBRIDE

PRESENT:	MR ROBERT McBRIDE	IPID
	MR SANDILE JULY	Director, Werksmans
	MS KERRY BADAL	Associate, Werksmans
	MR SANDILE TOM	Associate, Werksmans
	MR KWAZI BUTHELEZI	Candidate Attorney

17 April 2015

MR JULY: Mr McBride, my name is SANDILE JULY, I'm an attorney conducting this interview. This is SANDILE TOM, who is an Associate here, then we have KWAZI BUTHELEZI, who is a Candidate Attorney, and that is KERRY BADAL, who is an Associate here.

MR McBRIDE: Okay.

MR JULY: We were supposed to start this meeting at 12h00, but we are late. The reason for us being late is that we were stuck in traffic. We do apologise. Today is 17 April 2015, and we are talking to MR McBRIDE.

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5 July/IPID
17.04.15

ROBERT McBRIDE

Mr McBride, I don't know how we start, but we will tell you what we know. We have interviewed a number of people.

MR McBRIDE: I just want to mention something. In your first communication with IPID, the email didn't reach me. By the time I was suspended you sent the next email to my work email address, and I don't have access to it. I was also expecting an SMS from you confirming today, so that I could have details, because I think both of you phoned me from ...

MR JULY: ... a landline?

MR McBRIDE: Yes, without a number on it.

MR JULY: I will tell you what happened, Mr McBride. After I spoke to you, we then received a letter which made reference to you. They then wrote us a letter to say: We know that we are not supposed to speak to you. That's how it works. When you have a lawyer, we don't then talk to you. But what has happened is this, and maybe we need to explain this, we sent you an email which you did not receive. We then forwarded that email to your employer to say: Listen, we wrote a letter to Mr McBride - we didn't know that you did not receive it - but

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5 July/IPID
17.04.15

ROBERT McBRIDE

we have not received any response from him,
can you liaise with him? Apparently MR
KGAMANYANE directed him to send the letter to
ADAMS & ADAMS. Remember, we don't know for
the purposes of this interview, that you are 5
represented by ADAMS & ADAMS. Initially ADAMS
& ADAMS indicated to us that they were
representing IPID, they were not representing
individuals at IPID. Therefore, if we wanted
to speak to any person from IPID, we must come 10
through (?). Then on 26 March I got a call
from MR JACQUES MARAIS, who said: When is
KHUBA coming here? I said: No, the meeting
with KHUBA is supposed to be at 11h00 and the
time was 10h55. Then I said I wasn't sure 15
where he was, but we were supposed to meet
with him at 11h00. He then said he was going
to confirm his instructions with IPID. He
came back to me to say he was no longer
representing IPID. So when he said to me he 20
was no longer representing IPID, therefore the
individuals at IPID were no longer represented
by him, hence the letter to you and not to
ADAMS & ADAMS. Hence when we couldn't find
you and you couldn't respond to us, we didn't 25

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5 July/IPID
17.04.15

ROBERT McBRIDE

know the reason and we sent the letter to the employer, who then wrote to ADAMS & ADAMS. Then we received a letter from ADAMS & ADAMS telling us that we should not have contacted you, they have been on record several times - I think MR MARAIS forgot about our telephone conversation on 26 March, which I explained to him.

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MR McBRIDE:

Okay.

MR JULY:

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

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MR McBRIDE:

No, I think initially, from the beginning, we had indicated that we do not require lawyers to be present. But since I am suspended, and they are acting on my behalf, I obtained advice and guidance from them. The most important issue was you were not in contact with me, either via the lawyer or anybody, because I was not receiving this stuff. For me I was happy that at least you could make contact and sort out the legal issues between the lawyers. That was the most important thing.

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MR JULY:

At least that has been sorted out now, Mr

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S July/IPID
17.04.15

ROBERT McBRIDE

McBride. The issue is this, you started at IPID in March.

MR McBRIDE:

Yes.

MR JULY:

If I'm not mistaken it was 3 March?

MR McBRIDE:

That's correct, 3 March I started, yes. 5

MR JULY:

Yes, 3 March. MR KHUBA tells us a few days later, which could have been 6 March, you contacted him and asked him about the report, and the report we are talking about is the report in question, which is the ZIMBABWEAN report. He came to you and he talked about the report, and the following day you again called him to talk about the report. In that meeting it was you, SESOKO, him and MR GLEN ANGUS, and there was talk about the report. KHUBA says he was told by SESOKO that you wanted to speak to him, because he was attending a conference, and you didn't have his numbers, so you only contacted him through SESOKO. We want to know what happened when you received the report on either the 5th or the 6th, and what happened in the meeting with the four of you. Subsequent to that, according to MR KHUBA, there were other meetings. Firstly, there was an email 25

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5 July/IPID
17.04.15

ROBERT McBRIDE

exchange about the report, and later on there was a meeting where there was a signing of the report.

MR McBRIDE:

I will answer your question. On the first issue I was initially concerned about the way I was not contacted when you started communicating with IPID, so I mention that. Then also the fact that a private law company is investigating a government investigative agency, albeit an independent one, before the NPA had made a decision. Just to say that I would have expected that there would have been a wait, for the NPA to make a decision. It's neither here nor there, but with the communication problem, and then this, it was a little bit of a concern to me. (External interruption.) Is it okay if I continue speaking?

MR JULY:

If you can just hold on.

MR McBRIDE:

On my appointment I had asked for a briefing on all high-profile cases, and I think it was CATO MANOR, it was RIAH PHIYEGA's matter, it was this one of SIBIYA and DRAMAT - I can't remember - but I can't recall ANGUS and KHUBA in the same meeting on this issue of DRAMAT's

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S July/IPID
17.04.15

ROBERT McBRIDE

case. Maybe in the CATO MANOR cases, but I don't see why he would have been in that meeting, because I don't think he was an investigator in this case. He could have been in a meeting with me, but I don't seem to recall ...

MR JULY:

Let me tell you what he says. He says he was called into that meeting because he had raised a number of issues. You wanted to know - you must have thought there was something that went wrong with the investigation, and then you wanted him to also be involved in the investigation. He was hesitant to do that, but it did not happen in any event that he became part of the investigation, because one of the things he raised about the investigation was the involvement of MOUKANGWE from Crime Intelligence.

MR McBRIDE:

My issue in the briefing - and I can't remember the exact sequence of events - was firstly Crime Intelligence was involved in the case from the beginning. That's the one issue. The second issue was that my predecessor, Acting, MS MBEKI, had told KHUBA: Mr Khuba, just report directly to me, don't



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17.04.15

ROBERT McBRIDE

report to . This is what I was told. Then
also that he must work with the Crime
Intelligence guy, and the Crime Intelligence
guy also linked him up with ADVOCATE MOSING.
So for me already independence in the 5
investigation was compromised, the way it had
been said. In other words, bypass the Head of
Investigations. Those were my issues.
Immediately that was my concern.

I was also concerned because it became 10
apparent that Crime Intelligence operatives
were involved in the rest of the ZIMBABWEANS
themselves. They were also involved in the
illegal repatriation. Those were my concerns.
Then I questioned, because there were many 15
people involved: Who was involved at what
stage in this crime that you mention to me,
and to what extent? I also asked: What crime
has been committed, by whom, and who was
involved in it? What are the elements of that 20
crime? That's what it was. Basically that is
how it was.

At a later stage they gave me a work session
on MARIKANA. In fact KGAMANYANE was the
investigator there. Then they briefed me 25

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S July/IPID
17.04.15

ROBERT McBRIDE

about CATO MANOR and its status, and so on. PHIYEGA with LAMOER was completed. They were waiting for a warning statement from PHIYEGA. On this matter of HAWKS, Rendition and Crime Intelligence, if my memory serves me correctly there were some outstanding statements or warning statements at the stage when they spoke to me. If I'm not mistaken it could be SIBIYA's warning statement.

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MR JULY:

Did they tell you at that time that they had asked SIBIYA about his warning statement?

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MR McBRIDE:

It's possible, yes. I can't remember the specifics. They could have said that they needed a warning statement from SIBIYA.

MR JULY:

Can I also clarify this. In that meeting did KHUBA indicate to you that: On 22 January I submitted the report to the NPA?

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MR McBRIDE:

No, no, no, no, what he did tell me was that he was in discussions with ADVOCATE MOSING. No, he didn't tell me, and I don't think he would have - and I don't want to think on his behalf - because the investigation was not complete, as there were outstanding statements. In fact, I think there was a statement from JENNI IRISH-QUOBOSHEANE in that

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17.04.15

ROBERT McBRIDE

thing. I can't remember the context of it. I remember after I had started, I bumped her, and she said my guys were there - meaning IPID people were there to take a statement from her. I don't know if she meant then or on a previous occasion before I had started with IPID.

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MR JULY:

So he didn't express it in so many words, that: My investigation is not complete, and the report that you are asking for is not complete?

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MR McBRIDE:

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

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MR JULY:

You were still explaining.

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Handwritten signature and initials, possibly 'MP'.

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17.04.15

ROBERT McBRIDE

MR McBRIDE:

On the issue of details of the discussion and sequence of events, they were not really important to me. We did not take minutes of the meeting, so I can't confirm what was said. What I know is there is one report I have seen, which I have signed. The only issue on that report was that it was badly written: there were spelling errors, grammar and stuff like that. There were no other issues. I didn't even go through any of the evidence that was there. I looked at the recommendations that were made, and the analysis, and I signed it.

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MR JULY:

Let's make this supposition. If you knew about the existence of the report which had been given to the NPA, would you have asked for that report which had gone to the NPA?

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MR McBRIDE:

Well, the investigation was not completed. That was my impression. If you recall from the papers, we had briefed Minister Mthethwa on the status of various of these high-profile cases. It was just a status report, and it was soon afterwards. I think I indicated in that report that these cases were in the process of being finalised. It's in that

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Handwritten signatures and initials at the bottom of the page. On the left, there is a signature that appears to be 'RJM'. On the right, there are initials that appear to be 'MP'.

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17.04.15

ROBERT McBRIDE

information note that you will see. Just as my memory serves me now, as you ask me questions, I'm being reminded. Therefore, the investigation was not complete, because in the info note I mentioned that the investigations were in the process of being completed. 5

MR JULY:

If KHUBA says the investigation was completed but there was new evidence that came up, would he be right in that? He said: I had completed the investigation, but there was this new evidence about the cellphones in relation to SIBIYA, which needed to be tightened up. 10

MR McBRIDE:

From memory my understanding is that it was new analysis of cellphone records, and additional statements and warning statements. I don't know whether I knew it at that stage or subsequently, now that we have had a chance to go through the report in detail because of this unhappiness in this matter. What I must also add is this, just as you get my mind going - and I have mentioned it in the papers at court also - that I had briefed the Minister on this matter on 4 August. That's our present Minister Nhleko. On 4 August, 15 20 25

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17.04.15

ROBERT McBRIDE

when we had our first one-on-one, I briefed him about this case. I briefed him that I was concerned about this case, and that it appears that Crime Intelligence people tried to implicate a number of Generals from the HAWKS 5
falsely. I raised that with him then. I raised it with ADVOCATE MATHENJWA from the Reference Group. Then I raised these issues with the Minister in an info note, I think on the 26th, when he had asked for the docket I 10
think on the 24th. I think on 26 November - he gave me two days to give the docket and all exhibits, and so on. I felt uncomfortable about that, because I know MATHENJWA was looking for them, because he had phoned KHUBA, 15
but I was advised: Let's give everything to the Minister, because you don't want to appear to be obstreperous or anything, so give the Minister the docket.

MR JULY: So the docket you were going to give to the 20
Minister.

MR McBRIDE: He asked for the docket. In fact, the Minister asked for the docket, he asked for all exhibits, colour photos - that's what he asked - which made me kind of uncomfortable, 25

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S July/IPID
17.04.15

ROBERT McBRIDE

because I wasn't sure who it was going to and why he wanted it. But I gave him everything. I gave him the whole copy and I sealed it for him and signed every page so that he had it. Remember, we were plagued also by leaks. Now that I have been able to check, there were lots of leaks. That's why, when we took the docket and the report which I wrote - which I signed and we gave to the NPA, we got it directly to the National Director of Public Prosecutions, because of the leaks that were coming out of the NORTH GAUTENG DPP.

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MR JULY:

I want to clarify this point. At one stage you gave the docket to the Minister.

MR McBRIDE:

Yes.

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MR JULY:

At what point did you give it to the NPA?

MR McBRIDE:

14 April 2014. Yes, that's the date signed. The 14th or 13th, so it was like eight months before the Minister asked for it. I think the Minister was not even appointed as Minister yet, when we submitted the full docket to the National Director of Public Prosecutions.

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MR JULY:

So the Minister asked for this somewhere in November?

MR McBRIDE:

In November. On 22 or 23 December, when

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S July/IPID
17.04.15

ROBERT McBRIDE

DRAMAT was suspended, and the Minister's
spokesperson made a statement that as a result
of the IPID report the Minister had suspended
DRAMAT, I got a fright, because there is no
way that it could be like that based on our
report that I gave to the Minister - the one
and only report, and which is the same one I
gave to the NPA - that the Minister could have
come to that conclusion.

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Of course, later on it became clear that the
Minister said he disagrees with our report.

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Now, I'm not sure whether his disagreement
with the report is merely an opinion at a
stage when the NPA hadn't made a decision. I
heard our Minister speaking in Parliament, but

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I just kept quiet, because I had briefed him.

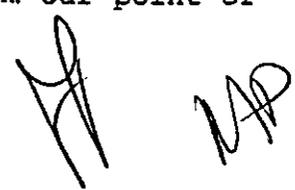
Then on 8 January 2015, in CAPE TOWN, I met
the Minister, and I said to the Minister:
Minister, this decision has caused confusion.

I said: Minister, I have met with Dramat and
his lawyers, I met in the presence of my
provincial head in the Western Cape, and we
told him we can't discuss the case. But I
confirmed, as I did on a previous occasion,

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that they are not suspects from our point of

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17.04.15

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view. But I told the Minister: Minister, I have spoken to Dramat, and he is willing to assist you to de-escalate this issue. That's what I told him. The Minister said: That's a good idea, I'll think about it. I wasn't sure how he had come to the decision to suspend, based on our report, because it couldn't have been from our report. There is no link between that.

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At that meeting I also briefed the Minister on other investigations concerning KwaZULU NATAL, the Provincial Commissioner and the National Commissioner's negligence of duty. Then the Minister said by the 13th or 14th, which was a few days after, he wanted a full report, making recommendations on the Provisional Commissioner, KZN and the National Commissioner. So I prepared those reports and then met him later on in January - I can't remember when - and I gave him the recommendations.

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MR JULY:

Maybe before you proceed, Mr McBride, did you know that KHUBA and somebody else went to fetch the docket from the NPA or DPP SOUTH GAUTENG? Before it came to you, it was

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already with the DPP SOUTH GAUTENG for a decision.

MR McBRIDE:

Well, it couldn't have been because there were no warning statements in it. It couldn't have been sent for a decision, because no docket goes to the NPA for decision without warning statements or such things.

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MR JULY:

Let me tell you what we have been told, because we are not in a court of law here, and I don't intend to trick you, but KHUBA says he went to fetch the docket. CHAUKE says the docket was with a certain MR VAN ZYL, SC because he got it from the NPA.

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MR McBRIDE:

I don't know any of that. I wouldn't have known who was sitting with it, and stuff like that. The only issue I knew was MOSING had the docket. That's all I knew. At some stage in between - and at some stage there was a leak, long before I was appointed in IPID, in November 2013 in MAIL & GUARDIAN or whichever newspaper, but there was a leak talking about this issue. Obviously I didn't have an acute interest in it then, but it was in the newspapers. On this issue of KHUBA fetching a docket, I wouldn't know. If he fetched a

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docket on this day, I'm not in a position to negate anything he says he did, nor would I do it for the sake of it. All I know is there is one report, with one set of dockets, which I signed. There is only one report I know. I think just in fairness, when our Minister asked for the docket, he said: All progress reports and final recommendations - or final report. So he asked for all of that, the progress reports and the final document. For me the investigation had been finished then, and the docket was with the NPA. I think where the confusion came in is that the Minister may have forgotten that I told him on 4 August that it had already been submitted to the NPA for decision. I think that might have caused some confusion.

MR JULY: What you are saying you had with you at the time was an inconclusive report?

MR McBRIDE: No, no, I'm not saying that. Mr July, please let's be honest with each other. I didn't say that. I said I got one final report which I signed. I didn't say it was an inconclusive report.

MR JULY: No, no, no, no.

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MR McBRIDE: So there was no inconclusive report, there was a final report, which was prepared by KHUBA and signed by SESOKO.

MR JULY: Maybe I should have said at the discussions, when you were discussing it and were looking at this report which had bad language. That's the one I'm talking about.

MR McBRIDE: No, it was a final report with bad language. There was no interim or progress report, or anything like that. If you look at the time lines, you will see the report was given to me, signed by these guys, I think on the 9th, and I signed it on 13 or 14 April, something like that. I can't remember the exact sequence. I think I received the report in April, but there were a few days between receiving it and when I signed it.

MR JULY: If KHUBA is lying, that you called him two days after you signed it - you called him and asked for the report ...

MR McBRIDE: No, no, I could not have called KHUBA, and I'll tell you why, because I didn't have his number. I could not have called him. I only got his number recently, when this started, so I could not have called KHUBA directly.

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MR JULY: Okay, let me put it this way, that you met with him to discuss a report.

MR McBRIDE: No, no. There were many high-profile matters. KHUBA was also involved in the CATO MANOR investigation. So there is CATO MANOR, there are a lot of other cases. One case I asked for a briefing on was PHIYEGA's report - and I think KHUBA might have been involved in that one also at the investigation stage. So I asked for a briefing on all the issues, which anyone who is heading an organisation should do.

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MR JULY: I think you have said this, but you have never had sight of any other report?

MR McBRIDE: Look, a report comes to me, it's signed by the Head of Investigations and by the investigator. I signed it.

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MR JULY: It came to you already signed?

MR McBRIDE: Yes, it was signed by the two people. That's the report I signed, the one with the corrected language and spelling.

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MR JULY: KHUBA then says the three of you were working on a report, which is different from what you are saying. You were working on a report, there was to-ing and fro-ing before the actual

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signing, and you were involved in that.

MR McBRIDE:

No, no, this is not true. I looked at the spelling, and, as I indicated to you, the questions indicated to me are what the crimes are, what the elements are of that crime, who was involved and at what stage. Because it is over a period. If you want my opinion on issues, I can give you my opinion. My opinion was, and still is, quite firmly - and I stand by that report I signed; I stand by it - there was no crime committed by anybody until the time the ZIMBABWEANS were arrested. There was no crime committed.

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MR JULY:

No crime committed by anybody ...

MR McBRIDE:

By anybody that I was aware of, or that the evidence shows on that issue.

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MR JULY:

I don't think we will then have to take you through the report of 22 January, because you have never seen this report.

MR McBRIDE:

Which one?

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MR JULY:

The one which was submitted by KHUBA on 22 January.

MR McBRIDE:

The one that has KHUBA's signature on it?

MR JULY:

Yes.

MR McBRIDE:

I had never seen that report until this

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hullabaloo started here.

MR JULY: In the same breath then ...

MR McBRIDE: No, I had never seen that report.

MR JULY: In the same breath then, we can't ask you about the inconsistencies that exist between the two because you don't know anything about that? 5

MR McBRIDE: Well, KHUBA can tell you about that. KHUBA can tell you about inconsistencies in the report. I don't even think there are inconsistencies, there is additional evidence. One report is longer than the other. One report has additional information to the other one. One report has an analysis of cellphone records and it has warning statements, which is a normal thing. So I wouldn't say inconsistencies, I would maybe say a change of analysis. I know in one case they had to send a statement to be analysed, to say whether the guy was truthful or not, because of evidence which came out from a cellphone, where people placed SIBIYA at the scene, and then from SIBIYA's cellphone records he could not have been on the scene. Then they had to look at other people's statements again and analyse 10 15 20 25

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them. Out of that was a protest which showed that if these guys lied about SIBIYA being on the scene, where else have they lied.

MR JULY: Then, to be fair to you about the inconsistencies, although we know you know 5
nothing about this report, I think we can't conclude this conversation without showing you the inconsistencies.

MR McBRIDE: No, I don't want to look at them because then I would be interfering in the investigation. 10
So I don't want to look at them, because if there are inconsistencies in a document which I did not have at the time of signing the final report, you can't question me on that.

MR JULY: No, no, I thought you said there are no 15
inconsistencies.

MR McBRIDE: No, your definition of inconsistency - you must talk to the investigator about that. Talk to KHUBA about it. My view was they were not inconsistencies, it is additional analysis 20
and additional evidence. That's what I'm saying. So I'm not conceding to you that - look, Mr July, you're a lawyer, you have your brief, and when you put something to me about inconsistencies, I'm saying from what I have 25

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been told and have been informed, and what the analysis says, there is additional information and additional analysis. That's all I'm saying, and a review of initial assumptions. If I can go through it, there are some 5 statements made which point to people being involved in a crime. Then later on, with additional information, new information, new analysis, a different assumption needs to be made, so there is a review of that. I 10 understand - and after the suspension of DRAMAT I then asked KHUBA: Did you make a mistake anywhere in your statement? I asked him: Is there anything where there is a problem? I even asked about this other report 15 and when it was signed. Because at some stage our spokesperson said the media were asking about a report, and when is this decision going to be made. Our view was: Let the NPA decide. Then he had a report. So I asked: 20 Where did you get this report from, and is it signed? It has "signed" written, but it's not signed. Then I said: Well, it's got no status if it is not signed. I signed only one report. I only signed one report. There is 25

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only one report with my signature on.

MR JULY: Anything else, Mr McBride, that you would want to share with us?

MR McBRIDE: No, no, no, I think I have said everything. You can ask me additional questions and you can call me back. What I would like to add, is there is a notion somehow that there has been some impropriety on this issue. As far as I'm aware there is none. If I look at DRAMAT and SIBIYA, before I came to IPID I knew about them, but I had never sat like this - like I'm sitting with MR TOM - and looked at DRAMAT or SIBIYA. I know DRAMAT's background, it's similar to mine. My father was on ROBBEN ISLAND with him. So I know him, and that he was involved in the taking down of PAGAD, but I didn't know the guy until I came to IPID. There is no reason for me, in a democratic SOUTH AFRICA, to want to do any favours for anyone in an independent investigative body. There is no reason to want to help anybody on this issue. We work on the evidence that is there.

But I will even go so far as to say there is no court in this country that will be able to

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convict DRAMAT and SIBIYA. There is no evidence against them. This evidence of people receiving - a simple question was this: Three Crime Intelligence people arrested the ZIMBABWEANS. Those three went with MALULEKE to take them across. I don't hear anyone saying: The Crime Intelligence Heads must be suspended. No-one is saying that.

There is another issue I want to add on this.

There were assaults made on the ZIMBABWEANS.

I had asked MR KHUBA and MR SESOKO: Why aren't you recommending charges when there is evidence from statements saying there were assaults on these guys and police were present? They said: Let's wait for the NPA decision on this, and then we can add the charges after. Even afterwards, when the

report was with the NPA, I asked MR KHUBA a number of times: Please can you start preparing the charges on the assaults, and get warning statements on that. That's what I did. I'm just sending a message because I'm late for my other meeting.

MR JULY:

I think we are finished. Thank you.

THE INTERVIEW ADJOURNS

25.

ANNEXURE "G"



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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 &
ADMINISTRATION

Second Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

PETRUS JAWUKE

do hereby state under oath that:-

1. I am an adult male and a police officer employed by the South African Police Service. I took part in the operation for the arrest of Zimbabwe nationals in Diepsloot on 5 – 6 November 2010 and 23 November 2010. I was also a

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member of the unit known as TOMS, which ultimately reported to General Shadrack Sibiya.

2. The allegations contained herein are true and correct. They are also within my personal knowledge and belief, unless the context indicates otherwise.
3. I confirm the allegations contained in the answering affidavit of the First Respondent insofar as they set out the facts around the arrest, detention and rendition of the Zimbabwe nationals. I confirm specifically that I took part in the operation and the General Sibiya was personally present during the operation. This fact was conveyed also to Mr Innocent Khuba of the Independent Police Investigative Directorate ("IPID") when he conducted the interviews during 2013.

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P. Sibiya

DEPONENT

I hereby certify that this affidavit was signed and sworn to before me at Sussex on this the 14 day of MAY 2015, by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and who uttered the following words: "I swear that the contents of this affidavit are true so help me God".


 PATRICIA FREDA BLAAUW
 Commissioner of Oaths
 Reference 107/7/10 Randburg 05/07/2010
 22 Fredman Drive
 Sandton

MP



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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 &
ADMINISTRATION**

Second Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

BONGANI HENRY YENDE

do hereby state under oath that:-

1. I am an adult male and am employed by the South African Police Service as a police officer. I confirm that I was a member of TOMS, a unit which reported directly under General Shadrack Sibiya.

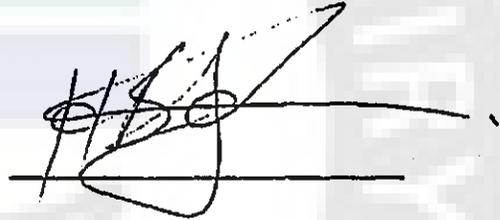


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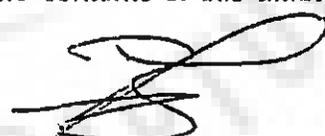
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2. The allegations contained herein are true and correct. They are also within my personal knowledge and belief, unless the context indicates otherwise.
3. I confirm the averments in the answering affidavit of the Minister insofar as they relate to the operations conducted by members of TOMS on 5 November 2010 and 23 November 2010. I was a party to those operations. I confirm in particular that General Sibiya personally took part in those operations. This fact was also mentioned to Mr Innocent Khuba when he took a statement from me during 2013.



DEPONENT

I hereby certify that this affidavit was signed and sworn to before me at Sandton on this the 14 day of MAY 2015, by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and who uttered the following words: "I swear that the contents of this affidavit are true so help me God".



 COMMISSIONER OF OATHS

Name:
Address:
Capacity:

PATRICIA FREDA BLAAUW
Commissioner of Oaths
Reference 107/7/10 Randburg 05/07/2010
22 Fredman Drive
Sandton



MP

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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 &
ADMINISTRATION**

Second Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

MTOKOZELWA WELCOME ZANGWA

do hereby state under oath that:-

1. I am an adult male and a brigadier at the South African Police Service. I am also the station commander of the Orlando Police Station.

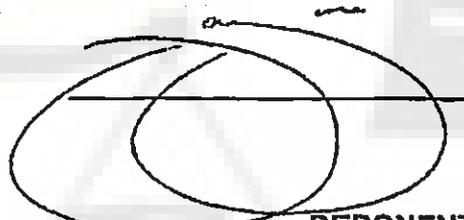
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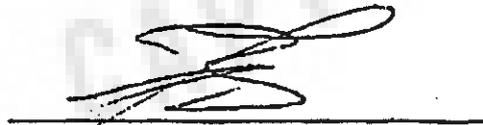
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- 2. The allegations contained herein are true and correct. They are also within my personal knowledge and belief, unless the context indicates otherwise.

- 3. I confirm the allegations contained in the answering affidavit of the First Respondent insofar as they set out the facts in relation to what transpired at the Orlando Police Station. I also confirm that the Occurance Book entries which relate to the detention of the Zimbabwe nationals on 6 November 2010 and their release to Beit Bridge on 8 November 2010, which are annexed to the Minister's affidavit, were obtained and copied by me from the original entries made at the station.


 DEPONENT

I hereby certify that this affidavit was signed and sworn to before me at Sandton on this the 14 day of MAY 2015, by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and who uttered the following words: "I swear that the contents of this affidavit are true so help me God".


 COMMISSIONER OF OATHS

Name:
Address:
Capacity:



PATRICIA FREDA BLAAUW
 Commissioner of Oaths
 Reference 1077/10 Randburg 05/07/2010
 22 Fredman Drive
 Sandton

MP

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case Number: 6588/15

In the matter between:

ROBERT MCBRIDE

Applicant

And

MINISTER OF POLICE

First Respondent

MINISTER FOR PUBLIC SERVICE

AND ADMINISTRATION

Second Respondent

EXPLANATORY AFFIDAVIT FOR SECOND RESPONDENT

I, the undersigned

Mashwahle Joseph Diphofa

do hereby make oath and state:

1. I am the Director-General of the Department of Public Service and Administration ("the DPSA") with offices situated at Batho-Pele House, 116 Johannes Ramokhoase (Proes) Street, PRETORIA, Gauteng.

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2. The facts set out in this affidavit are within my own personal knowledge, unless otherwise stated or apparent from the context. These facts are, to the best of my knowledge and belief, both true and correct.
3. Where I make legal submissions, I do so on advice of my legal representatives.
4. I am duly authorised to depose to this affidavit on behalf of the second respondent, the Minister for Public Service and Administration.

THE NATURE OF THIS AFFIDAVIT

5. This is an explanatory affidavit, the purpose of which is to explain the context in which the second respondent has decided to abide the decision of the Court in this matter, and to point out the DPSA's perspective on relevant statutory provisions which may hopefully be of assistance to the Court.
6. The second respondent is giving formal notice of withdrawal of opposition to the relief sought by the applicant. On the basis of counsel's advice, it has been decided that the second respondent (and his department, the DPSA) should not take an active part in this litigation as it is confined to the legal position peculiar to the Executive Director of IPID. That is an issue for which the Minister of Police bears responsibility, and it does not affect the rest of the public service for which the DPSA and its Minister are responsible. Accordingly, the DPSA and the second respondent merely abide the decision of the Court.

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7. However, in the hope of assisting the Court in its consideration of the merits of this matter, the DPSA wishes to point out its perspective as to the source of the Minister of Police's ("Minister") right to rely upon section 17(1) and (2) of the Public Service Act, 1994 ("PSA") in suspending and taking disciplinary action against the Executive Director of the Independent Police Investigative Directorate ("IPID").
8. From the outset, it is important to state that the DPSA does not contend that the Minister's reliance upon section 17 of the PSA is misplaced. Quite the contrary. I also do not seek to make any submissions on the constitutionality (or otherwise) of the application of this section to the Executive Director of IPID.
9. The main purpose of this affidavit is simply to set out why section 17 - rather than section 12(1) - of the PSA is the appropriate section applicable to the Executive Director of IPID. I also deal briefly with the question of costs sought against the second respondent.
10. The submissions made in this affidavit might ultimately lead the underlying debate to the same starting point, namely, the constitutionality of the application of section 17 of the PSA to the Executive Director of IPID. However, I believe that an exposition of the true source of the right to rely upon this section might be of assistance to this Honourable Court and to the parties.



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THE CORRECT READING OF THE PSA

11. The second respondent has been cited in this application primarily because he is the national executive authority responsible for administration of the PSA. He (along with the DPSA) is, in essence, the custodian of the PSA.
12. The second respondent's involvement and citation in this matter is required in terms of Rule 10A of the Uniform Rules of this honourable Court, even though his legal interest in this current dispute might be academic, as I shall demonstrate later. However limited the nature of the second respondent's legal interest is, the DPSA considers it appropriate to seek to assist this honourable court with any nuances in reading the PSA.
13. In the Minister of Police's letter, dated 24 March 2015, in which he placed Mr McBride on precautionary suspension, the Minister sought to rely on section 17 of the PSA and Chapter 7 of the SMS handbook. A copy of the Minister's letter is attached hereto as "A1".
14. Section 12 of the PSA governs the appointment and "career incidents" of heads of department. Although the term "career incident" is not defined, its ordinary meaning is intended to refer to events in a person's career, including disciplinary action that might culminate in dismissal.
15. Section 12(1)(a) reads:
"Notwithstanding anything to the contrary contained in this Act, but subject to this section and sections 2(2B) and 32(2)(b)(i), the

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appointment and other career incidents of the heads of department and government component shall be dealt with, in the case of...(a) a head of a national department or national government component, by the President..."

16. Sections 2(2B) and 32(2)(b)(i) are not relevant for present purposes. Section 2(2B) deals with the extent to which the provisions of the PSA apply to heads of department appointed in terms of the Constitution. Section 32(2)(b)(i) deals with a direction by the executive authority to a head of department, to perform certain functions other than those ordinarily assigned to that head of department.
17. A "head of department" is defined in section 1 of the PSA as "...*the incumbent of a post mentioned in Column 2 of Schedule 1, 2 and 3 and includes any employee acting in such post.*"
18. Schedule 1 of the PSA lists, *inter alia*, the national departments and the heads thereof. IPID is listed as a "national department" in Schedule 1 of the PSA. The Executive Director of IPID is listed as the head of this national department.
19. Under section 12(1)(a) of the PSA, the President of the Republic has the power to deal with career incidents of the heads of national departments.
20. Since the Executive Director of IPID is the head of a national department, the President has the power to deal with the Executive Director of IPID's career incidents, including suspension and dismissal.

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21. Section 42A(3)(a) of the PSA also endows the President with the authority to delegate any power conferred on the President by section 12(1) to the Deputy President or to a Minister.
22. On 8 October 1999 the former President of the Republic, President T M Mbeki, in fact made such a delegation, a copy of which is contained in a document entitled *Executive Protocol: Principles and Procedures for the Employment of Heads of Department (HODs) and Deputy Directors-General (DDGs) Nationally* ("the Protocol"). A copy of the Protocol is attached hereto as "A2".
23. There has been no subsequent delegation or relevant amendment thereof and the Protocol still subsists.
24. In terms of the Protocol (Annexure A), the President delegated the power to suspend a head of department suspected of misconduct, to the minister of the department in which that head of department was appointed. However, this delegation was silent on the power to dismiss. I submit that it excluded the power to dismiss.
25. Item 17 of Part 3 of the Protocol deals with termination of employment of heads of department. Item 17(1) of the Protocol lists seven methods of termination or reasons for which a head of department's services can be terminated. One of the ways listed in item 17(1)(4) is "*Discharge in terms of any of the subsections of section 17 of the Act.*" This is fleshed out, albeit slightly, in Item 17(5) of Part 3 of the Protocol.



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26. Accordingly, while the President is endowed with the power to address career incidents of heads of department, including dismissal, the President exercised the power by applying the provisions of section 17 of the PSA.
27. It is on this basis that section 17 of the PSA finds application to the suspension of the Executive Director of IPID. The source of the Minister's power to rely upon section 17 of the PSA to suspend the Executive Director of IPID, has its roots in section 12 of the PSA as delegated in the Protocol attached hereto.

SUBMISSIONS ON COSTS

28. Mr McBride seeks various orders, including a declaratory order to the effect that the decision of the Minister of Police to suspend Mr McBride from his position was unlawful, invalid and should be set aside.
29. As I understand it, Mr McBride's relief has been carefully crafted in specifically limited terms. In effect, while the PSA and the SMS Handbook apply to the entire public service, the form of relief sought by Mr McBride seeks only to carve out the office of Executive Director from the application of the impugned provisions.
30. The effect of the phrasing of this relief (if it were to be granted by the above honourable Court) would be twofold:



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- 30.1 If, and only if, section 17 of the PSA is found to authorise the Minister of Police to take circumscribed action, that section would be deemed unconstitutional to the extent that it does so. If section 17 does not authorise the Minister to take the circumscribed action, then it withstands scrutiny.
- 30.2 It also means that section 17 of the PSA would be unconstitutional only in respect of the circumscribed action. Thus, if Mr McBride succeeds with his relief, the impugned section would not be invalid or inoperative in respect of the rest of the entire public service. Instead, it would only invalidate the application of the impugned section to the position of the Executive Director of IPID. Put simply, section 17 would no longer apply to the Executive Director of IPID. But the section would continue to be valid and apply to the rest of the public service.
31. The same applies to the relevant provisions of the SMS Handbook.
32. Consequently, if Mr McBride obtains his relief as it currently stands in the notice of motion, it would not affect the inherent constitutional validity of section 17. The DPSA - and all other departments within the public service - would be able to continue making use of section 17 of the PSA in respect of all other persons employed in the public service.
33. Given the limited scope of the relief, and its application only to the position of Executive Director of IPID rather than the entire public service, the DPSA has a limited legal interest in the ultimate relief sought by Mr McBride.



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34. The DPSA, on behalf of the second respondent, has therefore instructed the state attorney to file a notice of withdrawal of opposition.
35. In prayer 5 of the amended notice of motion, Mr McBride has sought an order that "[t]he Respondents are directed to pay the Applicant's costs, including the costs of two counsel."
36. I submit that, given the early stage of the withdrawal, no prejudice has been suffered by Mr McBride or the Minister of Police. Consequently, no adverse costs order should flow from the filing of the second respondent's notice of intention to oppose or the withdrawal of such opposition.
37. In addition, given that the second respondent's joinder is required in terms of Rule 10A, a costs order would also be inappropriate.
38. The second respondent's continued participation would have unduly burdened this court's efforts in determining the matter without adding anything of substance to the debate or the litigation, which is distinct from the contribution that the Minister of Police is in any event making.

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CONCLUSION

39. In the premises, the second respondent will abide by the decision of this Court and requests that no order for costs be made against the second respondent.

[Signature]
DEPONENT

I HEREBY CERTIFY that the deponent has acknowledged that he/she knows and understands the contents of this affidavit, which was signed and sworn before me at *Pretoria* on the *20* day of MAY 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.

[Signature]
COMMISSIONER OF OATHS

Full Names: *Mercia Matlhotse*
Office: *Legal Services: DPLW*
Business Address: *Cnr Bosman & Madiba*

NATIONAL DEPT. OF PUBLIC WORKS
LEGAL SERVICES
2015 -05- 2 0
LITIGATION RECEIVED
SIGNATURE:

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MINISTRY OF POLICE
REPUBLIC OF SOUTH AFRICA

Private Bag X403 PRETORIA 0201, Tel: (012) 393 2000, Fax: (012) 393 2012/20 • Private Bag X0080 CAPE TOWN 8000, Tel: (021) 467 7021, Fax: (021) 467 7033

Mr Robert McBride
Executive Director
Independent Police Investigative Directorate
Pretoria

24 March 2015

Dear Mr McBride

RE: Your Precautionary suspension with full pay and benefits

I refer to the notice of intention to place you on precautionary suspension, dated 11 March 2015, as well as the allegations contained in the said notice which must be read as if incorporated in this letter. In the said notice I requested you to make written representations to me by no later than close of business on Thursday, 12 March 2015 as to why I should not place you on precautionary suspension on the basis of the allegations set out in the said notice.

Your written representations, accompanied by a supporting affidavit or a sworn statement were received by my office on Thursday, 12 March 2015. I would like to thank you for having positively responded to my request to make written representations which has assisted in making my decision. I have considered your representations and sworn statement.

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I have also taken into account that you have admitted that you refused Mr. Innocent Khuba permission to cooperate with the investigation, commissioned by myself, as the Minister of Police, currently conducted by Werksmans Attorneys.

Furthermore, you have also admitted to have removed a device from the safe in Major-General Sibiya's office whilst he was on suspension. I have taken into account your reasons for having acted in the matter aforesaid and I am not persuaded by those reasons.

Prima facie, your actions were intended to interfere with the ongoing investigation into the existence of two IPID investigation reports and any possible acts of defeating the ends of justice. These matters require to be investigated in an environment which is free from interference, intimidation and possible interference with investigations and possible witnesses.

The matters that are being investigated are of a very serious nature and directly implicate you as the most senior official within the IPID. It is important that when these matters are being investigated, and in order to preserve the independence, integrity and good name of the IPID, given the important constitutional and statutory function it performs in our constitutional state, you are placed on precautionary suspension.

As you are aware that I have the power in terms of section 6(8)(a) of the Independent Police Investigative Directorate Act 1 of 2011 to remove the Executive Director from office on account of misconduct. Inherent in the power aforesaid, is the power to suspend and institute disciplinary proceedings when allegations of misconduct are levelled against the Executive Director.

The Public Service Act, 1994, and chapter 7 of the Senior Management Handbook are equally applicable to you in relation to a decision to place you on precautionary suspension and same have been accordingly invoked by me. Besides, the common law right of employer to suspend is equally enforceable in this regard.



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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 with the evidentiary material. Your suspension is precautionary in nature and it is for a period of 60 calendar days pending the investigation and possible disciplinary proceedings.

I therefore place you on precautionary suspension with immediate effect, on full pay and benefits for a period of 60 calendar days pending the investigation and possible disciplinary enquiry.

You are entitled to take with you your personal belongings except items, equipment or goods which belong to IPID, utilised specifically for the performance of your day to day duties.

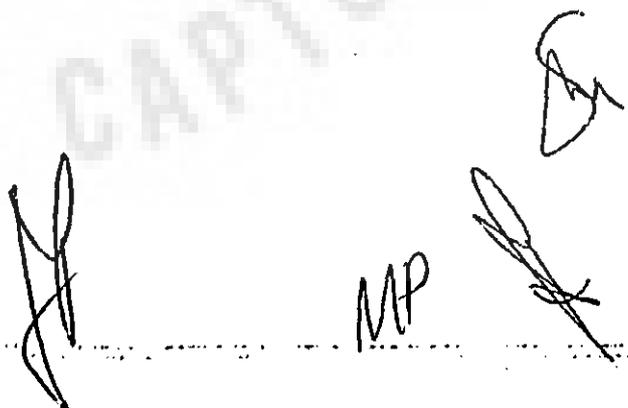
Yours faithfully,



NP Mhleko

Minister of Police

Date: 24/03/2015



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EXECUTIVE PROTOCOL:

**PRINCIPLES AND PROCEDURES
FOR THE EMPLOYMENT OF HEADS OF DEPARTMENT (HODs)
AND DEPUTY DIRECTORS-GENERAL (DDGs) NATIONALLY**



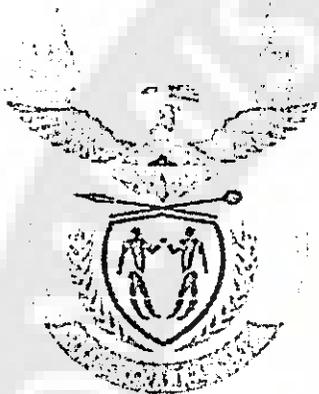
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PART 1: OVERVIEW**1. INTRODUCTION**

- 1.1 The purpose of this Executive Protocol (the Protocol) is to encourage good practice in the recruitment of Heads of Department (HoDs) and Deputy Directors-General (DDGs) nationally, thereby assisting Executive Authorities (EAs) in appointing high quality candidates. This Protocol is advisory in nature and must be read in conjunction with "A Toolkit on Recruitment and Selection" issued by the Public Service Commission.
- 1.2 Compulsory elements relating to appointment processes are set out in the Public Service Act, 1994 (as amended), the Public Service Regulations, 2001(PSR) and other laws of general application.

2. BASIC VALUES AND PRINCIPLES GOVERNING PUBLIC ADMINISTRATION

2.1 Section 195 (1) of the Constitution, 1996 stipulates that public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

- (1) A high standard of professional ethics should be promoted and maintained.
- (2) Efficient, economic and effective use of resources should be promoted.
- (3) Public administration should be development orientated.
- (4) Services should be provided impartially, fairly, equitably and without bias.
- (5) People's needs should be responded to, and the public should be encouraged to participate in policy-making.
- (6) Public administration should be accountable.
- (7) Transparency should be fostered by providing the public with timely, accessible and accurate information.
- (8) Good human resource management and career development practices, to maximize human potential, must be cultivated.
- (9) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation.

2.2 Section 197 of the Constitution, 1996 further states that:

- "(i) Within public administration there is a public service for the Republic, which must function, and be structured, in terms of national legislation, and which



Executive Protocol

must loyally execute the lawful policies of the government of the day.

- (ii) The terms and conditions of employment in the public service must be regulated by national legislation.
- (iii) No employee of the public service may be favoured or prejudiced only because that person supports a particular political party or cause."

3. MANDATORY AND REGULATORY FRAMEWORK FOR APPOINTMENT

- 3.1 The legal framework for appointment is provided by *inter alia* the Constitution of the Republic of South Africa, 1996, the Labour Relations Act, 1995, the Employment Equity Act, 1998, the Promotion of Administrative Justice Act, 2000, the Promotion of Access to Information Act, 2000, the Basic Conditions of Employment Act, 1997 and the Public Service Act, 1994 (as amended) read in conjunction with the Public Service Regulations, 2001. The White Paper on Human Resource Management in the Public Service, 1997 further provides a policy framework to enable the development of human resource management practices which support an effective and efficient Public Service, geared for economic and social transformation. The Senior Management Service Handbook, 2003 also contains valuable information in this regard.
- 3.2 In a nutshell the Constitution (Chapter 10) requires that good human resource management practices be cultivated with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation.
- 3.3 The Public Service Act, 1994, in section 3 (7) entrusts an EA with all those powers and duties necessary for –
- (1) the internal organisation of the department concerned, including its organisational structure and establishment, the transfer of functions within that department, human resources planning, the creation and abolition of posts and provision for the employment of persons additional to the fixed establishment; and
 - (2) the recruitment, appointment, performance management, transfer, dismissal and other career incidents of employees of that department, including any other matter which relates to such employees in their individual capacities.
- 3.4 In accordance with section 7 (7) of the Public Service Act, only the head of a national department and the Office of a Premier may bear the designation of 'Director-General'.
- 3.5 Section 9 of the Act stipulates that an EA may appoint any person in his or her department in accordance with the Act and in such manner and on such conditions as may be prescribed.



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- 3.6 Section 10 (1) of the Public Service Act further stipulates that no person should be appointed permanently, whether on probation or not, to any post on the establishment in a department unless he or she –
- (1) is a South African citizen or permanent resident; and
 - (2) is a fit and proper person.
- 3.7 Section 11 (1) of the Public Service Act stipulates that, in the making of appointments and the filling of posts in the Public Service due regard shall be had to equality and the other democratic values and principles enshrined in the Constitution. Section 11(2) of the Act takes these principles one step further by requiring that "all persons who applied and qualify for the appointment concerned shall be considered". Furthermore the evaluation of persons shall be based on "training, skills, competence, knowledge and the need to redress, in accordance with the Employment Equity Act, 1998, the imbalances of the past to achieve a public service broadly representative of the South African people, including representation according to race, gender and disability".
- 3.8 Section 12 (1) of the Public Service Act entrusts the President with the power to undertake and manage the appointment and other career incidents of Heads of Department and Government Component at National level. Section 42A(3) of the Public Service Act further stipulates that the President may delegate to the Deputy President or a Minister any power conferred on the President by section 12. The President has subsequently, in accordance with section 42A(3) of the Public Service Act, delegated some of his powers to the Deputy President and Ministers. In this regard attention is drawn to the President's letter to the Deputy President and Ministers dated 8 October 1999. It should be noted that the powers for deployment of HoDs in terms of section 12(3) of the Public Service Act has not been delegated. Section 12(2) of the Public Service Act stipulates that a person shall be appointed to the post of Head of Department in terms of section 9 for such term, not exceeding 5 years, as the relevant EA may approve. The person appointed as Head of Department shall conclude the prescribed contract within the prescribed period (Annexure 2 – Part 1 of the Public Service Regulations, 2001). The relevant EA may at the expiry of the term of office of a HoD or at the expiry of an extended term of office extend the term for a period of not more than five years at a time. Such extension should serve before Cabinet.
- 3.9 In terms of section 13 (1) of the Public Service Act, the appointment of a person as HoD or DDG shall be made on probation, unless the person having the power to approve such an appointment, directs otherwise. The period of probation shall not be less than 12 calendar months.
- 3.10 Public Service Regulation (PSR) 1/III/B.2 stipulates that an EA shall, based on the strategic plan of the department –
- (1) determine, after consultation with the Minister (MPSA), the department's organisational structure in terms of its core and support functions;

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- (2) define the posts necessary to perform the relevant functions while remaining within the current budget and medium-term expenditure framework of the department, and the posts so defined shall constitute the department's approved establishment;
- (3) grade proposed new jobs according to the job evaluation system referred to in PSR 1/IV; and
- (4) engage in human resource planning in accordance with PSR1/III/D with a view to meeting the resulting human resource needs.

3.11 In accordance with PSR 1/III/F(b) an EA shall, before creating a post for any newly defined job, or filling any vacancy, evaluate the job in terms of the job evaluation system. PSR 1/V/C.1 further requires an EA to determine the grade of a post to correspond with its job weight and to set the commencing salary of an employee on the minimum notch of the salary range attached to the relevant grade, unless the salary proves inadequate under the criteria in PSR V/C.3. In accordance with the last-mentioned regulation an EA may set the salary for a post or an employee above the minimum notch of the salary range indicated by the job weight -

- (1) if she or he has evaluated the job, but cannot recruit or retain an employee with the necessary competencies at the salary indicated by the job weight; and
- (2) she or he shall record the reason why the salary indicated by the job weight was insufficient.

3.12 PSR 4/II/B stipulates that persons newly appointed to the SMS shall be employed in a permanent or temporary capacity in posts on the fixed establishment. Where persons are appointed to the SMS in a temporary capacity, it shall be for a fixed term or for a specific project.

3.13 PSR 1/VII/C.2.3 stipulates that "Any vacant post in the SMS shall be advertised nationwide". According to PSR 1/VII/C.2.5 an EA may only fill a vacant post in the SMS without complying with PSR 1/VII/C.2.3 (i.e. compulsory advertising of SMS posts) if the -

- (1) department can fill the post from the ranks of supernumerary staff of equal grading;
- (2) department can absorb into the post an employee who was appointed under an affirmative action programme, if she or he meets the requirements of the post;
- (3) department plans to fill the post as part of a programme of laterally rotating or transferring employees to enhance organizational effectiveness and skills; or
- (4) post is filled in terms of section 12(3) (transfer of a HoD) of the Public Service Act.



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- 3.14 The PSR include a number of key principles on which recruitment and selection must be based. Some of these have general application while others focus on the SMS in particular. These include *inter alia* the principles of open competition and fair selection processes. Employment practices should further maximise flexibility, minimise administrative burdens on both employer and employee, and generally prevent waste and inefficiency.
- 3.15 The Employment Equity Act (EEA) stipulates that all designated employers shall submit employment equity plans, which shall include targets for employment of people from the designated groups. The Labour Relations Act outlaws discrimination in the work place and sets out measures for the protection and promotion of people who were previously disadvantaged.
- 3.16 The Promotion of Access to Information Act (PAIA) gives effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights.
- 3.17 The Promotion of Administrative Justice Act (PAJA) gives effect to the right to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action as contemplated in section 33 of the Constitution.
- 3.18 EAs must therefore, when dealing with the appointment of HoDs or DDGs, always ensure compliance with the above requirements. In this regard, Part 2 of this Protocol provides an exposition of pertinent procedural issues to be adhered to in the making of an appointment.



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PART 2: APPOINTMENT ENABLERS AND PROCEDURE

1. INTRODUCTION

- 1.1 Whilst the amended Public Service Act, 1994 and the Public Service Regulations, 2001 have freed EAs from the bureaucratic stranglehold of the previous regulatory framework, it remains a huge challenge to effectively communicate the basic requirements of the new framework.
- 1.2 The intention of this Part of the Protocol is to provide an overview of the procedural issues associated with effecting an appointment to a post at the level of a HoD or DDG.
- 1.3 This Part therefore addresses issues relating to the need for recruitment, requirements for employment, advertising of posts, selection principles and procedures, relevant Protocols as required by Cabinet and appointment.
- 1.4 Many EAs do not have time to study the Act and Regulations in detail. This Part serves to provide the relevant information in a concise format and in simple language.

2. DELEGATION OF POWERS

- 2.1 The *Public Service Act, 1994* (section 12(1)) entrusts –
 - (1) the President with the power to undertake and manage the appointment and other career incidents of a Head of a National Department or National Government Component; and
 - (2) Premiers with the power to deal with the appointment and other career incidents of a Head of the Office of a Premier, Provincial Department or Provincial Government Component.
- 2.2 The Act (section 42A (3)) further stipulates that the EA referred to in section 12 (1) of the Act may, in the case of-
 - (1) the President, delegate to the Deputy President or a Minister any power conferred on the President by section 12; or
 - (2) the Premier of a province, authorise a Member of the relevant Executive Council (MEC) to perform any duty imposed on the Premier by section 12.
- 2.3 The President has, in accordance with section 42A (3) of the Act, delegated to Ministers the authority to manage the career incidents of HoDs and DDGs within their respective departments (Annexure A).



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Note: The position at Provincial level may differ from Province to Province.

The above-mentioned delegated powers may be used by Premiers to guide them in the delegation of their powers for managing the appointment and other career incidents of HoDs at Provincial level.

The power for deployment of HoDs in terms of section 12(3) of the Act has not been delegated. It is administratively managed by MPSA, but resides ultimately with the President.

3. ESTABLISHING THE NEED FOR RECRUITMENT

3.1 Recruitment and selection practices are closely related to an organisation's human resource plan, which is derived from the strategic planning process. It follows thus that the recruitment and selection processes should continuously be informed by –

- (1) an analysis of the workforce profile;
- (2) organisational and environmental changes as well as job-designs;
- (3) a comparison of available human resources and projected human resource needs;
- (4) an approved structure in place for the organisation and the required post being part of this approved structure; and
- (5) cost considerations.

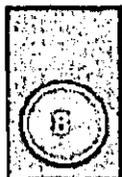
3.2 Following the above it must be determined if a "real" need exists for a position to be filled before a process of recruitment is initiated. If such a need has been confirmed, consideration should then be given to the lateral rotation, transfer or absorption of existing members. Should it be impossible to fill the vacancy through one of the above processes, the recruitment process can be initiated.

3.3 The PSR states clearly that human resource planning should precede any recruitment action. This includes forecasting the department's needs with respect to members.

3.4 The job must further be evaluated, unless it has been evaluated before and there are no significant changes to the functions.

3.5 It is also necessary to ensure that the position is budgeted for and that sufficient funds are thus available for filling the post.

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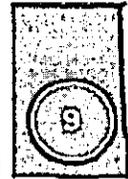
4. DETERMINING REQUIREMENTS FOR EMPLOYMENT

- 4.1 The PSR requires an EA to determine composite requirements for employment in any post on the basis of the inherent requirements of the job.
- 4.2 A job must be properly analysed to ensure that recruitment attempts are non-discriminatory and take place in accordance with the inherent requirements of the job. There must be a clear understanding of the nature of the post to be filled.
- 4.3 The results of the job analyses must be captured in a job description, addressing the main objectives and inherent requirements of the post (i.e. post and person specifications). The job profile describes the job in terms of the task requirements of the position and the requirements of the person filling the position. Development of the job profile will always be informed by the results of job evaluation and job analysis.
- 4.4 The job profile (aligned with the requirements used in the job evaluation process) will include, *inter alia*, the following:
- (1) A description of the job in terms of the task requirements and responsibilities.
 - (2) The competencies the person will need to demonstrate in the successful performance of the job.
 - (3) Educational requirements.
 - (4) Level of expertise required.
 - (5) Reporting relationships.
 - (6) Salary level.
- 4.5 The job analysis will determine which competencies are the most important for the particular job. It will also identify the proficiency level which the person will need to demonstrate in relation to the identified competencies.

5. RECRUITMENT

5.1 Introduction

- (1) Recruitment can be best described as the process of attracting suitable individuals on a timely basis, in sufficient numbers and encouraging them to apply for jobs in the organisation. As such it is aimed at providing a pool of potentially suitable candidates from which the organisation can cost effectively and efficiently select individuals that will satisfy its human resource needs.
- (2) Recruitment is an activity that generally takes place in response to an existing post becoming vacant or a new post being created. Recruitment is -



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- (a) one of the most important ways in which the Public Service meets its human resource capacity requirements;
- (b) the primary instrument for achieving employment equity by opening up the Public Service to all sections of society;
- (c) an important tool to be utilised by departments in order to ensure that the skills needed to meet their operational needs, are acquired; and
- (d) an important tool on which other Human Resource processes is based.

5.2 Formulating a recruitment policy

- (1) The recruitment policy should -
 - (a) set targets for achieving specified employment equity objectives for race, gender and disability representation as well as specify the skills necessary to meet the department's operational needs;
 - (b) spell out the objectives of the recruitment process;
 - (c) enable departments to attract those applicants who have the training, skills, competence and knowledge relevant to the requirements of the post; and
 - (d) include a clear specification of all the human resource needs of the department and be free from bias and any form of discrimination.

5.3 Principles governing the recruitment programme

- (1) The HoD, who is responsible for the administration and management of her or his department, is responsible for the recruitment programmes of the department. There are, however, basic principles which have to be adhered to in developing and formulating such a programme. These are the following:
 - (a) Recruitment should be targeted for maximum accessibility and should be aimed at reaching, as far as practically and financially possible, the broadest possible pool of available human resources within a specific target group.
 - (b) The image of the Public Service in general and the department in particular must be promoted in order to foster applicants' interest in the Public Service as an employer.
 - (c) All recruitment actions should be undertaken with a view to seek from the relevant target group, the ideal applicant with the necessary training, skills, competence, and knowledge relevant to the requirements of the post concerned.
 - (d) Recruitment strategies must be underpinned by the principle of



employment equity.

- (e) Recruitment strategies must ensure the acquisition and retention of human resources with appropriate competencies.

5.4 Methods of recruitment

- (1) A variety of methods can be utilised, depending on the need and situation of a particular department. The method of recruitment used should be in line with the department's recruitment strategy and must not discriminate against prospective candidates. In accordance with the PSR any vacant post of senior manager (SMS Grades A to D) shall be advertised nationwide. Advertising will be discussed in paragraph 6 of this Part. Although not conclusive, the following recruitment methods can also be utilised in conjunction with advertising:

(a) Posting

- (i) This method could be used to reach communities which can normally not be reached through the more conventional recruitment methods. A department could liaise at local level with both official and private entities for the display of posters at places that are accessible, known to and frequented by the community (e.g. the Thusong Service Centres). Posters should be compiled in the languages used in the relevant community.

(b) Radio advertising

- (i) This is a form of recruitment which can typically be utilised to reach rural communities. If used in conjunction with posting, it can serve the purpose of announcing the places where advertisements are posted.

(c) Headhunting (skills search)

- (i) Departments may, in order to enlarge the potential pool of candidates to be generated through the normal advertising of posts, request identified potential candidates to submit their candidature for an advertised post prior to the closing date of an advertisements. Applications received from such identified potential candidates must be considered together with all other applications and all the normal processes will apply. This skills search based method of recruitment can typically be used to seek and identify candidates for positions where it is usually difficult to recruit suitably qualified candidates as well as candidates from historically disadvantaged groups.
- (ii) In the event where the subsequent selection process fails to recommend a suitable candidate for appointment, or in cases where a successful candidate is no longer available



Executive Protocol

for appointment and no other suitable candidate is available, this phase should be concluded where-after a process of headhunting may be embarked on. During such headhunting process departments must use the same criteria as originally advertised (e.g. educational qualifications and remuneration on offer). Candidates identified through such headhunting must, however, be assessed by the same selection committee and against the same selection criteria applied in respect of those candidates initially shortlisted and interviewed. Headhunting thus entails a next phase of the recruitment process, following the conclusion of the initial phase that was unsuccessful.

- (iii) Against this background a selection committee needs to be abundantly clear on whether shortlisted candidates are found suitable or not. Only in the event where no candidate is found to be suitable, a process of targeted headhunting may be initiated, i.e. individuals who meet the requirements of the post are approached to submit their CVs to be considered for the vacant position. It speaks for itself that the candidature of persons interviewed prior to the headhunting process and who were found not suitable, cannot be considered for appointment together with possible headhunted candidates. Although comparison of a headhunted candidate with initial candidates will obviously take place, initial candidates who were found not suitable cannot be considered for appointment should headhunting also fail to render a suitable candidate.
- (d) Referrals
- (i) Employees/members can be asked to communicate information about vacancies to acquaintances. This method should, as in the case of headhunting, only be applied in conjunction with advertising.
- (e) Recruitment agencies
- (i) Recruitment agencies may be used to act as intermediaries between the employer and prospective members. An EA may utilise an appropriate agency to identify candidates for posts, as long as the advertising and selection procedures comply with Public Service selection principles.



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6. ADVERTISING OF POSTS

6.1 General

- (1) An EA has the discretion to advertise or re-advertise a vacancy. The advertising of vacant posts underpins human resource provisioning in the SMS. As already mentioned, departments must ensure that vacant posts are so advertised as to reach, as efficiently and effectively as possible, the entire pool of potential applicants, especially persons historically disadvantaged. When a department wants to advertise a vacancy, it is important to thoroughly consider the medium to be used. Any vacant post of DDG or HoD must be advertised nationwide. The following options can also be utilised in collaboration with the nationwide advertisement:
 - (a) Advertising within a defined area.
 - (b) Advertising of posts internally within the whole Public Service by means of the Public Service Vacancy Circular issued by the DPSA.
 - (c) Advertising of posts internally within the Public Service as a whole and/or in selected departments/provincial administrations and sectors by means of their own circulars, if they possess the means to undertake the advertising themselves.
 - (d) Advertising of posts by means of posting.
- (2) An EA may fill a vacant post without advertising, if the post is filled in terms of section 12(3) of the Act (deployment by the President/ a Premier).
- (3) An EA may use an appropriate agency or selection consultant to assist in part or all of the advertising/selection process as long as she or he ensures that the advertising and selection procedures comply with the prescribed principles and procedures contained in PSR1/VII/C and D.

6.2 Guidelines for the compilation of advertisements

- (1) An EA must, as a first step, determine the composite requirements for employment in the relevant post on the basis of the inherent requirements thereof. An advertisement should not favour or prejudice any prospective candidate who has the necessary training, skills, competence and/or knowledge relevant to the requirements of the post. Advertisements should therefore be supportive of and in compliance with the *Constitution*, the *Labour Relations Act*, the *Public Service Act* and the PSR. Qualifications should not be defined primarily or solely in terms of educational attainment, but should include skills, relevant experience and other criteria.
- (2) Educational qualification requirements, including qualifications obtained through the Recognition of Prior Learning process and linked to the National Qualification Framework, should as per the post advertisement reflect the minimum qualification requirements determined during job evaluation. Such

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qualification requirements should be specific to the post. An applicant with a lower qualification cannot be shortlisted for the post. If no suitable candidate is found with the advertised minimum qualification, the department may either re-advertise the post with the revised minimum qualification requirement (provided the revised minimum qualification is still within the specifications used to arrive at the level of the post) or embark on a headhunting process using the same criteria as originally advertised. The MPSA must be approached for a deviation for a relaxation of the minimum qualification requirement, prior to the re-advertisement of the post.

- (3) An advertisement should be fully compatible with the valid post and job specifications and should specify the inherent competencies of the job, the job title and core functions. Do not put into an advertisement any requirements and/or skills that are not directly related to the applicant's ability to perform that specific job.
- (4) The methods of advertising must attract the widest possible number of people within the target groups in the most cost-effective manner.
- (5) Departments should use the relevant job title and rank in advertisements in order to attract applicants with the ability to perform that specific job.
- (6) Advertising should encourage competition between internal and external applicants to promote labour mobility and cross-fertilisation of energy and experience.
- (7) Advertisements must in no way discriminate either directly (race, gender, etc) or indirectly (inordinate qualifications/experience requirements) against any potential candidate, or discourage her or him from presenting her or his candidature.
- (8) The requirements for additional health and security checks must be clearly stated in the advertisements. Health requirements can only be stated in any case where it is a requirement of the post.
- (9) Job requirements should not be formulated so as to unfairly exclude candidates who may possess the necessary ability or potential.
- (10) Where the advertising of a post within and outside the Public Service is undertaken simultaneously, care must be taken that the contents of both advertisements in respect of the post description and skills stated therein, are the same. It must also be ensured that the date of placement and the closing date for applications are the same for inside and outside advertisements.
- (11) Closing dates for applications for advertisements outside the Public Service should preferably not be less than four weeks after the date of placement so as to allow applicants from remote areas a fair opportunity to apply.



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6.3 Contents of advertisement

- (1) An advertisement for a post should specify the following:
 - (a) Job title.
 - (b) Place to be stationed.
 - (c) Formal educational requirements as well as specific competencies, experience and knowledge requirements (i.e. inherent requirements of the post).
 - (d) Core functions to be performed by the incumbent.
 - (e) All-inclusive package payable.
 - (f) Contact particulars of person to whom enquiries can be addressed.
 - (g) Closing date.
 - (h) Application for the post must be made using the Z83 form and that all information must be provided – failure to complete or disclose all required information will automatically disqualify the applicant.
 - (i) If the appointment is for a specific term, this should be clearly stated (e.g. in the case of a HoD or DDGs on contract).
 - (j) That the successful candidate will be required to enter into an employment contract and sign an annual performance agreement.
 - (k) That all shortlisted candidates will be subjected to personnel suitability checks and the successful candidate will have to undergo full security vetting.
 - (l) All applicants to declare any conflict or perceived conflict of interest.
 - (m) All applicants to disclose membership of Boards and directorships that they may be associated with.
 - (n) The successful candidate will have to annually disclose her or his financial interests.
 - (o) Identified candidates will be subjected to a government specific competency assessment.

6.4. Re-advertising vacancies

- (1) The re-advertisement of a vacancy should be done for good reasons and in exceptional circumstances only. These include:
 - (a) No suitable candidate could be found. This is subject to a fair process of selection having been applied.
 - (b) The operational requirements (or job contents) for the vacancy have changed drastically since the vacancy was advertised.
 - (c) A long delay in finalising the selection process due to various



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unforeseen departmental circumstances, resulting in candidates no longer being available.

- (d) The exposure of the initial advertisement having been found to be too limited, not reaching all potential candidates.

Note: The department should invite candidates who responded to the initial advertisement to apply again should they still wish.

6.5 Methods of application

- (1) The employer's aim is to get as close a match as possible between the specified competencies and the ideal candidate. In order to identify a suitable candidate, sufficient information is needed to be able to make a judgement. It is thus important to obtain the information by way of a well constructed application form (i.e. form Z83) and *Curriculum Vitae (CV)*.
- (2) A standard application form holds certain advantages. All applicants are required to provide the same information, making comparisons much easier. Applicants also have to respond to the employer's questions rather than setting their own agenda.
- (3) It is compulsory for applicants to submit a completed Z83 form together with a CV in response to the advertisement and said documents must reach the relevant office before the closing date.

Note should be taken that form Z83 (application form) is available on the government website at www.gov.za

7. SELECTION

7.1 Introduction

- (1) The selection process commences after the closing date of the advertisement and is concluded when a recommendation is made regarding the most suitable applicant.
- (2) Selection should be undertaken in a justifiable, equitable and fair manner in compliance with the provisions of sections 10, 11 and 12 of the *Act* read with the PSR.

7.2 Selection principles

- (1) Merit
 - (a) Selection on merit is fundamental to ensure that the Public Service recruits and promotes people of the highest calibre. It ensures that the person selected is the best suited on the basis of:



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- (i) Skills.
 - (ii) Experience.
 - (iii) Abilities.
 - (iv) Personal attributes.
 - (v) Competencies.
 - (vi) The need to achieve a representative and diverse workforce.
- (2) Job related selection criteria
- (a) The criteria should relate only to the inherent requirements of the job, taking account of:
 - (i) Competencies acquired through past experience.
 - (ii) Training received.
 - (iii) Learning potential.
 - (b) Educational qualifications should not be the sole determinant of suitability.
- (3) Fairness
- (a) The process should not discriminate against any applicant on the grounds of:
 - Race.
 - Colour.
 - Belief.
 - Sexual orientation.
 - Disability.
 - Age.
 - Any other arbitrary criteria.
 - Culture.
 - Marital status.
 - Gender.
 - Pregnancy.
 - Domestic circumstances.
 - Religion.
- (4) Equity
- (a) All candidates should be measured against the same objective criteria with due regard to the need for diversity and representativeness.
 - (b) Criteria should be in writing and be available to the selection committee prior to the selection process.
 - (c) All applicants for a particular post must be assessed by the same selection panel.
 - (d) All applicants should be assessed against the same selection criteria.
- (5) Transparency
- (a) To be able to demonstrate that the process was fair and transparent,



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easily accessible written records of the following should be kept:

- (i) Criteria used in selecting interviewees.
- (ii) Criteria used in selecting the most suitable candidate.
- (iii) Evaluation of individual candidates.

7.3 Screening

- (1) After the closing date, the application documents should be screened to determine whether applicants comply with the basic criteria laid down in the advertisement. When in doubt, additional information should be requested. The thoroughness with which this phase is conducted determines the success of the selection activities to follow. During this phase candidates who do not comply with the minimum advertised requirements may be eliminated with noting of reasons, resulting in a preliminary selection pool.
- (2) During this phase legends may be used to denote the advertised criteria such as:
 - A = Lack of specific knowledge, competencies or high level skills;
 - B = Lack of identified managerial skills;
 - C = Lack of proven high level communication skills;
 - D = Non-compliance with regard to educational qualifications or years of relevant experience;
 - E = Application received after the closing date;
 - F = No Z83 form submitted together with application or Z83 form is incomplete; and
 - G = Conflict of interest.

7.4 Preliminary selection pool and shortlisting

- (1) The next step entails the shortlisting of candidates using the preliminary selection pool.
- (2) The shortlist of candidates, who are to be put through a further selection process, is then compiled. A rating scale may be used to identify the most suitable candidates based on the advertised criteria.
- (3) Elimination of candidates must be done in a justifiable manner and be documented so that the reasons for elimination are available when the filling of the post is finally considered. This can be done by careful consideration of the information provided by the applicant, in order to ascertain whether the candidate meets the job requirements.
- (4) Shortlisting must only be concluded on the basis of information provided in the application form (Z83) and in the *Curriculum Vitae*. Any information from other sources should not be considered as it may unfairly benefit or disadvantage an applicant in relation to the others.

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- (5) Only Public Servants who have been employed in the Public Service for at least 5 consecutive years at SMS level will be eligible for appointment as HoDs.

7.5 Selection Committee

- (1) The role of a selection committee is to -
- (a) establish the suitability of a candidate to comply with the job requirements;
 - (b) determine the relative suitability of the various candidates as objectively as possible;
 - (c) render justifiable and valid advice to the final decision maker; and
 - (d) formulate and record the reasons for specific recommendations.
- (2) A selection committee should include persons who are well versed with the job content as well as persons who are competent in applying selection techniques. Members of selection committees should be known for their impartiality and objectivity.
- (3) A selection committee may include a person of stature from outside the Public Service if this will add value to the selection process.
- (4) The interviewing of candidates and deliberations of selection committees as well as their recommendations and documentation are confidential and should not be divulged other than in the execution of official duties or to authorised persons.
- (5) An EA shall appoint a selection committee to make recommendations on appointments to posts at HoD and DDG levels.
- (6) The EA's office shall arrange a date and venue for interviews and notify both panel members and candidates.
- (7) A selection committee constituted for the appointment of -
- (a) the head of a national department, shall be chaired by the Minister responsible for the portfolio in which the vacancy exists and include at least two other Ministers and a national head of department;
 - (b) a Deputy Director-General of a national department, shall be chaired by the Minister responsible for the portfolio in which the vacancy exists and include at least two Deputy Ministers and the relevant head of department;
 - (c) the head of the Office of the Premier, shall include at least three Members of the Executive Council of the relevant province and the head of any national department;
 - (d) the head of a provincial department, shall include at least three Members of the Executive Council of the relevant province and the head of the Office of the Premier of the province; and



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- (e) a Deputy Director-General of -
 - (i) the Office of the Premier, shall include at least two members of the Executive Council of the relevant province and the head of the Office of the Premier of the province;
 - (ii) a provincial department, shall include at least two members of the Executive Council of the relevant province and the head of the relevant provincial department.
- (8) Employees of a grading which is lower than the grading of the post to be filled may provide secretarial or advisory services during the selection process/interview, but shall not form part of the selection committee.
- (9) Special Advisers should not form part of the interviewing panel; however, they may be included as observers to the interview process.

7.6 Interviewing

- (1) The next stage in the selection process is the interview. During the interview, the selection committee is granted an opportunity to probe into the applicant's background, experience and interests. This is a step where face to face communication takes place, and where impressions are formed of the personality, values and attitudes of the applicant.
- (2) Interviews should directly assess the competencies possessed by the applicant. The interview can take one of two forms:
 - (a) A structured interview: The selection committee utilises a predetermined questionnaire to obtain certain information. The questions can be asked in a specific order.
 - (b) A semi-structured interview: The most important guiding questions are determined in advance. This provides flexibility to add questions depending on the situation and to probe deeper depending on the answers provided.
- (3) Additional guidelines on interviews:
 - (a) The interview must be conducted at a suitable venue that will ensure privacy.
 - (b) Plan the interview and formulate its objectives and the questions to be asked.
 - (c) Thoroughly study the relevant job descriptions before the interview.
 - (d) Study the information that appears on the candidate's application form and CV.
 - (e) Ensure that the interview is objective and unbiased.
 - (f) Put the applicant at ease.
 - (g) Encourage the applicant to participate by asking pertinent questions and listening attentively.



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7.7 Recommendation of most suitable candidate

- (1) After the last interview, the selection committee must reach consensus on the most suitable candidate for the post. The final decision must be supported by as wide a range of evidence as possible.
- (2) The selection committee must make a recommendation on the suitability of a candidate after considering only the following:
 - (a) Information based on valid methods, criteria or instruments for selection that are free from any bias or discrimination.
 - (b) The training, skills, competence and knowledge necessary to meet the inherent requirements of the post.
 - (c) The needs of the department for developing human resources.
 - (d) The representativeness of the department as a whole with regard to DDG appointments and HoDs as a group in the appointment of an HoD.
- (3) A selection committee shall record the reasons for its decision with reference to the criteria mentioned in paragraph 7.7(2) above.
- (4) Departments must conduct, for shortlisted candidates, personnel suitability checks which shall cover at least the following:
 - (a) Criminal record checks;
 - (b) Citizenship verification;
 - (c) Financial/asset record checks;
 - (d) Qualification/Study verification; and
 - (e) Previous employment verification (Reference checks).
- (5) The appointment of a HoD or Deputy Director-General at national level can only be effected after consultation with the MPSA and obtaining Cabinet's concurrence/approval.
- (6) According to a Cabinet decision of 5 May 2010, HoDs of National Departments/National Government Components must be appointed for a term of five years.
- (7) A serving employee who is appointed to the post of HoD, will automatically lose her or his status as a permanent employee. Her or his accrued pension and other benefits will, however, only be payable on the date that her or his term expires.
- (8) Amendments to section 12 of the Act changed the permanent employment status of serving Provincial Heads of Department with effect from 1 July 1999, to that of a five year term of office on contract.
- (9) Certain appointments are made only by the President. The President as head of the national executive:



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- (a) is Commander in Chief of the Defence Force and must therefore appoint the Military Command of the Defence Force (section 202(1) of the Constitution);
- (b) must appoint the National Commissioner of the Police Service (Section 207(1) of the Constitution); and
- (c) must appoint the head of each Intelligence Service established in terms of the Constitution (section 209(2) of the Constitution).

7.8 Submission of Cabinet Memorandum and relevant information to the MPSA

- (1) Regarding national HoDs and DDGs, the MPSA must be consulted by the relevant EA on the appointment of the successful person. The MPSA is further responsible for obtaining Cabinet's concurrence on the appointment. To facilitate this process national EAs must provide the MPSA with a Cabinet Memorandum containing all relevant information as per the Protocol Document at Annexure B. For this purpose a *pro forma* letter (Annexure C) and a Cabinet Memorandum (Annexure D) containing all relevant information, should be forwarded to the MPSA at least four weeks before the next Cabinet meeting. For practical reasons, departments must only deal with one appointment per Cabinet Memorandum. The Cabinet Memorandum must be accompanied by the completed *pro forma* letter and supporting documents, including the relevant *Curriculum Vitae* and information, if any, on Board/s that the candidate may currently be serving on or directorship/s that she or he currently holds.
- (2) The MPSA will not table a Memorandum for the appointment of a HoD or DDG if the Executive Authority in whose portfolio the post is, is not present in the specific Cabinet meeting.
- (3) Following Cabinet's concurrence, the relevant EA is responsible for issuing an appointment letter to the successful candidate which should include the following:
 - (a) Provisions of the Act in accordance with which the appointment is effected and the probationary period which will apply (i.e. Sections 12 and 13 of the Act).
 - (b) Term of contract and flexible all inclusive remuneration per annum (including also the 10% non-pensionable HoD allowance in the case of an HoD appointment).
 - (c) Indicate a need to sign an employment contract and enter into a Performance Agreement.
 - (d) Date of appointment/assumption of duty.
 - (e) Requirement to disclose financial interests within the prescribed period of 30 days after assumption of duty.
 - (f) Requirement to obtain a relevant security clearance within 12 months from date of appointment.



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- (4) The employment contract to be concluded by the EA and the HoD will be as set out in Annexure 2 – Part 1 of the Public Service Regulations. The relevant EA must provide the MPSA with a copy of the contract as soon as possible after the conclusion thereof.
- (5) Should any candidate require reasons why she or he was not appointed, it will be the responsibility of the relevant EA to provide such reasons.
- (6) The relevant EA must require the appointee to be subjected to security clearance in accordance with PSR 1/VII/B.1(f). In this respect the measures contained in the Minimum Information Security Standards, issued by the Domestic Branch of the State Security Agency must be complied with and the relevant security clearance must be obtained within 12 months from date of appointment.
- (7) The date of appointment will be with effect from a date as agreed to by the relevant EA and the appointee (which date should be after the date of approval of the appointment).
- (8) In accordance with PSR1/VII/B.3.1 and B.3.2 -
 - (a) an EA shall not re-appoint a former employee as HoD where -
 - (i) the former employee left the Public Service earlier on the condition that she or he would not accept or seek re-appointment;
 - (ii) the original grounds for termination of service militate against re-appointment; or
 - (iii) the former employee left the Public Service due to ill health and cannot provide recent and conclusive evidence of recovery.
 - (b) notwithstanding PSR1/VII/B.3.1(a), an EA may appoint a former employee referred to in that regulation provided that -
 - (i) the appointment is in the public interest;
 - (ii) the appointment is made in accordance with the recruitment and selection procedures in the Regulations and no other suitable candidate could be recruited;
 - (iii) the appointment is made for a fixed term not exceeding three years, and that term may be extended only once for a further term not exceeding three years; and
 - (iv) the employee has not previously been appointed in terms of the relevant regulation.

7.9 Remuneration

- (1) Agreement on the remuneration of the prospective appointee must be reached between the relevant EA and the prospective appointee before Cabinet is approached for approval of the appointment. The remuneration to be awarded to the relevant person should be included in the proposal to be presented to Cabinet.



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- (2) An EA may not request a deviation after Cabinet has taken a decision on the matter.

7.10 Employment contract

- (1) A member of the SMS can either be appointed on a permanent basis or on contract, depending on the nature of the post. In both cases the individual must enter into an employment contract. Such an employment contract must be based on one of the contracts as set out in Annexure 2 (Part 1, 2 or 3 of the Public Service Regulations).
- (2) According to Section 12 (2) of the Public Service Act, all HoDs are appointed on contract for a period up to five years. Once Cabinet has decided on the contract period of a HoD, any extensions thereafter can only be effected with Cabinet approval. To facilitate an extension of contract national EAs must provide the MPSA with a Cabinet Memorandum containing all relevant information as per Annexure B. For this purpose a *pro forma* letter (Annexure E) and a Cabinet Memorandum (Annexure F) containing all relevant information should be forwarded to the MPSA at least four weeks before the next Cabinet meeting.
- (3) All DDG posts that are core to the mandate of the department and are part of the approved fixed establishment, should be permanent appointments.
- (4) An EA shall ensure that each employee upon appointment, is provided with a written contract of employment, including the terms and conditions of her or his service.



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PART 3: CAREER MANAGEMENT AND EXIT OF HODs

1. INTRODUCTION

- 1.1 In accordance with the new management framework Executive Authorities (EAs) have been granted extensive powers relating to the day to day management of their departments. These powers inter alia relate to appointment and other career incidents of Heads of Department (HoDs).
- 1.2 Since HoDs normally have no career progression or prolonged employment opportunities, they have unique conditions of service. These conditions of service are all explained in this Part. It also provides information and examples on the management of all career incidents of HoDs, from appointment right through to termination of service.
- 1.3 Statutory provisions referred to in this Part do not necessarily reflect the precise wording or meaning of that provision and are for easy reference only. In applying this Part, it is important that the original statutory provision(s) be consulted and read in conjunction with this document.

2. EMPLOYMENT CONTRACTS FOR HODs

- 2.1 The purpose of an employment contract is to:
 - (1) Regulate the appointment of HoDs.
 - (2) Confirm the employment provisions and conditions of service of HoDs as determined by the Act and Regulations.
- 2.2 The employment contract of a HoD shall comply with the requirements set out in PSR1/VII/B.2. In accordance with this regulation, the contract to be concluded between an EA and a HoD in terms of section 12(2) of the Act shall be as set out in Part 1 of Annexure 2 of the PSR.
- 2.3 The prescribed contract referred to above covers broadly the following areas:
 - (1) Appointment.
 - (2) Remuneration.
 - (3) Deployment during the contract period and re-appointment on expiry of the contract.
 - (4) Termination of employment.
 - (5) Renewal and extension of term office.
 - (6) Conduct.



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- (7) Additional terms and conditions.
- (8) General aspects pertaining to good faith, applicability of the Act, interpretation of the agreement, jurisdiction of courts, variation and waiver.
- (9) Notice and Domicillium.

2.4 Parties to an employment contract include the relevant-

- (1) EA; and
- (2) HoD.

2.5 An employment contract must include any term and condition agreed upon between the EA and the HoD on particular duties and specific performance criteria for evaluating the performance of the HoD.

3. PERFORMANCE AGREEMENTS (PA)

3.1 The employment contract in Part 1 of Annexure 2 of the PSR states that a HoD shall enter into an annual PA with the EA. This is linked to a specific financial year and shall include at least the minimum requirements prescribed in clause 7 of the prescribed contract. The HoD should enter into a PA not later than three months after assumption of duty/entering into a new post.

3.2 Please refer to Chapter 4 (SMS PMDS) of the SMS Handbook and Guidelines for HoD evaluation issued annually by the Public Service Commission (PSC)/ Department of Performance Monitoring and Evaluation (DPME).

4. PROBATION

4.1 In accordance with section 13 of the Act, the appointment of a HoD is effected on a minimum probation period of 12 calendar months, unless the EA directs otherwise.

4.2 The purpose of a probationary period is to facilitate the process of evaluating a HoD in the post while freeing the EA from lengthy and cumbersome processes should it be necessary to -

- (1) terminate the appointment; or
- (2) transfer/deploy the HoD.

4.3 The process followed in evaluating a HoD during a probationary period and the actions to be taken are prescribed in section 13 of the Act and in PSR1/ VII/E. The HoD should be supported by the EA and be given a fair opportunity to meet the conditions of her or his appointment. The relevant EA must quarterly evaluate the HoD's work performance in terms of her or his PA (Refer to Chapter



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4 – SMS PMDS of the SMS Handbook). The HoD must endorse each report as confirmation that she or he is aware of how her or his work performance is being regarded and which areas, if any, need to be improved on.

4.4 On expiry of the twelve months probationary period, the EA must:

- (1) confirm the appointment; or
- (2) extend the probation period; or
- (3) terminate the appointment.

Please refer to Chapter 4 (SMS PMDS) of the SMS Handbook pertaining to the assessment.

4.5 The probation period may be extended under the following circumstances:

- (1) The period of probation must be extended by the number of days leave taken by the HoD during the initial period or any extension thereof.
- (2) If a probationary period is extended, the process of evaluation and reporting on a quarterly basis must be continued until the probation is ended by terminating the appointment or confirming it.
- (3) Where a decision is taken to extend the HoD's probationary period, it would be advisable to first apply the *audi alteram partem* rule, i.e. allow the HoD to state a case in response.

4.6 If a HoD who is on probation is transferred or deployed to another post, a lesser period of probation may be directed in the new post which, together with the period of probation served in the former post, shall total at least 12 calendar months.

4.7 HoDs who are employed for a period not exceeding one year do not serve a probationary period.

4.8 The EA of a HoD on probation shall ensure that the probationer:

- (1) Knows the performance and other requirements needed for confirmation of probation at the start of the probationary period.
- (2) Receives written feedback each quarter on her or his performance and compliance with other requirements.
- (3) Receives training, counselling or other assistance if needed.
- (4) Receives written confirmation of appointment at the end of the probationary period if she or he has been found suitable.
- (5) Is allowed to state her or his case if dismissal as a result of poor performance is considered. During this process the probationer may be assisted by a colleague or a trade union representative.

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- (6) Is managed in compliance with the stipulations of Schedule 8 Code of Good Practice, of the *Labour Relations Act*, 1995.

5. REMUNERATION AND SERVICE CONDITIONS

- 5.1 HoDs receive an all inclusive flexible remuneration package, based on the cost-to-company principle. The remuneration scale consists of distinct grades and remuneration bands (with commensurate job evaluation weights).
- 5.2 Provincial HoDs and Heads of Government Components (Schedule 2 and 3 of the Act) shall not by virtue only of their post be entitled to the rank, status or salary scale and benefits of the HoD mentioned in the second column of Schedule 1 of the Act. The all inclusive remuneration package that the HoD shall receive should be based on the grading of the post as determined through job evaluation and as specified in the prescribed employment contract. Only remuneration packages contained in the official remuneration scale may be utilised.
- 5.3 The remuneration packages of HoDs will be in accordance with determinations made in this regard by the MPSA. The EA may, however, in accordance with PSR1/V/C, set the remuneration package above the minimum notch of the salary range to enable the recruitment of suitable candidates. In such a case, Cabinet approval must be obtained prior to the appointment of the individual at the higher salary level.
- 5.4 The inclusive remuneration package consists of the basic salary, the state's contribution to the GEPF and a flexible portion. The structure and rules of the inclusive and flexible remuneration package are spelled out in Chapter 3 of the SMS Handbook. General conditions of service are also spelled out in Chapter 3 of the SMS Handbook and benefits may be amended by determinations issued by the MPSA in terms of the Act. HoDs are also eligible for additional compensation in the form of a non pensionable HoD allowance equal to 10% of the relevant annual all inclusive remuneration package, payable in equal portions per month for the time that a member is designated as a HoD. Refer to Chapter 3 of the SMS Handbook for more details as well as the circumstances under which the allowance is not payable.
- 5.5 HoDs are eligible for an annual cost-of-living (remuneration package) adjustment, irrespective of the outcome of performance assessment. Such adjustment is effected by way of a determination made by the MPSA.
- 5.6 HoDs may furthermore be considered for performance related package progression and/or payment of a cash bonus (see Chapter 4 of the SMS Handbook in this regard).
- 5.7 All jobs of Provincial HoDs as listed in Schedule 2 of the Act, must be evaluated using the applicable job evaluation system before amendments to the grading of such jobs (e.g. upgrading) are considered.

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6. OVERTIME

Compensation for overtime work is not applicable to HoDs.

7. TRANSFER

7.1 Section 12(3) of the Act stipulates as follows:

- (a) "The President may transfer the head of a national department or national government component before or at the expiry of his or her term, or extended term, to perform functions in a similar or any other capacity in a national department or national government component in a post of equal, higher or lower grading, or additional to the establishment, as the President considers appropriate.
- (b) The Premier of a province may transfer the head of the office of the Premier, a provincial department or a provincial government component before or at the expiry of his or her term, or extended term, to perform functions in a similar or any other capacity in the Office of the Premier, a provincial department or a provincial government component of the relevant province in a post of equal, higher or lower grading or additional to the establishment, as the Premier considers appropriate.
- (c) The President may, in consultation with the Premier or Premiers concerned, transfer before or at the expiry of his or her term, or extended term -
- (i) the head of a national department to perform functions in a similar or any other capacity in the Office of a Premier, a provincial department or a provincial government component; or
- (ii) the head of the Office of a Premier, a provincial department or a provincial government component, to perform functions in a similar or any other capacity in the Office of a Premier, a provincial department or provincial government component of another province or in a national department or national government component,
- in a post of equal, higher or lower grading or additional to the establishment, as the President, in consultation with the Premier or Premiers, considers appropriate.
- (d) A transfer in terms of this subsection may only occur if -
- (i) the relevant head of department consents to the transfer; or
- (ii) after due consideration of any representations by the head, the transfer is in the public interest.
- (e) Any person appointed as head of department or government component who is transferred in terms of this subsection -

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- (i) during her or his term of office or extended term -
 - (aa) shall for the unexpired portion of that term not suffer any reduction in salary and change of other conditions of service, unless she or he consents thereto; and
 - (bb) to a higher post shall not by reason only of that transfer be entitled to the higher salary applicable to the higher post; and
- (ii) at the expiry of her or his term of office, or extended term, shall receive the salary and conditions of service attached to the capacity in which she or he is so transferred."

7.2 Transfer of national HoDs in terms of section 12(3) of the Act has not been delegated by the President in the standing delegation of powers to Ministers, and must be dealt with by the President, who will exercise the power together with other members of Cabinet. In the case of provincial HoDs, the power of transfer vests with the relevant Premiers.

8. SECONDMENT

8.1 Section 15(3) of the Act stipulates as follows:

- "(a) An employee may with her or his consent and on such conditions, in addition to those prescribed by or under any law, as may be determined by the relevant executive authority after consultation with the Treasury, be placed at the disposal of another government, or of any council, institution or body established by or under any law, or of any other body or person, for a particular service or for a stated period.
- (b) Such an employee remains subject to the laws applicable to employees in the public service while so placed at such disposal."

8.2 PSR1/VII/B.4 further states as follows:

- "B.4.3 If an employee is seconded in terms of section 15(3) or (4) of the Act, the recipient government, council, institution or body or person shall bear the inclusive costs of the secondment, unless the relevant department, after consultation with the Treasury, and the recipient entity agree otherwise."
- "B.4.4 If an employee is seconded in terms of section 15(3) or (4) of the Act, the relevant executive authority may, subject to the written consent of the employee, bind her or him to continued employment in the relevant department or another department in the public service immediately after the secondment, for a period not exceeding the period of the secondment."

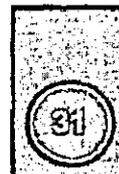
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- 8.3 The power to second a HoD in terms of section 15(3) of the Act has been delegated by the President to National EAs. Such power should be executed only after consultation with the MPSA and Cabinet needs to be informed by the relevant Minister. In the case of Provincial HoDs, the power of secondment vests with the relevant Premiers.
- 8.4 Posts of HoD cannot be filled on the basis of secondment. The reason being that a seconded person does not hold the status of an employee as defined in the Public Service Act.
- 8.5 Please refer to Chapter 11 of the SMS Handbook, dealing with the Policy and Procedure on the Revolving Door Enablers, for details (Parts A and B) regarding Secondment of Members of the Senior Management Service to Academic and other Institutions.
- 8.6 In the application of section 15(3) of the Act, due cognisance must be taken of the "National Policy on the Secondment of South African Public Service Employees", as approved by Cabinet and communicated to all National and Provincial Government Departments and Government Components under DPSA Circular 14/1/2/P dated 6 October 2009.
9. EXTENSION OF TERM OF OFFICE
- 9.1 Section 12(2)(c) of the Act provides for the extension of the term of office of a HoD. Extension occurs prior to the expiry of the term or extended term of office and is carried out in accordance with the terms and conditions of the contract. A further contract may be concluded between the relevant EA and the HoD for an extended period of not more than five years at a time. Cabinet approval must be sought before the term of office of an HoD can be extended. In accordance with the Protocol Document at Annexure B, Cabinet decided that a term may be renewed pending the performance and at the discretion of Cabinet. There is no limit to the number of times a term of office can be extended.
- 9.2 For purposes of dealing with an extension of a contract please refer to the *pro forma* letter and Cabinet Memorandum at Annexure E and F respectively.
- 9.3 Process to be followed when term of HoDs are due to expire (PSR, Annexure 2 – Part 1):



Stage	Description
Three months prior to the expiry of the term of office	
1	The EA should inform the MPSA of her or his intention to extend a contract or not (Situation will be different in a Province, depending on the delegation of power)
2	The MPSA informs Cabinet prior to the expiry of the term of office of the intention to extend the term (Situation will be different in a Province, depending on the delegation of power).
At least two calendar months prior to the expiry of the term of office	
3	The EA communicates in writing with the HoD whether she or he intends to retain the HoD's services for a further period not exceeding five years (60 calendar months), or not
Within one calendar month of the date of communication to extend term of office	
4	The HoD informs the EA in writing whether she or he accepts the offer of extended employment.

- 9.4 If it is agreed that the HoD will enter into a further contract at the end of the present contract, her or his continued service will be recognised under the new contract. This will avoid any break of service and any accrued or *pro rata* entitlement will be carried forward into the new contract.
- 9.5 Should the EA not renew the contract beyond the initial period(s), the HoD has the right to retire and shall be entitled to the pension and other benefits directly linked to section 16(3) of the Act.

Note: For more details refer to the part dealing with termination of employment contracts in the SMS Handbook.

10. ASSIGNMENTS AND ACTING APPOINTMENT / ACTING ALLOWANCE

- 10.1 Section 32(1) of the Act stipulates that an EA or HoD may direct an employee under her or his control to temporarily perform any functions other than those ordinarily assigned to the employee or appropriate to her or his grade or post.
- 10.2 An employee may further be directed in writing to act in a post. Such acting appointment shall, in terms of section 32(2) of the Act, in the case of the post of HoD, be made by the relevant EA. At a National level, the relevant EA shall thus appoint a SMS member/suitable employee to act in the HoD post. At a Provincial level, if a premier has not delegated powers to other EAs, she or he shall appoint

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a SMS member/suitable employee to act as HoD.

- 10.3 A SMS member/suitable employee may be compensated for acting as HoD in terms of a determination by the MPSA. Refer to Chapter 3 (paragraph 10) of the SMS Handbook for more details pertaining to the acting allowance and the policy.
- 10.4 A SMS member/suitable employee acting as HoD may only do so for maximum uninterrupted period of 6 (six) months. The acting allowance may only be paid to an acting member for a maximum of 6 months. The person to be appointed in the acting capacity should be informed in writing and the letter should include the following:
- (1) An indication that she or he has been appointed to act in accordance with section 32 of the Act.
 - (2) The period of acting.
 - (3) An indication of the post requirements and responsibilities in accordance with section 7(3)(b) of the Act.
 - (4) An indication that she or he acts as accounting officer in terms of section 37 of the Public Finance Management Act, 1999.
- 10.5 The member must accept the acting appointment in writing.

11. ETHICAL CONDUCT

- 11.1 A HoD shall –
- (1) display the highest possible standards of ethical conduct;
 - (2) set an example to subordinates and maintain high levels of professionalism and integrity in their interaction with political office-bearers, fellow employees and the public; and
 - (3) ensure that they minimize conflicts of interests and that they put the public interest first in the performance of their functions.
- 11.2 A HoD is expected to comply with the Code of Conduct provided for in Chapter 2 of the PSR. Specific measures have been introduced to regulate the involvement of HoDs in work outside the public service and to enforce the disclosure of their financial interests.
- 11.3 No HoD shall perform paid work outside the public service unless provided for in her or his conditions of employment and with written permission from the relevant EA (section 30 of the Act). A HoD may not claim any extra remuneration for any official duty or work which she or he performs voluntarily or is required by an EA to perform.
- 11.4 A policy on the disclosure of financial interests is contained in Chapter 3 of the



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PSR as well as in Chapter 9 of the SMS Handbook. HoDs must disclose their financial interests to their EAs by 30 April of each year. New appointees must disclose their interests within 30 days after assumption of duty. The framework includes a standardised form that has to be completed and certified. The regulatory framework prescribes that if HoDs do not disclose their interests by the prescribed date they may be charged with misconduct.

11.5 The PSC keeps a centralised database of information on financial matters of HoDs and members of the SMS. The OPSC is responsible for the management of the information.

11.6 Chapter 6 of the SMS Handbook provides further guidance on this important matter.

12. SUSPENSION

12.1 The suspension of HoDs is covered in Chapter 7 of the SMS Handbook.

12.2 The EA may suspend a HoD on full pay if -

- (1) she or he is alleged to have committed a serious offence; and
- (2) the EA believes that the presence of the HoD at the workplace might jeopardise an investigation into the alleged misconduct, or endanger the well-being or safety of any person or state property.

12.3 A suspension of this kind is a precautionary measure that does not constitute a judgement and must therefore be on full pay.

12.4 When a HoD is suspended, a disciplinary hearing must be held within 60 days. The EA must appoint a Chairperson and an employer representative to deal with the disciplinary hearing. The chair of the hearing must then decide on any further postponement and or further suspension.

13. DISCIPLINARY PROCEDURE

13.1 Chapter 7 the SMS Handbook deals with the disciplining of HoDs.

13.2 Paragraph 2.5 of Chapter 7 provides for the process to be followed in cases of less serious misconduct that warrants only corrective counselling, verbal warnings, written warnings or final written warnings.

13.3 If the alleged misconduct justifies a more serious form of disciplinary action, the EA may initiate a disciplinary enquiry. The disciplinary enquiry may follow in cases where -



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- (1) the transgression is so serious that counselling or warnings by an EA will not suffice;
- (2) the transgression constitutes a material breach of the employment relationship; and
- (3) transgressions are repeated and/or occur during the validity period of a written or final written warning.

13.4 The criteria for assessment of the seriousness of the alleged misconduct must be based on:

- (1) Actual or potential impact on the work of the public service, department, organisational component, colleagues and public.
- (2) Nature of the HoD's work and responsibility.
- (3) Circumstances in which the alleged misconduct took place.

13.5 The following are the steps/actions as prescribed in Chapter 7 on the disciplinary hearing:

- (1) The EA may suspend a HoD in accordance with paragraph 2.7(2) as a precautionary measure.
- (2) The EA must appoint a representative to initiate the enquiry.
- (3) The relevant EA must appoint a person as chairperson for the hearing.
- (4) The HoD must be given written notice of at least 5 working days before the date of the hearing and must sign receipt of notice.
- (5) The written notice of the disciplinary meeting may be given in the form of Annexure D to Chapter 7 of the SMS Handbook.

13.6 The following are the main issues pertaining to conducting of the disciplinary hearing (See Chapter 7 in this regard):

- (1) The disciplinary hearing must be held within 10 working days after the notice is delivered to the HoD.
- (2) The HoD may be represented by a fellow member/employee or a representative of a recognised trade union, but not by a legal practitioner.
- (3) Both sides shall be allowed to present evidence and cross-examine.
- (4) The decision/final outcome of the hearing must be communicated to the HoD within 5 working days after conclusion of the disciplinary hearing.
- (5) If the chairperson finds that the HoD has committed misconduct, she or he must pronounce a sanction.
- (6) The EA and the HoD may agree that the disciplinary hearing will be chaired by an arbitrator from the relevant sectoral council.



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14. GRIEVANCES

- 14.1 A HoD has the right to lodge a grievance about an official act or omission which adversely affects her or him in her or his employment relationship. Chapter 10 of the SMS Handbook contains the procedures that must be followed in dealing with grievances of members of the SMS, including HoDs.
- 14.2 Section 35(3) of the Act determines that a HoD may lodge any such grievance with the relevant EA or directly with the Public Service Commission (PSC).
- 14.3 Paragraph 7 of Chapter 10 of the SMS Handbook indicates the procedural stages to address the grievance of a HoD, either with the relevant EA or with the PSC directly.
- 14.4 Annexures A and B of Chapter 10 contain the grievance forms for submitting a grievance to the relevant EA or directly with the PSC.
- 14.5 Grievances relating to the outcome of the evaluation of a HoD must be dealt with in terms of the dispute resolution mechanism provided for in her or his Performance Agreement, before it is referred to the PSC in terms of the Grievance Rules.
- 14.6 It should be noted that section 35(4)(b) of the Act, determines that a HoD may not lodge a dispute on the same matter that was referred to the PSC, with the PSCBC or the relevant sectoral council or the CCMA.

15. INCAPACITY CODE AND PROCEDURES IN RESPECT OF POOR WORK PERFORMANCE

- 15.1 If the EA considers that the HoD is unfit for her or his duties or incapable of carrying them out efficiently and is not performing in accordance with the job requirements, she or he should be managed in accordance with the appropriate collective agreement (Resolution 10/99). The Code of Good Practice contained in Schedule 8 of the Labour Relations Act, 1995, insofar as it relates to incapacity, constitutes part of this agreement.
- 15.2 The purpose of the incapacity code, *inter alia*, is to help the HoD to -
- (1) overcome poor performance;
 - (2) correct inadequate performance; and
 - (3) prevent arbitrary or discriminatory actions being taken.
- 15.3 In applying this procedure, the EA must assess the incapacity by considering:-
- (1) the extent to which the incapacity affects the work of the public service, the HoD's department, colleagues, and the public;

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- (2) the extent to which the HoD fails to meet the required performance standards established by the EA;
- (3) the extent to which the HoD lacks the necessary skills to perform in accordance with the HoD's PA;
- (4) the nature of the HoD's work and responsibilities; and
- (5) the circumstances of the HoD.

15.4 If the EA considers that a HoD is not performing in accordance with the PA or job that the HoD has been employed to do, then the EA must:

Step	Action
1	Give written reasons why it is necessary to initiate this procedure.
2	Serve the written reasons referred to in Step 1 on the HoD.
3	Meet with the HoD and (if the HoD chooses) with the HoD's representative and/or a fellow member/ employee.

Also refer to Chapter 4 on the Performance Management and Development System for SMS in this regard.

15.5 When meeting with the HoD, the EA must apply the following procedure:

Step	Action
1	Explain the requirements, grade, skills and nature of the job.
2	Give feedback on the HoD's performance in relation to the requirements of the job.
3	Indicate reasons for perceived poor performance.
4	Hear the HoD or her or his representative on whether- <ul style="list-style-type: none"> • she or he has performed in accordance with the requirements of the job; and • the HoD agrees that she or he has not performed in accordance with the requirements of the job.

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15.6 After considering the HoD's position, the EA must, if necessary -

Step	Action
1	<p>Develop and initiate a formal programme of counselling and instruction to enable the HoD to reach the required standard of performance. This must include -</p> <ul style="list-style-type: none"> • Assessing with the HoD the time that it would take for her or him to overcome the poor work performance; • establishing from the above assessment realistic time frames the EA will expect the HoD to have met the required performance standards; and • if necessary, identifying and providing appropriate training for the HoD to reach the required standard of performance; and
2	Establish ways to address any factors that affect the HoDs performance that lie beyond her or his control.

15.7 If the poor performance of the HoD is not remedied within the time frames established by the programme referred to above, then the EA must -

Step	Action
1	Give the HoD a written report on the outcome of the procedure; and
2	Consult again with the HoD to explain the outcome of the procedure, and on measures to address any problems indicated in the report.

15.8 After consulting with the HoD, the EA must consider whether to -

- (1) Continue to give the HoD appropriate guidance, instruction and counselling and establish a further appropriate period for the HoD to meet the required performance standards;
- (2) Mentor the HoD;
- (3) Place the HoD in a more appropriate job; or
- (4) Dismiss the HoD.

Important:

Before exercising the option of dismissal or placement in an alternative job, the EA must give the HoD a hearing to establish reasons for failure to meet required standards.

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16. INCAPACITY CODE IN RESPECT OF ILL HEALTH

16.1 If the EA considers that as a result of poor health or injury, a HoD is not performing in accordance with the job that she or he has been employed to do, then the EA shall investigate the extent of the incapacity or injury, with due consideration to the provisions of Resolution 12/99 and the leave provisions contained in Chapter 3 of the SMS Handbook.

16.2 In conducting the investigation, the EA must:

Step	Action
1	Give the HoD (and the HoD's trade union representative) the opportunity of stating the HoD's case and being heard on all the issues that the EA investigates and considers.
2	Consider relevant medical and other information.
After the investigation	
3	Provide the HoD with a written report setting out the results of the investigation.

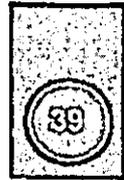
16.3 In the investigation the EA must consider whether the nature of the HoD's ill health or injury is of a temporary nature and the period of time that she or he is likely to be absent from work. In this investigation the EA must consider the:

- (1) nature of the job;
- (2) likely period of absence;
- (3) seriousness of the illness or injury;
- (4) remuneration of the HoD during her or his period of absence; and
- (5) possibility of securing a temporary replacement for the ill or injured HoD.

16.4 If the EA established that the HoD's ill health or injury is of a temporary nature, the period of absence must be covered by sick/incapacity leave whichever is applicable. Please refer to Chapter 3 of the SMS Handbook for more details.

16.5 If the HoD's ill health or injury is of a permanent nature the EA must investigate the possibility of:

- (1) securing alternative employment for the HoD (transfer in accordance with section 12(3) of the Act);
- (2) adapting the duties or work circumstances of the HoD to accommodate her or his disability; and
- (3) offering boarding on the grounds of ill health or injury.



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- 16.6 If the investigation conducted by the EA suggests that the HoD's ill health is as a result of alcohol or drug abuse, the EA may:
- (1) counsel the HoD;
 - (2) encourage the HoD to attend rehabilitation;
 - (3) establish a formal rehabilitation programme which the HoD will be expected to follow; or
 - (4) terminate the employment of the HoD after following fair procedures, if the behaviour is repetitive.
- 16.7 If the HoD fails to follow the formal programme or to attend rehabilitation or to address the problem of alcohol or drug abuse, then the EA must:
- (1) give the HoD or her or his representative a written report; and
 - (2) consult again with the HoD.
- 16.8 The EA may, if applicable and after consulting the HoD, consider whether to terminate the employment of the HoD after the normal disciplinary process is concluded.

17. TERMINATION OF CONTRACT OF EMPLOYMENT

17.1 Overview

- (1) The term of office of a HoD may be terminated in the following ways. Each of these reasons for termination of contract of employment is dealt with in greater detail below.

No.	Reason	Reference
1	On reaching the prescribed (or earlier optional) retirement age.	Section 16(1); (2); 2(A) and (4) of the Act
2	On completing a term or extended term of office.	Section 16(3) of the Act
3	Premature retirement at own request.	Section 16(5) of the Act
4	Discharge in terms of any of the subsections of section 17 of the Act.	Section 17 of the Act
5	Re-determination of original or extended term of office.	Section 3(7) read with section 12(4) of the Act
6	Voluntary resignation.	
7	Death.	

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- (2) The employment contract provides that either party may after consultation and agreement, terminate the contract before the expiry of an original term of office or an extended term of office, by giving to the other party three months notice of termination (PSR Annexure 2 – Part 1). This notice must be given in writing and be given on or before the last day of a month and take effect of the first day of the succeeding month.
- (3) The payment of pension and other benefits are directly linked to the -
 - (a) specific section of the Act;
 - (b) Government *Employees Pension Fund Law*, 1996 and Rules of the Government Employees Pension Fund and regulations promulgated as applicable to a HoD;
 - (c) Public Service Regulations; and
 - (d) collective agreement(s) reached.

Note:

The following paragraphs illustrate the benefits that are payable in different circumstances. These are illustrations only and actual calculations must be done with reference to the above acts/ regulations/ agreements and with the help of experts.

17.2 Reaching retirement age

- (1) The following severance benefits are payable when a term of office is terminated by reaching the prescribed (or earlier optional) retirement age (Section 16(1); (2); 2(A) and (4) of the Act).
- (2) These are the pension benefits payable:

Length of service	Pension benefit
Less than 10 years pensionable service.	• Actuarial interest:
	HoDs who are younger than 55: Period of pensionable service x average salary over the last 24 months of service x actuarial factor.
	HoDs who are older than 55: [6,72% x average salary over last 24 months of service x years of pensionable service] + [(1/55 x average salary over last 24 months of service x period of pensionable service) x actuarial factor].

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At least 10 years pensionable service.	• Gratuity at 6,72% x average salary over last 24 months of service x years of pensionable service.
	• Annuity at 1/55 x average salary over last 24 months of service x years of pensionable service.

Note:

An HoD with at least 10 years of pensionable service may elect in writing to have either the gratuity or annuity reduced in favour of an increased spouse's pension entitlement.

- (3) A leave payout is made in respect of any unused leave credits of the previous and/or current leave cycle, and annual leave credits prior to 1 July 2000 (capped leave) on the basis provided for in Chapter 3 of the SMS Handbook.
- (4) A *pro rata* 13th cheque is paid, if structured.
- (5) Resettlement benefits are paid as per the policy contemplated in Chapter 3 of the SMS Handbook.
- (6) The following post retirement medical assistance benefits are paid:

Length of service	Medical assistance
At least 15 years	Continued employer contribution from the age of 50 onwards as follows: Two-thirds of membership fees limited to the same maximum employer contribution applicable to serving employees.
At least 10 but less than 15 years	Cash benefit of 36 times the actual employer contribution as at the last day of service.
Less than 10 years	Cash benefit of 12 times the actual employer contribution as at the last day of service.

Note:

Medical benefits are only payable if the HoD is a member of a registered medical scheme for at least the 12 months before retirement.

17.3 Completing term (section 16(3) of the Act)

- (1) On expiry of a HoD's term of office or any extended term, section 16(3)(b) of the *Act* applies, which stipulates that the HoD shall be deemed to have been dismissed in terms of section 17(2)(b) of the *Act*.

(2) The following pension benefits are payable:

Length of service	Pension benefits
Less than 10 years pensionable service	Gratuity calculated at 15,5% of average salary over the last 24 months of service x the period of pensionable service. (The amount of the gratuity payable shall be increased by one-third of the said amount).
At least 10 years pensionable service	Gratuity calculated at 6,72% of average salary over the last 24 months x the period of pensionable service.
	Annuity calculated at 1/55 of average salary over the last 24 months x the period of pensionable service, and
	A supplementary amount of R360 per year.

- (3) For the purposes of the calculation of the gratuity and annuity of HoDs with at least 10 years of pensionable service, the period of pensionable service, (excluding all completed terms of office) shall be increased by -
- one third of the period of pensionable service (excluding term of office) but not exceeding five years or the number of years up to the 60th birthday (or 65 in the case of a person in office on 1 May 1997); and
 - one half of the (completed) period during which she or he held office as HoD, provided that the total of a member's pensionable service shall not exceed 55 years.

Note:

An HoD with at least 10 years of pensionable service may elect in writing to have either the gratuity or annuity reduced in favour of an increased spouse's pension entitlement.

- A leave payout is made in respect of any unused annual leave credits of the previous and/or current leave cycle, and annual leave credits prior to 1 July 2000 (capped leave) on the basis provided for in Chapter 3 of the SMS Handbook.
- A *pro rata* 13th cheque is paid, if structured.

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(6) Medical assistance is based on the following:

Length of service	Medical assistance
At least 15 years	Continued employer contribution from the age of 50 onwards as follows: Two-thirds of membership fees limited to the same maximum employer contribution applicable to serving employees. A person who does not immediately qualify for the continued employer contribution may be paid a cash amount equal to 6 times the maximum employer contribution.
At least 10 but less than 15 years	Cash benefit equal to 36 times the actual employer contribution as at the last day of service.
Less than 10 years	Cash benefit equal to 12 times the actual employer contribution as at the last day of service.

Note:

Medical benefits are only payable if the HoD is a member of a registered medical scheme for at least the 12 months before retirement.

(7) Resettlement benefits paid as per the policy contemplated in Chapter 3 of the SMS Handbook.

17.4 Premature retirement at own request

- (1) Section 16(5) of the Act provides that the HoD may be allowed to retire from the Public Service before her or his term of office or any extended term of office expires.
- (2) If the HoD is allowed to retire from the Public Service in terms of this section, she or he shall not be entitled to any added pension benefits unless she or he retires during an *extended* term of office. In such a situation service is increased as if the term of office had been completed (maximum 5 years + $\frac{1}{2}$ of the completed term of office).
- (3) The following pension benefits will be payable:



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Length of service	Pension benefit
Less than 10 years pensionable service	Actuarial interest <ul style="list-style-type: none"> HoDs who are younger than 55: Period of pensionable service x average salary over the last 24 months of service x actuarial factor.
	<ul style="list-style-type: none"> HoDs who are older than 55: [6.72% x average salary over last 24 months of service x years of pensionable service] + [(1/55 x average salary over last 24 months of service x period of pensionable service) x actuarial factor]
More than 10 years pensionable service	<ul style="list-style-type: none"> Gratuity at 6.72% x average salary over the last 24 months of service x period of pensionable service*.
	<ul style="list-style-type: none"> Annuity at 1/55 of average salary over the last 24 months of service x period of pensionable service*.
	<ul style="list-style-type: none"> Supplementary amount of R 360 per year.

Note:

If the HoD with 10+ years' service retires during an extended term of office, her or his pensionable service (excluding completed term of office) will be increased similar to the HoD who served a completed term, except that the uncompleted term is part of the pensionable service to be increased. An HoD with at least 10 years of pensionable service may elect in writing to have either the gratuity or annuity reduced in favour of an increased spouse's pension entitlement.

- (4) A leave payout is made in respect of any unused annual leave credits of the previous and/or current leave cycle, and annual leave credits prior to 1 July 2000 (capped leave) on the basis provided for in Chapter 3 of the SMS Handbook.
- (5) A *pro rata* 13th cheque is paid if structured.
- (6) Resettlement benefits paid as per the policy contemplated in Chapter 3 of the SMS Handbook.
- (7) The following medical benefits apply:

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Length of service	Medical assistance
At least 15 years	Continued employer contribution from age 50 as follows: Two-thirds of membership fees limited to the same maximum employer contribution applicable to serving employees.
At least 10 but less than 15 years	Cash benefit of 36 times the actual employer contribution as at the last day of service.
Less than 10 years	Cash benefit of 12 times the actual employer contribution as at the last day of service.

Note:

Medical benefits are only payable if the HoD is a member of a registered medical scheme for at least the 12 months before retirement.

17.5 Discharge (section 17 of the Act)

- (1) Payment of pension and other benefits are directly linked to the specific section of the Act, as regulated by the pension laws and other prescripts and collective agreements (section 17 of the Act).
- (2) The Act allows for the following circumstances under which the contract may be terminated:
 - (a) Incapacity due to ill health or injury.
 - (b) Operational requirements of the department as provided for in the Labour Relations Act.
 - (c) Incapacity due to poor work performance.
 - (d) Misconduct.

17.6 Re-determination of original or extended term of office

- (1) It might under certain circumstances be necessary to re-determine a HoD's term of office to expire earlier than initially anticipated in terms of sections 12(1) and (2) of the Act, provided there is no breach of contract or due to incapacity (poor performance or ill health) or misconduct.
- (2) In practice the situation will be dealt with by the relevant EA reaching an agreement with the HoD to re-determine the HoD's term of office to expire earlier. The relevant EA (at national level) will subsequently approach the MPSA for approval of such a re-determination and the payment of a special service benefit to the HoD in accordance with the stipulations of section 12(4) of the Act.
- (3) In order to assist EAs in calculating the above-mentioned special service benefit, attention is drawn to the MPSA's "Determination on Special Benefits applicable when term of office of Head of Department is re-determined" – see Annexure G.



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- (4) The purpose of the Determination (Annexure G) is to provide for compensation when a HoD's term of office is re-determined before the end of the term for a reason other than the HoD's misconduct or incapacity due to poor performance or ill health. The compensation payable takes into account loss or potential loss of income, fairness, the negative effect attached to the premature termination, outstanding performance assessments and the expeditious finalisation of the exit in the best interest of the State with due regard to the entitlements of the HoD.
- (5) The MPSA must be consulted on the fairness of the special service benefit. The payment is subject to Treasury approval and normal income tax directives apply when paying the special service benefits.
- (6) The following pension benefits are paid:

Length of pensionable service	Pension benefit
Less than 10 years pensionable service	Gratuity calculated at 15,5% of the average salary over the last 24 months of service x the period of pensionable service (+ the amount of the gratuity which is payable shall be increased by one-third of the said amount)
At least 10 years pensionable service	<ul style="list-style-type: none"> • Gratuity calculated at 6,72% of average salary over the last 24 months of service x the period of pensionable service. • An annuity calculated at 1/55 of average salary over the last 24 months of service x the period of pensionable service. • A supplementary amount of R360 per year.

Note:

For the purposes of the calculation of the gratuity and annuity in respect of HoDs with at least 10 years of pensionable service, the period of pensionable service (excluding all completed terms of office) shall be increased by a period equal to one third of the period of pensionable service, but not exceeding five years or the number of years up to the 60th birthday (or 65 in the case of a HoD in office on 1 May 1997), and one half of the (re-determined completed) period during which she or he held office as HoD (Provided that the total of a member's pensionable service shall not exceed 55 years). An HoD with at least 10 years of pensionable service may elect in writing to have either the gratuity or annuity reduced in favour of an increased spouse's pension entitlement.

- (7) A leave payout is made in respect of any unused annual leave credits of the previous and/or current leave cycle, and annual leave credits prior to

1 July 2000 (capped leave), on the basis provided for in Chapter 3 of the SMS Handbook.

- (8) *A pro rata* 13th cheque is paid if structured.
- (9) Resettlement benefits paid as per the policy contemplated in Chapter 3 of the SMS Handbook.
- (10) The following medical benefits apply:

Length of service	Medical assistance
At least 15 years	Continued employer contribution from age 50 as follows: Two-thirds of membership fees limited to the same maximum employer contribution applicable to serving employees. A person who does not immediately qualify for the continued employer contribution may be paid a cash amount equal to 6 times the maximum employer contribution.
At least 10 but less than 15 years	Cash benefit of 36 times the actual employer contribution as at the last day of service.
Less than 10 years	Cash benefit of 12 times the actual employer contribution as at the last day of service.

17.7 Voluntary resignation

- (1) When a HoD resigns from the Public Service, she or he shall receive the following pension benefits:

A choice between:

- (a) A **cash resignation benefit** of 7.5% x average salary x years + (plus) increased with 10% interest for each full year of service between 5 and 15 years e.g. 6 years: 10%, 7 years: 20%; 8 years: 30% up to 100%; or
 - (b) **Transfer benefit** equal to actuarial interest.
- (2) A leave payout is made in respect of any unused annual leave credits for the previous and/or current leave cycle on the basis provided for in Chapter 3 of the SMS Handbook.
 - (3) *A pro rata* 13th cheque, if structured.

Note:

A resignation is to be distinguished from early retirement in accordance with section 16(5) of the Act.



Executive Protocol



18. EXIT INTERVIEWS

- 18.1 The MPSA has, in terms of Section 3(3)(e) of the Public Service Act, 1994 issued a Directive to elucidate and supplement PSR1/VII/G.2. The Directive to institutionalize the practice of exit interviews in the Public Service, is effective from 1 January 2008.
- 18.2 In accordance with the above-mentioned Directive, an exit interview must be conducted with a HoD whose employment is terminated on or after the date of commencement of the Directive on account of -
- (1) Incapacity due to ill-health or injury;
 - (2) retirement; or
 - (3) resignation.
- 18.3 For the above purpose, the relevant EA must, in respect of the exit interview contemplated in paragraph 18.2 supra -
- (1) appoint a panel comprising of at least two HoDs to conduct the exit interview;
 - (2) determine the manner in which the exit interview will be conducted; and
 - (3) develop an exit interview template which must, as a minimum, require the HoD to indicate the following:
 - (a) the reasons for her or his exit;
 - (b) the circumstances, if any, under which the HoD would consider returning to the Department or Public Service; and
 - (c) any suggestions for improving the working environment and service delivery within the Department and Public Service.

19. APPOINTMENT, MANAGEMENT AND EXIT OF DDGs

The appointment, management and exit of DDGs is extensively covered in the SMS Handbook and the general provisions for members of the Senior Management Service apply.



Executive Protocol

Annexure A**DELEGATION OF POWERS**

8 October 1999

Dear Colleague

DELEGATION OF POWERS ENTRUSTED TO THE PRESIDENT: HEADS OF NATIONAL DEPARTMENTS

As you are aware, a new regulatory framework to effectively manage human resources within the Public Service has come into operation with effect from 1 July 1999.

Section 3B of the *Public Service Act, 1994* entrusts me as President with the power to undertake and manage the appointment and other career incidents of heads of national departments. These powers include, *inter alia*, the appointment, deployment, performance management, salary increases, secondments and extension and termination of employment contracts of heads of departments in the national sphere of government.

In view of the fact that Ministers and their Departmental heads actively and continuously work together to optimise departmental functioning and to contribute towards effective service delivery, I have delegated, in accordance with section 3B(4)(a) of the *Public Service Act, 1994*, the powers entrusted to me as described in the first column of the attached Annexure, to Ministers. Please note that the deployment of heads of departments in terms of section 3B(2)(a) of the Act, is not delegated. I will exercise this power together with you and other Executing Authorities in Cabinet, as envisaged in the said section, read with section 85(2) of the Constitution, 1996. The application of the delegated powers listed in the Annexure is, besides the conditions laid down therein, also subject to the relevant provisions of the *Public Service Act, 1994*, the new Regulations and other instructions.

The Minister for the Public Service and Administration will gladly render support and give advice to the application of the delegated powers, if required.

Kind regards.

T M MBEKI
Dr E G Pahad
Minister in the Office of the Presidency
Room 223B
Tuynhuys
CAPE TOWN



Executive Protocol

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(Submission to letter)**POWERS OF THE PRESIDENT IN TERMS OF SECTION 3 B(1) OF THE PUBLIC SERVICE ACT, 1994, WHICH ARE DELEGATED BY THE PRESIDENT TO MINISTERS FOR RECOMMENDATION OR APPROVAL****1. Purpose**

- 1.1 To expedite as far as possible the taking of decisions regarding the appointment of Heads of Department (HoDs) as well as other career incidents of heads, within the new statutory framework.

2. Delegations

- 2.1 The President delegates the powers assigned to him in terms of Section 3 B(1) of the *Public Service Act*, 1994 (Proclamation 103 of 3 June 1994), to the extent indicated in the Annexure and subject to the conditions as set out thereunder, in terms of section 3B(4) of the *Public Service Act*, 1994 to Ministers as indicated.

3. Conditions

- 3.1 The delegations must be exercised with due regard to the Constitution of the Republic of South Africa, 1996, relevant statutory and financial requirements, the Public Service Regulations and applicable collective agreements.
- 3.2 The criteria prescribed/laid down in the *Public Service Act*, 1994, and the policy as contained in the new Regulations and other relevant documents, must be adhered to.
- 3.3 Even though the relevant powers have been delegated, the President may at any time decide to exercise/perform such powers personally.

MP



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Executive Protocol

**(Annexure to letter (submission):
Delegation of Powers**

POWERS OF THE PRESIDENT IN TERMS OF SECTION 3 B(1) OF THE PUBLIC SERVICE ACT, 1994, WHICH ARE DELEGATED BY THE PRESIDENT TO MINISTERS FOR RECOMMENDATION OR APPROVAL

DELEGATED POWER			CONDITIONS	
TOPIC	MINISTER TO WHOM DELEGATED, EXCEPT WHERE OTHERWISE INDICATED	PRESCRIPT	EXECUTION	REPORTING
1. The recruitment/ appointment/ employment/ promotion/ of any person or employee to the post of HoD.	Minister who is the executing authority for the department/ organisational component concerned or in the case of the Office of the Presidency, the President acting on his own.	Section 12(1) and (2) of <i>Public Service Act, 1994</i> Regulation VII/B, C and D	1. Suitable vacancy. 2. The relevant Minister to beforehand notify the Minister for the Public Service and Administration (MPSA) of her/his intention to fill the post of HoD to allow the MPSA to advise the President* regarding possible redeployment of other HoDs. 3. Post to be advertised within and outside the Public Service. 4. Relevant Minister's Department to effect the shortlisting. 5. Selection Panel must comprise of the Minister concerned who must act as Chairperson, at least two other Ministers; and an official to provide secretarial support. 6. Appointment, etc. of the successful person to be decided upon by relevant Minister after consultation with MPSA. 7. Appointment to be effected with the signing of the employment contract prescribed in the Public Service Regulations, which contract must include a Performance Agreement between the Minister and the HoD. 8. Appointee to be security cleared.	

MP



Executive Protocol

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DELEGATED POWER			CONDITIONS	
TOPIC	MINISTER TO WHOM DELEGATED, EXCEPT WHERE OTHERWISE INDICATED	PRESCRIPT	EXECUTION	REPORTING
2. Determination of commencing salary.	As in No. 1	Regulations V/A, B and C	<ol style="list-style-type: none"> 1. Commencing salaries should be negotiated between the relevant Minister and the selected person and decided upon after consultation with the MPSA. 2. The provisions contained in Regulations V/A, B and C should be adhered to. 	
3. Awards to HoD in recognition of suggestions, inventions, improvements, etc. and sustained above average job performance, for exceptional efficiency and/or for an exceptional achievement.	As in No.1	Section 37(2) (c) of <i>Public Service Act, 1994</i> Regulation VIII/F	An award must be made by the relevant Minister after consultation with the MPSA.	
4. Retirement when term expires	As in No.1	Section 16(3)	<ol style="list-style-type: none"> 1. Three months prior to expiry of term of office relevant Minister to inform MPSA of intention of HoD to retire. 2. Relevant Minister to take decision not to extend term of office of HoD after consultation with MPSA. 	Cabinet to be informed prior to expiry of term of office by relevant Minister.
5. Permission for the performance of remunerative work outside employment in the public service.	As in No. 1	Section 30(b)	Approval by relevant Minister.	MPSA to be informed.
6. Suspension of HoD suspected of misconduct.	As in No.1	Resolution 2 of 1999 of PSCBC.	<ol style="list-style-type: none"> 1. Relevant Minister may suspend HoD with emoluments. 2. Suspension may at any time be withdrawn by relevant Minister. 	MPSA to be informed.



Executive Protocol

DELEGATED POWER			CONDITIONS	
TOPIC	MINISTER TO WHOM DELEGATED, EXCEPT WHERE OTHERWISE INDICATED	PRESCRIPT	EXECUTION	REPORTING
7. Extension of the term of office.	As in No.1	Section 12(1) and (2)	<ol style="list-style-type: none"> 1. Three months prior to the expiry of term of office MPSA to be informed of intention to extend contract. 2. Extension to be dealt with after consultation with MPSA. 3. Extension must be effected with the signing of a new employment contract and a Performance Agreement. 4. Extension can be granted for up to 5 years. 	Cabinet to be informed prior to expiry of term of office by relevant Minister.
8. Salary increases in accordance with the performance of the HoD.	As in No.1	Resolution 13 of 1998 of PSCBC.	To be determined in accordance with bases provided by the MPSA after consultation with MPSA.	
9. Secondment of HoD between departments; to the service of another government/board, institute, or body.	As in No.1	Section 15(3)	After consultation with MPSA.	Cabinet to be informed by relevant Minister.
10. Retirement on reaching the prescribed (or earlier optional) retirement age.	As in No.1	Section 16(1), (2) (2A) and (4)	HoD to notify relevant Minister.	MPSA to be informed. Cabinet to be informed by relevant Minister.
11. Premature retirement at request of HoD.	As in No.1	Section 16(5)	After consultation with the MPSA.	Cabinet to be informed by the relevant Minister.

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Executive Protocol

DELEGATED POWER			CONDITIONS	
TOPIC	MINISTER TO WHOM DELEGATED, EXCEPT WHERE OTHERWISE INDICATED	PRESCRIPT	EXECUTION	REPORTING
12 Redetermination of original term/ extended term of office by Employer.	As in No.1	Section 12(1) & (2)	1. Recommendation by relevant Minister to MPSA to redetermine term of office of HoD. 2. MPSA to advise President* on redeployment if possible and advisable, otherwise MPSA has to approve and determine the benefits.	Cabinet to be informed by relevant Minister.
13. Resignation	As in No.1		Relevant Minister to note resignation.	MPSA to be informed. Cabinet to be informed by the relevant Minister.
14. Discharge due to continued ill-health.	As in No.1	Section 17(2) (a)	Approved by relevant Minister.	MPSA to be informed. Cabinet to be informed by the relevant Minister.

Notes:

- * The President exercises the executive authority together with the other members of Cabinet (section 85 (2) of the Constitution, 1996).
- * The President exercises the executive authority together with the other members of Cabinet (section 85 (2) of the Constitution, 1996).
- * Other administrative and operational arrangements related to the employment of Heads of Departments such as information on remuneration, working hours, leave etc. must be dealt with within the national norms and standards determined in terms of legislative and other prescripts.
- * Deployment of HoDs in terms of section 3 B(2)(a) of the *Public Service Act, 1994*, cannot be delegated and shall be dealt with by the President (who will exercise the power with other members of Cabinet).

Executive Protocol



Annexure B

PROTOCOL DOCUMENT ON THE PRINCIPLES AND PROCEDURES TO BE FOLLOWED FOR THE RECRUITMENT AND FILLING OF POSTS OF HEAD OF DEPARTMENT (HoD) AND DEPUTY DIRECTOR-GENERAL (DDG) AT NATIONAL LEVEL

PRINCIPLES/PROCEDURES	REFERENCE
1. The purpose of this document is to confirm the principles/procedures that apply in appointing HoDs and DDGs at national level.	
2. Although HoDs and DDGs are appointed by Executive Authorities (EAs), Cabinet also plays a role in their employment.	Cabinet adopted the Protocol Document on 28/6/2000
3. The Minister for the Public Service and Administration (MPSA) has the responsibility to submit motivations for the filling of HoD and DDG posts to Cabinet. Only after Cabinet has concurred with the nomination, can the appointment of the candidate be formalised.	Cabinet decisions of 3/9/1997 and 12/4/2000
4. HoDs are appointed for a term of five years or such shorter period as determined by the relevant EA. Cabinet, however, decided in September 1999 that national HoDs should as a general rule be appointed for a period of three years. On 5 May 2010 Cabinet "approves that in keeping with the Public Service Act, 1994, that Heads of National Departments be appointed for a term of five years, which may be renewed pending on the performance and at the discretion of Cabinet".	Section 12 of the Public Service Act, (PSA), 1994 Cabinet decision dated 5/5/2010
5. DDGs are generally appointed in the same way as any other career public servant.	Section 9 and 11 of the PSA, 1994
6. Before a post of HoD or DDG is advertised/ filled, an EA must first determine the composite requirements for employment in the post based on the inherent requirements of the job. An EA shall - (a) record the inherent requirements of the job; (b) ensure that the requirements for employment do not discriminate against persons historically disadvantaged; and (c) comply with any statutory requirement for the appointment of employees.	Public Service Regulations (PSR) 1/ VII/C.1.1 and 1/VII/C.1.2
7. The job must also be evaluated, unless it has been evaluated before. Evidence must be submitted that the relevant job has been evaluated in terms of the job evaluation system.	PSR 1/III/F



Executive Protocol

PRINCIPLES/PROCEDURES	REFERENCE
<p>8. An EA must ensure that the vacant post of HoD or DDG is advertised to reach (as efficiently and effectively as possible) the entire pool of potential applicants. The filling of posts of HoD and DDG must be effected by means of advertising such vacancy nationally inside and outside the Public Service. An advertisement for a post must, as a minimum, specify the following –</p> <ul style="list-style-type: none"> - Job title. - Core functions to be performed by the incumbent. - Inherent requirements of the post. - All-inclusive package payable. - Contact person to whom enquiries can be addressed. - Closing date. - The contract period (in the case of an HoD). - That the successful candidate will be required to enter into an annual performance agreement and that she/he will have to disclose her/his financial interests. - That all shortlisted candidates will be subjected to personnel suitability checks (PSCs). 	PSR 1/ VII/C.2
<p>9. An EA may only fill a vacant post of HoD and DDG without advertising in the circumstances outlined in the PSR.</p>	PSR 1/VII/C.1B and 1/VII/C.2.5
<p>10. An EA may utilise an appropriate agency or selection consultant to assist in some or all of the selection processes as long as the prescribed advertising and selection procedures are followed.</p>	PSR 1/VII/C.2.6
<p>11. After the closing date of the advertisement the department concerned must do shortlisting. All shortlisted candidates must be subjected to preliminary security vetting as regulated in the MISS. In this regard departments must conduct personnel suitability checks (PSCs) in respect of all shortlisted candidates. The prescribed verifications must be conducted prior to the appointment or the filling of a post of HoD or DDG. Therefore, no candidate or person may be appointed in or transferred to a post of HoD or DDG before the verification results have been duly considered. Such PSCs shall, with effect from 1 January 2008, cover at least the following:</p> <ul style="list-style-type: none"> (a) Criminal record checks; (b) Citizenship verification; (c) Financial/asset record checks; (d) Qualification/Study verification; and (e) Previous employment verification (Reference checks) <p>As regards to 11(d) above, verification of qualifications must be undertaken by the South African Qualification Authority (SAQA) in line with a directive issued in this regard by the MPSA, effective 1 March 2010.</p>	<p>Cabinet decision of 17/3/1999</p> <p>"Dear Colleague" letter by MPSA dated 24/4/2002</p> <p>PSR 1/VII/D.8(a)</p> <p>National Vetting Strategy approved by Cabinet during December 2006.</p> <p>Directive by MPSA issued under cover of DPSA Circular 14/1/1/P of 23/11/2007</p> <p>Directive by MPSA issued under cover of DPSA Circular HRP1 of 2010 dated 1 April 2010</p>



Executive Protocol

PRINCIPLES/PROCÉDURES	REFERENCE
<p>12. An EA must appoint a selection committee. Such a selection committee constituted for the appointment of a head of a national department, shall be chaired by the Minister responsible for the portfolio in which the vacancy exists and include at least two other Ministers and a national head of department. The selection committee constituted for the appointment of a Deputy Director-General of a national department, shall be chaired by the Minister responsible for the portfolio in which the vacancy exists and include at least two Deputy Ministers and the relevant head of department.</p>	<p>PSR 1/VI/D.2 as amended with effect from 01 March 2013</p>
<p>13. During the selection process all candidates for a particular post must be assessed against the same selection criteria by the same selection committee.</p>	
<p>14. In respect to the Directive on the implementation of competency based assessment of 1 April 2011, it should be noted that following the interview process, the two most suitable candidates must be invited for a competency assessment, to determine developmental gaps. With reference to the competency assessment, only mandated tools developed by the dpsa may be used.</p>	<p>Cabinet decision of 26 to 28 July 2006 DPSA circular of 4/3/2008 Chapter 5 of the SMS Handbook as amended, May 2011 Directive w.e.f. 1/4/2011 issued under cover of DPSA Circular dated 10/5/2011</p>
<p>15. The selection committee shall make a recommendation on the suitability of a candidate after considering only –</p> <ul style="list-style-type: none"> (a) Information that is based on valid methods, criteria or instruments for selection that are free from any bias or discrimination; (b) the training, skills, competence and knowledge necessary to meet the inherent requirements of the post; (c) the needs of the department for developing human resources; (d) the representativeness of the component where the post is located; and (e) the department's affirmative action programme. 	<p>Section 11 of the PSA, 1994 PSR 1/VI/D</p>
<p>16. The selection committee shall record the reasons for its recommendation. The appointment of the successful candidate should only be approved after consultation with the MPSA (who is responsible for obtaining Cabinet's concurrence) and once the President has exercised his prerogative on deployment.</p>	<p>Cabinet decision of 4/8/1999</p>

STATE CAPTION

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Executive Protocol

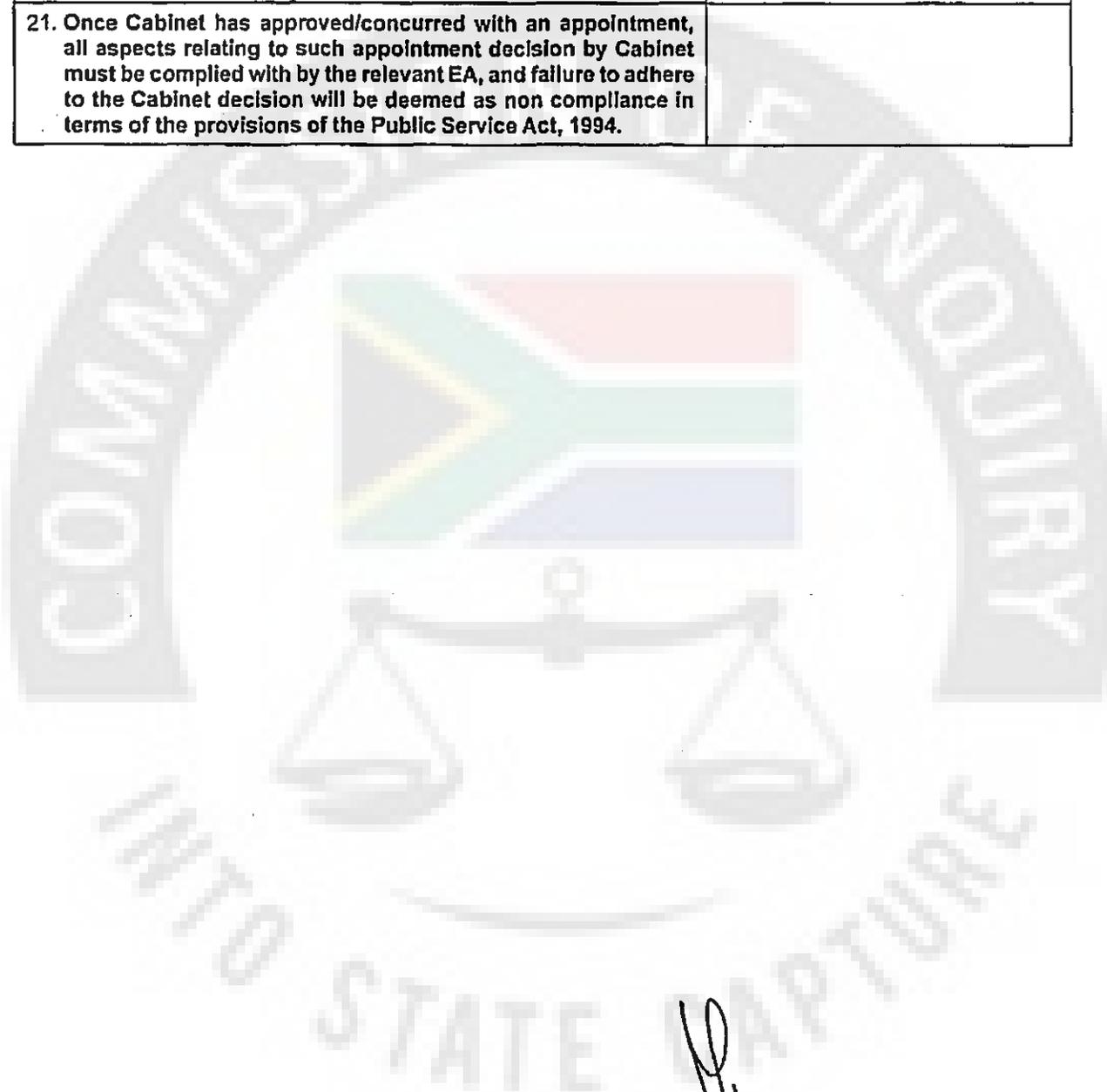
PRINCIPLES/PROCEDURES	REFERENCE
<p>17. In order to allow the MPSA to add value and to facilitate the appointment of nominated candidates to posts of HoD and DDG in national departments, national EAs are required to forward information on these candidates to the MPSA. For this purpose a pro-forma letter (Annexure C) and a Cabinet Memorandum (Annexure D) containing all relevant information, should be forwarded to the MPSA at least four weeks before the Cabinet meeting. For practical reasons, departments must only deal with one appointment per Cabinet Memorandum.</p> <p>Note: The Cabinet Memorandum must be accompanied by an updated curriculum vitae. The appointing Department must provide information on the Boards that the nominee is currently serving on as well as business interests, if any.</p>	<p>Cabinet decisions of 12/4/2000, 22/8/2001 and 24/3/2010</p> <p>Cabinet decision of 24/10/2012</p> <p>Cabinet decisions of 12/4/2000 and 22/8/2001</p>
<p>18. Agreement on the remuneration of the prospective appointee must be reached between the relevant EA and the prospective appointee before Cabinet is approached for approval of the appointment. The remuneration to be awarded to the relevant person should be included in the proposal to be presented to Cabinet. An EA may not request a deviation after Cabinet has taken a decision on the matter.</p> <p>Note: With reference to the Cabinet Memorandum (Annexure D), departments are required to list and inform Cabinet about the extent of representivity of the institution concerned, and how this will be affected by the appointment.</p>	<p>Cabinet decisions of 28/5/2003, 8/2/2006 and 5/12/2001</p>
<p>19. After Cabinet's concurrence has been obtained the relevant EA will issue an appointment letter to the successful candidate. Such a letter should include the following:</p> <ul style="list-style-type: none"> - Indicate in accordance with which provision of the Act the appointment is effected. - Term of contract (if applicable) and all-inclusive package. - Attach the prescribed employment contract and refer to the requirement to enter into a performance agreement within the first three months of appointment. - Date of assumption of duty (The date of appointment will be with effect from a date as agreed to by the relevant EA and the appointee.). - Requirement to disclose financial interests within one month of appointment. - Requirement to complete form Z204, in order to allow the Domestic Branch of the State Security Agency to conduct the necessary vetting investigations, at the end of which a relevant security clearance will be considered. - Indicate that the appointment is made subject to a probationary period of 12 months (in the case of all permanent appointments and contract appointments of 12 months and more). 	<p>PSR, Annexure 2, Parts 1,2 and 3</p>



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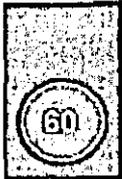
Executive Protocol

PRINCIPLES/PROCEDURES	REFERENCE
<p>20. Should any candidate require reasons why she/he was not appointed, it will be the responsibility of the relevant EA to provide such reasons.</p> <p>Note: For purposes of dealing with an extension of a contract a <i>pro forma</i> letter and Cabinet Memorandum are attached at Annexures E and F.</p>	
<p>21. Once Cabinet has approved/concurred with an appointment, all aspects relating to such appointment decision by Cabinet must be complied with by the relevant EA, and failure to adhere to the Cabinet decision will be deemed as non compliance in terms of the provisions of the Public Service Act, 1994.</p>	



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MP



Executive Protocol

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Annexure C

L N Sisulu, MP
Minister for the Public Service and Administration
Private Bag X 916
PRETORIA
0001

Dear Colleague

FILLING OF THE VACANT POST OF : DEPARTMENT OF

The above-mentioned post was advertised nationally within and outside the Public Service during with a closing date of After assessment of all applications against the key performance areas and requirements of the post as advertised, candidates were shortlisted.

A Selection Committee conducted interviews with all the shortlisted candidates. Ms/Mr, acted as scribe to assist the Committee.

After thorough consideration of the candidature of the shortlisted individuals against the particular requirements and circumstances of the post, Ms/Mr was found to be the most suitable candidate for the post.

The following documents regarding the filling of the post are attached:

- (a) Copy of internal and external advertisement.
- (b) List of the candidates who applied for the post.
- (c) Cabinet Memorandum for submission to Cabinet.
- (d) Copy of letter from the Domestic Branch of the State Security Agency regarding preliminary security vetting.
- (e) Documentary proof of the outcome of personnel suitability checks.
- (f) Exposition of representivity profile per SMS level, before and after the appointment.
- (g) Copy of curriculum vitae/résumé.
- (h) Copy of ID.
- (i) Copy of competency assessment report.
- (j) Copy of written verification of qualification(s) issued by SAQA.
- (k) Copy of a duly completed, signed and dated application form (Z83).
- (l) Copy of the Department's organisational structure (complying with the MPSA's Directive effective 1 July 2006).
- (m) Evidence of Job Evaluation conducted.

In view of the aforementioned, it will be appreciated if you can obtain Cabinet's concurrence with the appointment of Ms/Mr for a term of years (in the case of a contract appointment), to the vacant post of Director-General/Deputy Director-General:, with an all-inclusive remuneration package of R per annum with effect from a date to be agreed between myself and the nominee.

Thank you for your co-operation and assistance.

Kind regards

MINISTER

DATE:

MP



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(TO BE CLASSIFIED AS SECRET ONCE COMPLETED)

Annexure D



MINISTRY FOR THE PUBLIC SERVICE AND ADMINISTRATION

CABINET MEMORANDUM NO : OF 2013

DATE : 2013.....

FILE NUMBER :

1. SUBJECT

Filling of the post of Director-General/Deputy Director-General:
in the Department of

2. PURPOSE

To obtain Cabinet's concurrence for the intended appointment of Ms/Mr
to the advertised post of at the Department
of

3. SUMMARY

It is the intention of the Minister of to appoint
Ms/Mr to the advertised post of Director-General/
Deputy Director-General: on the establishment
of the Department of

(TO BE CLASSIFIED AS SECRET ONCE COMPLETED)

[Handwritten signature] *MP*

2013



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4. STRATEGIC FOCUS OF THE MEMORANDUM

The filling of this post will contribute to the achievement of the strategic aims of the Department.

5. DISCUSSION

5.1 The post ofwas advertised in the media and in the Public Service Vacancy Circular on with a closing date of

5.2 A total number of applications were received for the advertised post.

5.3 The following key performance areas have been identified for this post:

5.3.1

5.3.2

5.3.3

5.3.4

5.3.5

5.4 A pre-selection was done by scrutinising each of the applications received, with due consideration to the core functions and requirements for the post as indicated in the advertisement. The following candidates were shortlisted and invited to the final interviews:

NAME	EMPLOYER/ DEPARTMENT	RANK/POSITION

(TO BE CLASSIFIED AS SECRET ONCE COMPLETED)

[Handwritten signature] *MP*



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(TO BE CLASSIFIED AS SECRET ONCE COMPLETED)

5.5 A Selection Committee was constituted consisting of:

NAME	PORTFOLIO

5.6 The Selection Committee conducted interviews with the shortlisted candidates. Following the interviews, the two most suitable candidates were subjected to the prescribed competency assessments, to determine developmental gaps. After thorough consideration of the candidature of these individuals, the Committee unanimously agreed to recommend the appointment of Ms/Mr on the basis of the strengths she/he displayed against the required competency profile and in comparison with the other candidates who were interviewed.

5.7 Ms/Mr is in possession of the following qualifications:

- 5.7.1
- 5.7.2
- 5.7.3

5.8 (Provide motivation together with an indication of overall assessment of the most suitable candidate, including possible areas in need of further development.)

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5.9 Personnel suitability checks, covering the following, were conducted in respect of all shortlisted candidates (documentary proof attached):

5.9.1 Criminal record checks;

5.9.2 Citizenship verification;

5.9.3 Financial/asset record checks;

5.9.4 Qualification/Study verification (SAQA written verification); and

5.9.5 Previous employment verification (reference checks).

(Note - Previous employment verification (reference checks) must include the reasons for exiting the previous or current job. The nominated candidate must submit in writing either confirmation that there is no pending disciplinary case/s against her or his name or provide details of pending disciplinary case/s against her or him. The Cabinet Memorandum must address the findings in this regard).

5.10 In view of the above, Ms/Mr is regarded as the most suitable candidate for the advertised post of

5.11 A copy of Ms/Mr Curriculum Vitae is attached for information. According to information available Ms/Mr is currently serving on the following Boards and/or has the following business interests:

.....
.....
.....

(TO BE CLASSIFIED AS SECRET ONCE COMPLETED)





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Executive Protocol

(TO BE CLASSIFIED AS SECRET ONCE COMPLETED)

5.12 The other candidates for the position were found to be either less suitable than the nominee or not suitable at all.

6. IMPLEMENTATION PLAN

None

7. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

7.1 The relevant post exists on the establishment of the Department of The appointee will fill the vacant post on the establishment. A copy of the Department's approved organizational structure reflecting the relevant position is attached. The job was evaluated prior to being advertised i.t.o. the Job Evaluation system.

7.2 Should Ms/Mr appointment be approved, the representivity profile per level of the senior management service in the Department will be affected as follows:

Before appointment:

.....
.....
.....

After appointment:

.....
.....
.....

(TO BE CLASSIFIED AS SECRET ONCE COMPLETED)

MP



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(TO BE CLASSIFIED AS SECRET ONCE COMPLETED)

8. FINANCIAL IMPLICATIONS

An all-inclusive remuneration package of R per annum (and the 10% non-pensionable allowance payable only to HoDs) have been budgeted for. Funds are therefore available to cover the expenses of the appointment.

9. COMMUNICATION IMPLICATIONS

The Department will inform the candidate of her/his appointment, if Cabinet concurs. The other candidates will be informed in writing that they have been unsuccessful.

10. CONSTITUTIONAL IMPLICATIONS

None

11. IMPLICATIONS FOR VULNERABLE GROUPS

None

12. SECURITY IMPLICATIONS

Preliminary security vetting was conducted in respect of all shortlisted candidates. Ms/Mr was granted a preliminary security clearance and will, once appointed, be vetted for a relevant security clearance.

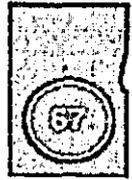
13. DEPARTMENTS AND PARTIES CONSULTED, RESPONSES AND COMMENTS

This memorandum was drafted by the employing department in association with the Department of Public Service and Administration.

14. RECOMMENDATIONS

It is recommended that Cabinet concurs with the appointment of Ms/Mr to the advertised post of at the Department of with an all-inclusive remuneration package of R per annum (and the 10% non-pensionable allowance payable only to HoDs) - for a term of years in the case of a contract employee - with effect from a date as agreed to by the relevant Executive Authority and the successful candidate.

(TO BE CLASSIFIED AS SECRET ONCE COMPLETED)



Executive Protocol

(TO BE CLASSIFIED AS SECRET ONCE COMPLETED)

15. OFFICIAL RESPONSIBLE FOR THE MEMORANDUM

I declare that the memorandum adheres to the guidelines provided by the Cabinet for the drafting of memoranda.

Name:

Designation:

Contact Details

Telephone:

Cellular:

16. HEAD OF DEPARTMENT

(Full Name and Surname)

(Designation)

(Department)

(Contact Telephone Number)

17. AUTHORISATION FOR PROCESSING THE MEMORANDUM

L N SISULU, MP

MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION

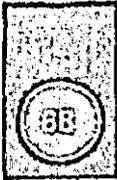
DATE:

Is there a need for an electronic presentation to be done in addition to the memorandum?
(Yes or No)

(TO BE CLASSIFIED AS SECRET ONCE COMPLETED)

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Executive Protocol

Annexure E

L N Sisulu, MP
Minister for the Public Service and Administration
Private Bag X 916
PRETORIA
0001

Dear Colleague

**EXTENSION OF EMPLOYMENT CONTRACT OF
DIRECTOR-GENERAL: DEPARTMENT OF**

The employment contract of the Director-General of the Department of,
Ms/Mr, will expire on
It is my intention to extend Ms/Mr employment contract for a period of
..... year(s).

The following documents are attached:

- (a) Copy of Ms/Mr *curriculum vitae/résumé.*
- (b) Cabinet Memorandum for submission to Cabinet.
- (c) Outcome of most recent performance assessment(s).
- (d) Security clearance confirmation.
- (e) Copy of ID

In view of the aforementioned, it will be appreciated if you can obtain Cabinet's concurrence
with the extension of Ms/Mr term of office as
Director-General for a period of year (s), commencing on.....
..... and ending on

Thank you for your co-operation and assistance.....

Kind regards

MINISTER
DATE:



53

Executive Protocol

(TO BE CLASSIFIED AS SECRET ONCE COMPLETED)

Annexure F



MINISTRY FOR THE PUBLIC SERVICE AND ADMINISTRATION

CABINET MEMORANDUM NO : OF 2013.....

DATE : 2013.....

FILE NUMBER :

1. SUBJECT

Extension of the employment contract of the Director-General at the Department of

2. PURPOSE

To obtain Cabinet's concurrence for the intended extension of the contract of the Director-General at the Department of

3. SUMMARY

It is the intention of the Minister of to extend the employment contract of Ms/Mr as Director-General at the Department of for a period of year(s), commencing on and ending on

4. STRATEGIC FOCUS OF THE MEMORANDUM

The extension of the relevant contract of employment will contribute to the achievement of the strategic aims of the Department.

(TO BE CLASSIFIED AS SECRET ONCE COMPLETED)

MP [Handwritten signature]

897



Executive Protocol

(TO BE CLASSIFIED AS SECRET ONCE COMPLETED)

5. DISCUSSION

5.1 Cabinet approved on the appointment of (HoD's name) for a period of year(s). This contract expires on

5.2 It is intended to extend the relevant employment contract for a period of year(s), commencing on and ending on

5.3 Ms/Mr (HoD's name) has received a rating in her/his most recent performance assessment and has scored (percentage) for the 20...../20..... performance cycle.

5.4 A copy of the HoD's curriculum vitae/résumé is attached for information.

6. IMPLEMENTATION PLAN

None

7. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The relevant post exists on the establishment of the Department of Ms/Mr will continue to fill the post of Director-General on the establishment of the Department.

8. FINANCIAL IMPLICATIONS

It is proposed that the employment contract of Ms/Mr be extended with an all-inclusive remuneration package of R per annum plus the 10% non-pensionable HoD allowance. The post has been budgeted for and funds are available to cover the relevant expenses.

9. COMMUNICATION IMPLICATIONS

The Minister will inform the candidate of the extension of her/his appointment, if Cabinet concurs.

10. CONSTITUTIONAL IMPLICATIONS

None

11. IMPLICATIONS FOR VULNERABLE GROUPS

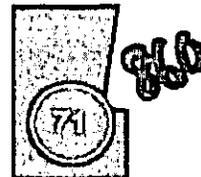
None

(TO BE CLASSIFIED AS SECRET ONCE COMPLETED)

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Executive Protocol



(TO BE CLASSIFIED AS SECRET ONCE COMPLETED)

12. SECURITY IMPLICATIONS

(Confirm continued compliance with security vetting requirements)

13. DEPARTMENTS AND PARTIES CONSULTED, RESPONSES AND COMMENTS

This memorandum was compiled by the employing department in association with the Department of Public Service and Administration.

14. RECOMMENDATIONS

It is recommended that Cabinet concurs with the extension of the contract of Ms/Mr at the Department of with an all inclusive remuneration package of R per annum plus the 10% non-pensionable HoD allowance, for a term of year(s) with effect from (date).

15. OFFICIAL RESPONSIBLE FOR THE MEMORANDUM

I declare that the memorandum adheres to the guidelines provided by the Cabinet for the drafting of memoranda.

Name:

Designation:

Contact Details

Telephone:

Cellular:

16. HEAD OF DEPARTMENT

(Full Name and Surname)

(Designation)

(Department)

(Contact Telephone Number)

17. AUTHORISATION FOR PROCESSING THE MEMORANDUM

L N SISULU, MP

MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION

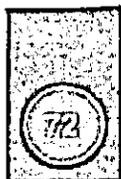
DATE:

Is there a need for an electronic presentation to be done in addition to the memorandum?

Yes/No

(TO BE CLASSIFIED AS SECRET ONCE COMPLETED)

2013



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Annexure G**DETERMINATION ON SPECIAL BENEFITS APPLICABLE WHEN TERM OF OFFICE OF HEAD OF DEPARTMENT IS REDETERMINED****1. SCOPE**

This Determination is applicable to all Heads of Department (HoDs) appointed in terms of the Public Service Act, 1994, as amended.

2. AUTHORISATION AND DATE OF EFFECT

This Determination has been made by the Minister for the Public Service and Administration in terms of section 3(5), read with section 12(4), of the Public Service Act, 1994, as amended, and is effective from 15 May 2010.

3. PURPOSE

The purpose of this Determination is to provide for compensation when a HoD's term of office is re-determined before the end of the term for a reason other than the HoD's misconduct or incapacity due to poor performance or ill health. The compensation payable takes into account loss or potential loss of income, fairness, the negative effect attached to the premature termination, outstanding performance assessments and the expeditious finalisation of the exit in the best interest of the State with due regard to the entitlements of the HoD.

4. SPECIAL BENEFIT AS COMPENSATION

If the term of office of a HoD is re-determined with his or her consent, the following will apply:

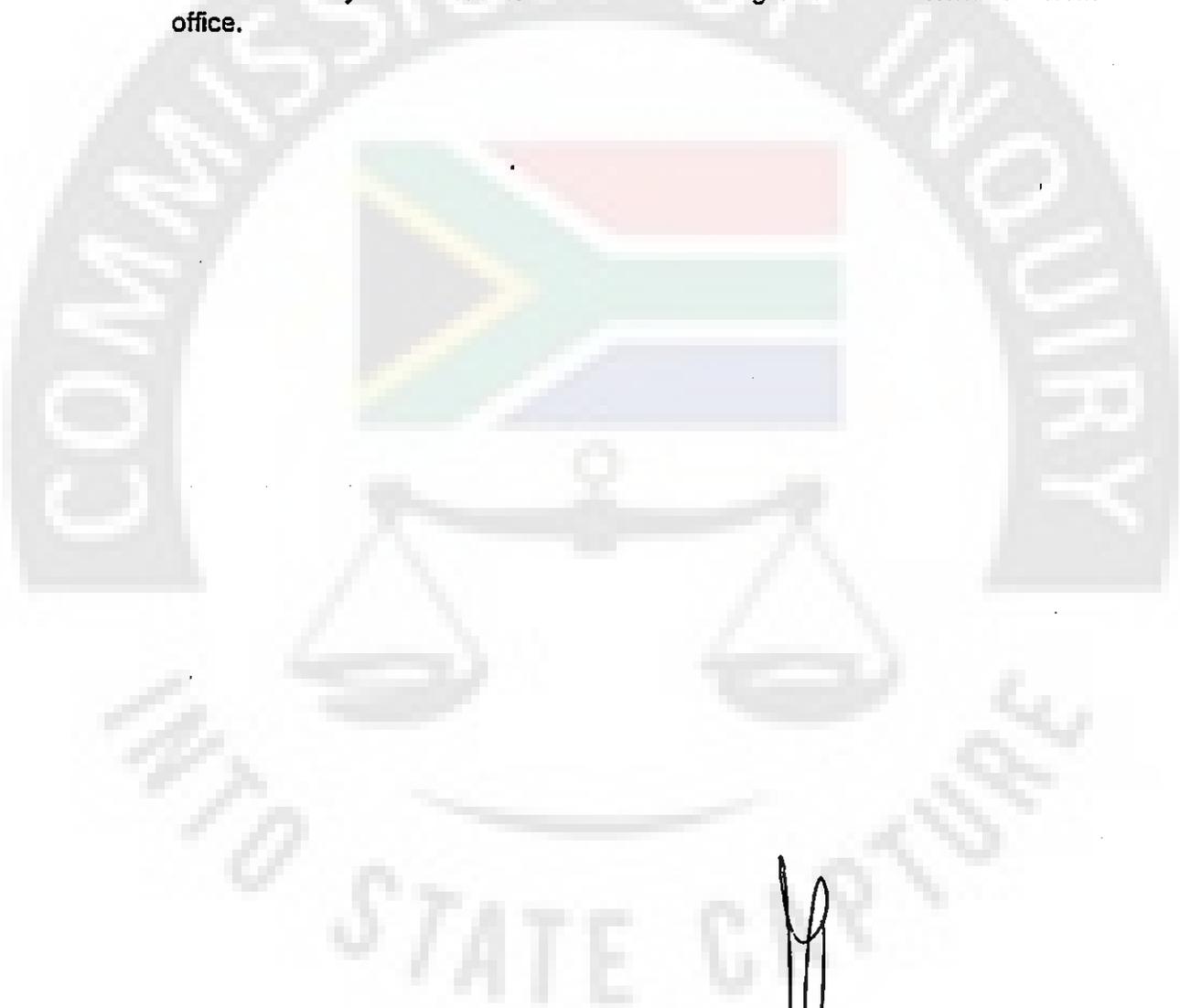
4.1.1 A lump sum payment for the remainder of the original term of office calculated according to the following formula:

- (a) first three months or part thereof: the gross monthly remuneration times the number of months or part thereof;
- (b) nine months thereafter or part thereof: 80% of the gross monthly remuneration times the number of months or part thereof;
- (c) twelve months thereafter or part thereof: 60% of the gross monthly remuneration times the number of months or part thereof;

Executive Protocol



- (d) the remaining months thereafter or part thereof: 30% of the gross monthly remuneration times the number of months or part thereof.
- 4.1.2 For purposes of calculating the compensation, the gross monthly remuneration (including the HoD allowance) as at the last of day of service according to the re-determined term shall be used.
- 4.1.3 The lump sum payment will be subject to the applicable income tax prescripts.
- 4.2 The executive authority of the department of the HoD may, with the approval of the Minister for the Public Service and Administration and the consent of the HoD, approve special measures to finalise any outstanding performance assessment on the last day of service of the HoD according to the re-determined term of office.



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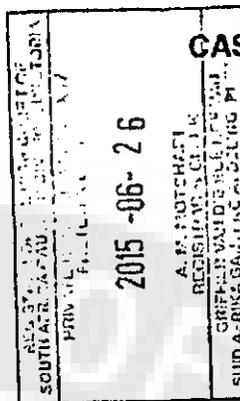
Private Bag X916
Pretoria
0001
Tel: +27 (0) 836 1063/1183
Fax: +27 (0) 828 7802
Website: www.dpsa.gov.za

Private X9148
Cape Town
8000
Tel: +27 (0) 21 467 5120
Fax: +27 (0) 21 467 5484
Website: www.dpsa.gov.za

STATE CAP

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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

REPLYING AFFIDAVIT

I, the undersigned

ROBERT MCBRIDE

do hereby make oath and state as follows:

- 1 I am an adult male, currently suspended from my position as the Executive Director of the Independent Police Investigative Directorate ("IPID"), situated at 114 Madiba Street, Pretoria. I am the applicant in this matter.

- 2 The facts set out in this affidavit are true and correct, and are within my personal knowledge unless the context indicates otherwise. Where I make legal submissions, I do so on the advice of my legal representatives.

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3 I have read the answering affidavit filed by the First Respondent (together with their annexures and confirmatory affidavits) and the explanatory affidavit filed by the Second Respondent.

4 In its explanatory affidavit, the Second Respondent has indicated that it will abide the decision of this Court and will withdraw its notice of opposition to this application. The Second Respondent's submissions are entirely of a legal nature, and I do not dispute those submissions. I accordingly accept that this Court ought not to make any order of costs against the Second Respondent.

5 For the sake of convenience, I refer to the First Respondent as "the Minister".

AMENDMENTS TO THE RELIEF SOUGHT

6 Since the supplementary affidavit and amended notice of motion was filed in this matter, developments have arisen that require amendments to the relief that I seek in this application.

7 At the time that I deposed to the supplementary founding affidavit, on 2 April 2015, I had been placed on precautionary suspension pending an "investigation and possible disciplinary enquiry".¹ On 6 May 2015, I received a notice from the Minister to attend a disciplinary inquiry,

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



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

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

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

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

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

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

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

³ Annexure RM2 of the Supplementary Founding Affidavit: Letter of suspension dated 24 March 2015 (p. 2 of the letter).



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- 11.2 Paragraphs 2.5, 2.6, 2.7(1), (3), (4) and (5) of chapter 7, and paragraph 19 of chapter 8, of the SMS Handbook; and
- 11.3 Regulation 13 of the Regulations for the Operation of the Independent Police Investigative Directorate (GNR 98 of Government Gazette 35018 of 10 February 2012).
- 12 A notice of intention to amend was served and filed in accordance with Rule 28(1) of the Uniform Rules of Court on 20 May 2015. A copy is attached for the sake of convenience as RJM 1.
- 13 On 29 May 2015, the Minister's attorneys advised my attorneys that they opposed the application to amend on the basis that *"it seeks to introduce a new case which is not pleaded in the founding papers and [the] supplementary affidavit"* and would prejudice the Minister who is entitled to answer the new case. A copy of this correspondence is attached as RJM2.
- 14 I do not accept that the proposed amendment constitutes "a new case", as the Minister contends. The reasons for the challenge to constitutionality of the Minister's disciplinary powers under these provisions vis-à-vis that Executive Director of IPID are the same as those that pertain to the Minister's power of suspension and removal. I seek the review and setting aside of the Minister's decision to institute the disciplinary inquiry against me on the same legality ground (the first ground) as is pleaded in the founding affidavit.

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

OVERVIEW OF REPLY TO THE MINISTER'S ANSWERING AFFIDAVIT

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

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



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of improper motive; and the Minister's decision is irrational and unreasonable).⁴

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

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

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

⁴ FA paras 30.2 and 30.3.

⁵ FA para 30.1.

⁶ AA para 8, read with the charge sheet annexed as NM1.

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

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

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

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

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

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

⁷ AA para 11.


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Q.G.

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

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

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

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

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

⁸ AA para 10.

⁹ AA para 102.

¹⁰ AA para 87.2.

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

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

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



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

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

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

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

THE IPID INVESTIGATION AND FINALISATION OF THE IPID REPORT

The January 2014 report

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



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

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

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

¹¹ The terms of reference of the Werksmans' inquiry are attached to the founding affidavit as annexure RM9.

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



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

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

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

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

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

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



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

33.3.2 Regulation 5(3)(i) must be read with section 7(4) of the IPID Act,¹⁴ which provides that the Executive Director must refer criminal offences revealed as a result of an investigation to the National Prosecuting Authority for criminal prosecution and notify the Minister accordingly. It is evident that the Acting Executive Director at the time (Ms Mbeki) did not authorise and refer the recommendation for prosecution in the January 2014 report to the NPA, nor was the Minister notified of the referral.

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

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

"(3) An investigator ... must, as soon as is practicable ... (i) after collecting all evidence, statements and technical or expert reports, if applicable, submit a report on the investigation of the offence to the Executive Director or the relevant provincial head, as the case may be, containing recommendations regarding further action, which may include... criminal prosecution of such member".

¹⁴ 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."*

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

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

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

35.1 Khuba stated in his interview that:

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

"1. The Case Worker initiates completion of a file through the Supervisor after completing a case investigation report;

2. The Supervisor reviews and quality assures directives and reports and recommends completion to the DI/PH [Director Investigations/ Provincial Head];

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

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

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

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*"Mosing was pressuring me, to say: This matter has been going on for a long time, you need to sign. I said: I will definitely sign, I'm going to sign. So I signed it... even though there were things that were outstanding...."*¹⁷

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

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

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

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

¹⁷ Khuba interview, 13 April 2015, p. 13, lines 1-8.

¹⁸ Mosing interview 17 April 2015, p. 24, lines 3-5.

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

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

My briefing on the investigation and the retrieval of the docket

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

¹⁹ Mosing interview 17 April 2015, p. 23, lines 13-25.



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

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

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

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

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

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

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

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

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

²⁰ AA para 32.



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

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

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

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

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

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

²¹ AA para 31.

²² AA para 33.

²³ AA para 34.

²⁴ AA para 35.

²⁵ AA para 40.



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

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

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

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

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

"... I got a request to say the ED [Executive Director] wanted to get an update on the case, what I did, if I'm not mistaken, I emailed the report to Mr Sesoko to give the report to Robert McBride, for his attention, so that when I met with him he would be well aware of the facts of the case. That report I gave him was not a signed report, but it was a copy – it might be the old one that I sent to the DPP. I can't remember which one, but it was a report



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

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

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

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

²⁶ Khuba interview 27 March 2015: Transcript, p. 44 line 22 – p. 45, line 19.

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

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

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

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



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

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

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

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

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



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

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

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

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

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

²⁷ At p 390.

²⁸ At pp 391-394.



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

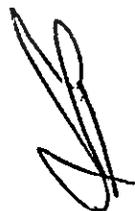
50.1 While Khuba informed me that the docket was with the NPA, I was not informed that it was in the possession of the NPA for a decision on prosecution.

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

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

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

²⁹ Werksmans’ report para 3.2.1.12.



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

51.1 As indicated, I deny that I gave any such instruction. I also deny that Khuba or Angus advised Werksmans that I gave such an instruction as no such statement is reflected in the transcripts of Khuba's or Angus' interviews with Werksmans.. To the contrary, Khuba explained to Werksmans that, upon retrieval of the docket from Van Zyl SC, he took the docket to Sesoko's office, attached hereto marked RJM14³⁰ Angus indicated that he went with Khuba voluntarily, attached hereto marked RJM15.³¹

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

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

³⁰ Transcript of Khuba's interview with Werksmans, 23 April 2015, pp. 14-15.

³¹ Transcript of Angus interview with Werksmans, 31 March 2015, p. 8

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

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

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

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

The finalisation of the IPID report in March 2014

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



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

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

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

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

...
"The issue is there was not even a single time where McBride said to me: Change the report to suit Dramat. He might have made inputs, he might have queried how things were done. Sometimes the issue – most especially the issue of having a crime intelligence member – he had a concern about it, to say: Are you people not independent? We indicated to him that we

³¹ Khuba interview 27 March 2015, p. 61, lines 2-5.

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*are independent.*³²

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

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

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

³² Khuba interview 27 March 2015, p. 96, lines 15-23.



THERE IS NO INCONSISTENCY IN MY ACCOUNT

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

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

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

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

³³ AA para 4B.



paragraph 51.1); that *"the final IPID report was the product of a thorough investigation process which included taking into account all the evidence gathered through the IPID investigation and making reasonable recommendations on the basis thereof"* (at paragraph 51.2); and that *"The preliminary draft of the IPID Investigation Report was also still subject to consideration and review by Sesoko as well as myself"* (at paragraph 51.5).

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

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



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IPID'S FINDINGS AND RECOMMENDATIONS ON DRAMAT AND SIBIYA

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

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

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

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

³⁴ AA para 14.

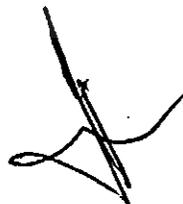
³⁵ Annexure NM17, paras 6.3 and 7.


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

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

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



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

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

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



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The instructions conclude by recording that *"The police docket CAS39077/2012 is attached, but must be returned to this office together with the required information"*.

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

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

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



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

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

AD SERIATIM REPLY TO THE MINISTER'S ANSWER

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

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

77 Ad paragraph 6.1

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

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



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

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

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



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

78 Ad paragraph 9

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

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

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

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



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

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

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

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

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

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

³⁶ *Independent Police Investigative Directorate and Another v Minister of Police and Another* (6588/2015) [2015] ZAGPPHC 13B (18 March 2015) at para 7.



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

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

81 Ad paragraph 9.3 (incorrectly numbered 8.3 in the AA)

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

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



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

82 Ad paragraph 10

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

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

83 Ad paragraph 11

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

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



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

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

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

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

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

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

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

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



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

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

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

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

89 Ad paragraph 14

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

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

90 Ad paragraph 15



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

91 Ad paragraphs 15.1 to 15.6

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

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

92 Ad paragraphs 15.7 and 15.8

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

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

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

93 Ad paragraphs 15.9 – 15.10



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

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

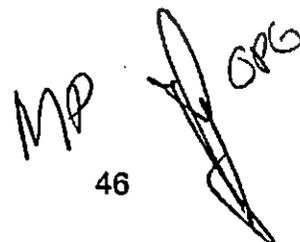
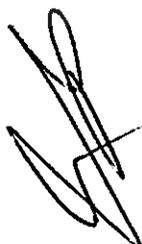
94 Ad paragraph 15.11

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

94.2 Mr Polela was not employed at DPCI at the time of the alleged meeting at the DPCI offices on 5 November 2010. Polela only joined DPCI in December 2010. This is confirmed in Polela's own statement (annexure NM7). Polela states that "*From December 2010 to May 2013, I was employed by South African Police Services as a spokesperson for DPCI ...*"³⁷

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

³⁷ At p 82.



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95 Ad paragraph 16, subparagraphs inclusive

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

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

96 Ad paragraph 17

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

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

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

97 Ad paragraph 17.1

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

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

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

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

98 Ad paragraphs 17.2 to 17.4

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

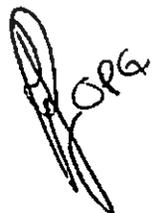
98.2 Their evidence was considered in the March 2014 report, and addressed as follows:

98.2.1 As regards the arrests on 5 November 2010:

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



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

98.2.2 As regards the arrests on 23 November 2010:

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



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

99 Ad paragraph 18, subparagraphs inclusive

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

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

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

“The letter retrieved from Captain Maluleke’s laptop provides a vital clue that his engagement in the operation did not receive the blessing of his superior. The letter was addressed to the Director General of Home Affairs requesting assistance in the deportation of Zimbabwean nationals involved in the murder of Zimbabwean police. Protocol dictates that a letter to such a senior person in the Home Affairs department could not have been signed off by an officer at the rank of Captain, but could have

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

99.4 I admit paragraph 18.4.

100 Ad paragraph 19

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

101 Ad paragraph 20

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

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

102 Ad paragraph 21

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



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

103 Ad paragraph 22

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

104 Ad paragraphs 23 and 24

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

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

105 Ad paragraphs 25 and 26

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



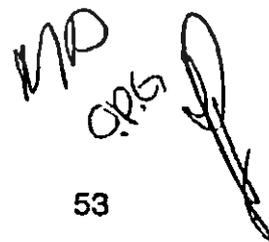
105.2 I deny that, at the time the January 2014 report was compiled and submitted, a sufficiently extensive and complete investigation had been conducted and captured in the report.

106 Ad paragraph 27

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

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

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



been removed. I attach the relevant page of the transcript as RJM24.³⁸

107 Ad paragraph 28

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

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

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

108 Ad paragraph 29

³⁸ Khuba interview 23 April 2015, p. 22, lines 21-23.



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

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

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

109 Ad paragraph 30

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

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

110 Ad paragraph 31

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



111 Ad paragraphs 32 to 35

111.1 I deny these paragraphs.

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

112 Ad paragraphs 36 to 39

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

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

113 Ad paragraph 40

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

114 Ad paragraphs 41 to 43 and 45

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

115 Ad paragraphs 44, 46 and 47

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

  
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116 Ad paragraph 48

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

117 Ad paragraphs 49 to 54

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

118 Ad paragraph 58

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

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

119 Ad paragraph 80

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



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

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

120 Ad paragraphs 84 to 85

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

121 Ad paragraph 86

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

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

³⁹ At p 393.

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

122 Ad paragraph 88

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

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

123 Ad paragraph 93, including subparagraphs

123.1 I deny the allegations in this paragraph.

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

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



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

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

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

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

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



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

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

125 Ad paragraph 105

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

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

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

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

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

"... I once spoke to the Minister, and when I spoke to the Minister when (sic) the Minister wanted to know: Are you sure you are cooperating. I spoke to the Minister, but Sesoko and McBride did not know that I had spoken to the Minister. I said to Sesoko: The Minister's PA called me. Of course she called me, she did call me, but I

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

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

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

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

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

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

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

126 Ad paragraph 111

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

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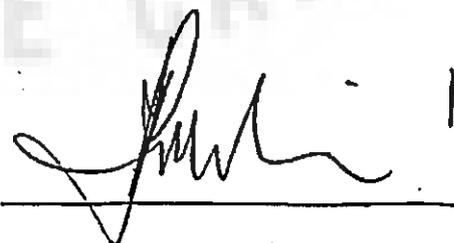
126.2 In my founding and supplementary founding affidavit, I have explained the reasons for my initial instruction to Khuba not participate in the Werksmans inquiry, and my reasons for subsequently changing my position.

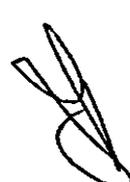
127 Ad paragraph 114.2

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

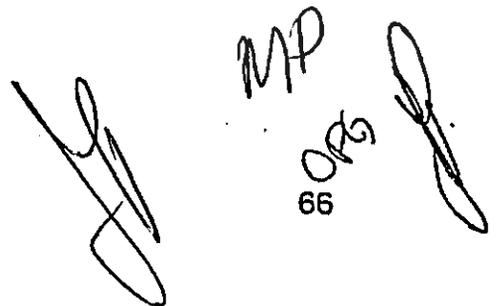
127.2 As regards the Minister's contention that he has never attempted to influence the decision-making process on the part of IPID in any of its high-profile investigations, I deny this and refer to what is stated in paragraph 125 above.

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




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ROBERT MCBRIDE



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

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

COMMISSIONER OF OATHS

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

CAPACITY

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

AREA



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RJM1

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

CASE NO: 6588/2015

In the matter between:

ROBERT MCBRIDE

and

MINISTER OF POLICE

MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION



First Respondent

Second Respondent

NOTICE OF INTENTION TO AMEND IN TERMS OF RULE 28

KINDLY TAKE NOTICE that the Applicant intends to amend the Notice of Motion in the following respects:

1. By inserting a new paragraph 2 which reads as follows:

"2. It is declared that the decision of the Minister of Police to institute the disciplinary inquiry to be commenced on 21 May 2015 against the Applicant is unlawful and invalid and the decision is set aside."

2. By renumbering the subsequent paragraphs.

3. By inserting "16A(1) and 16B" after the word "sections" and before "17(1)" in the renumbered sub-paragraph 3.2.

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4. By replacing "paragraph 2.7(2)" with "paragraphs 2.5, 2.6, 2.7(1)-(5)" in the renumbered sub-paragraph 3.3;
5. By inserting the words "and 19" after the words "paragraph 18" and before the words "of chapter 8" in the renumbered sub-paragraph 3.3.
6. By inserting the following as a new sub-paragraph 3.4:

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

7. By replacing renumbered paragraph 5.3 with the following:

"5.3 Sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act, 1994, paragraphs 2.5, 2.6, 2.7(1)-(5) of chapter 7 and paragraphs 18 and 19 of chapter 8 of the Senior Management Service Handbook, 2003, and regulation 13 of the IPID Regulations, shall be read as having no application to the Executive Director of the Independent Police Investigative Directorate."



MP

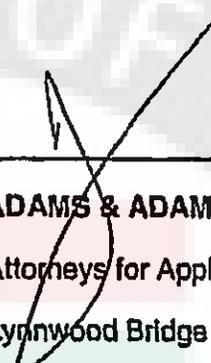
QPS



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TAKE NOTICE FURTHER THAT unless written objection to the proposed amendment is delivered within ten (10) days of receipt of this notice, the Applicant will amend the Notice accordingly.

SIGNED at PRETORIA on this 20th day of MAY 2015



ADAMS & ADAMS
 Attorneys for Applicant
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 4 Daventry Road
 Lynnwood Manor
 Tel: (012) 432 6000
 Ref: JSM/MG/LT2141


TO: THE REGISTRAR
 High Court of South Africa
 Gauteng Division, Pretoria


AND TO: HOGAN LOVELLS (SOUTH AFRICA)
 First Respondent
 22 Fredman Drive
 Sandton



CPG

935

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SERVICE VIA EMAIL

AND TO: **MINISTER OF PUBLIC SERVICE AND ADMINISTRATION**
Second Respondent

c/o State Attorney

316 Thabo Sehume Street

Pretoria

ccory@justice.gov.za

SERVICE VIA EMAIL



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MP

CRS

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RJM2
936**Varana Chutterpaul**

From: Thema, SJ [sj.thema@hoganlovells.com]
Sent: 31 May 2015 09:56 PM
To: Jac Marais
Cc: Sikhakhane, Lerato; Mayila, Londeka; Nkotswe, Daphney; Manisha Maganbhai-Mooloo; Michael Gwala; Varana Chutterpaul; Jameel Hamid
Subject: R McBride/Minister of Police & Another (Our Ref.: I35771/SJ Thema/L Sikhakhane/dn)
Attachments: Letter - Adams & Adams - McBride vs Minister of Police & Another - 29052015.pdf; Notice of Objection (Amendment) - R McBride vs Minister of Police & Another - (29-05) 2015.pdf

Good Day, Sir

Kindly take note of the attached letter and our notice of objection to your proposed amendment.

Kindly acknowledge receipt.

Regards,

SJ Thema
Partner

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Handwritten signatures and initials: A stylized signature on the left, 'MP' in the middle, 'OPG' below it, and another stylized signature on the right.



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29 May 2015

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Dear Sir/Madam

ROBERT MCBRIDE// MINISTER OF POLICE & ANOTHER
[CASE NO: 6588/15, GAUTENG DIVISION, PRETORIA]

1. We refer to the above matter and to previous correspondence herein.
2. We further refer to your client's latest notice of amendment which was served on us on 20 May 2015. We have considered the amendment and our client does not agree to the amendment because it seeks to introduce a new case which is not pleaded in the founding papers and your client's supplementary affidavit. The amendment will prejudice our client because our client would have been entitled to answer to this new case.
3. As a result, we accordingly deliver our client's notice of objection herein.
4. Our client's rights remain strictly reserved.

Yours faithfully

TRANSMITTED ELECTRONICALLY WITHOUT SIGNATURE

SJ Thema
Partner
Hogan Lovells (South Africa)

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[Handwritten signatures and initials: SJ Thema, MP, OPG]

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

CASE NO: 6588/2015

In the matter between:

ROBERT MCBRIDE

Applicant

and

MINISTER OF POLICE

First Respondent

MINISTER OF PUBLIC SERVICE AND ADMINISTRATION

Second Defendant

NOTICE OF OBJECTION TO THE PROPOSED AMENDMENT

KINDLY TAKE NOTICE THAT the first respondent objects to the prepared amendment of the notice of motion on the basis that:

1. It introduces a new cause of action not pleaded in the founding and supplementary affidavits; and
2. The respondent is prejudiced in that no opportunity was afforded to the respondent to answer to the aforesaid new case.

DATED AT JOHANNESBURG ON THIS THE 29TH OF MAY 2015



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**TO: THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
PRETORIA**

AND TO:

ADAMS & ADAMS ATTORNEYS

Attorneys for the Applicants

4 Daventry Street

Pretoria

E-mail: jacmarais@adamsadams.com

Service by Email

Received a copy hereof on
this the _____ day of May 2015.

For: Applicant's Attorneys



S July/EPID
17.04.15

ANTHONY MOSING

report I said was dated 13 February. So that was the only thing he wanted to add to the docket before he could finally submit the docket for a decision. I think that's why I perhaps wrote "draft" on this report. I want to see if he added ... 5

MR JULY: What was the conclusion of QUOBOSHEANE, the recommendation?

MR MOSING: It's the same. In fact she didn't make any recommendation - I think. 10

MR JULY: It then makes sense that the October one was still a draft, hence there was no recommendation.

MR MOSING: Yes. That one was a draft, and because we didn't want this decision to be only ours. They're the investigators, they are bound to indicate what the conclusion is of their investigation. I think that was one of the reasons why I said you must go and write your report in the usual format, and then he's the guy who makes a recommendation on prosecution. If they say there is no case, then at least there is a recommendation. The prosecutor will be guided also by what the attitude is of the investigator. It's probably contained 15 20 25

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5 July/IPID
17.04.15

ANTHONY MOSING

MR JULY: Yes. Then on page 9, on the report of 22 January, if you look at page 9 as well - look at the paragraph that starts in the middle with:

"He will state that ..."

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It's the fourth paragraph. It's in the middle.

MR MOSING: You know why? Remember I said this one is a draft.

MS BADAL: Oh, is this yours?

MR MOSING: Yes.

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MR JULY: Oh, let me show you this one.

MR MOSING: There would have been some changes. Can I just look to see what it says at the front? That's why I wrote "draft", because he needed to do something else before we could say yes. It will be identical, but there was something...

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MR JULY: It will be the pages that will be different. But the problem with this here is page 9.

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

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MS BADAL: This is 18 March.

MR JULY: On 18 March, where it is supposed to start with "He will state", after the paragraph ends

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17.04.15

ANTHONY MOSING

Because that whole report isn't consistent with the evidence.

MR JULY:

It is.

MR MOSING:

If you look at this one and you look at that one, you will see this one is more in line with the evidence than the later one is. That should also be conclusive that this report is...

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MR JULY:

That's fine.

MR MOSING:

Sandile, sorry, just on that report, so that there is no confusion, both of these are dated 22 January, but I think because there have been some changes maybe we must compare these two. As I indicated, I wrote "draft", and I think I wrote draft because he still had to do one or two things. Although the date is still the same, this was already like the end. You can see this thing is almost like a final thing. There was just maybe one thing or another that he had to add.

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MR JULY:

This one is the one that he signed.

MR MOSING:

Yes, this one he also signed. But, as I say, because there were maybe one or two things, I just want to check where exactly it was. Because you can see it starts there already,

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5 July/IPID
17.04.15

ANTHONY MOSING

where there is a bit of difference there. They will be identical, except maybe there was something that he - this was CHUMA, this was SIBANDA and NYENDA and NELSON CHAUKE ...

MR JULY: No, but this one could be the way that it came out when he printed the grid. 5

MR MOSING: Because this is now my copy, and we haven't really ...

MR JULY: Let's go to paragraph 4.3.

MR MOSING: 4.3 is: 10

"STATEMENTS OF HOME AFFAIRS OFFICIALS:

QABA, NDWANDWE, JACKSON, SKOSANA, LODEWICKUS ..."

Then you have:

"STATEMENTS OF SAPS: 15

MADILONGA ..."

Maybe MADILONGA's statement - these two are the same. I doubt there will be anything changed in this one.

MR JULY: No, this one is the same, you see. 20

MR MOSING: I know there must have been just some small thing that he did, which then accounts for the fact that the documents are not exactly the same.

MR JULY: But it will just be a question of the timing. 25

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S July/IPID
17.04.15

ANTHONY MOSING

After that it was this.

MR MOSING: Yes, because like I say this one is just my draft. It was almost complete to the final one, so I think he may have just - perhaps it could be that MOSEANE(?), the addition of her. 5
Because he had to deal with the evidence. If you can see where he says anything about her - because I think the rest will ...

MR JULY: This is what you submitted to the NDPP?

MR MOSING: Yes. Like I say, what actually happened, was I thought I hadn't kept copies, because I didn't make any. 10

MR JULY: You see, the difference between this one and this one, even if they differ in terms of the format, the conclusion is the same. 15

MR MOSING: Yes, and the statements are the same.

MR JULY: Then they come with another report, where the people who were also involved in the investigation are not even advised: We are now changing this report. Because even 20
MOUKANGWE was not advised.

MR MOSING: Yes, I don't think he would have ...

MR JULY: And they didn't even tell KHUBA - if you look, this was taken out, and I don't know why.

MR MOSING: KHUBA was also surprised. 25

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S July/IPID
17.04.15

ANTHONY MOSING

MR MOSING: It should be around page 24 or 25. I think that could have been the story, that his statement was not there, and I think we wanted him to give his side of it.

MR JULY: It says: "STATEMENTS OF SENIOR MEMBERS". 5

MR MOSING: Yes, "STATEMENTS OF SENIOR MEMBERS OF SAPS",

MR JULY: Then there is "STATEMENT OF HOW DIEPSLOOT" - this part is there.

MR MOSING: Yes.

MR JULY: INNOCENT KHUBA. So what makes a difference is 10 his statement, because after that his statement takes a lot of ...

MR MOSING: Here is an analysis of the evidence. So these few pages are the same, from what I do have.

MR JULY: Yes. 15

MR MOSING: And I know his statement is supposed to be in that thing, in the one we gave. Now I remember. That's why on this copy that I have, I wrote "draft", because it lacked his statement. Once he did that - and like I 20 said, in not making a copy I didn't anticipate something like this happening. Because we thought in good faith KHUBA would stand by that investigation and wouldn't be made to change it. In other words the original report 25

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5 July/IPID
12.4.15

ANTHONY MOSING

that he signed - although he had signed this
 one and I wrote "draft" on it - we said: This
 one is incomplete and you need to summarise
 your statement. I think maybe if you look at
 the docket, when was his statement 5
 commissioned? It was commissioned more or
 less at the same time, because it was the last
 thing he also did. Because he said although
 he had a draft of what he had done, we said:
 Do an investigating officer's statement, so to 10
 speak, explaining, because in this case he
 really needed to explain how this case
 unfolded, because it would help anyone reading
 the docket to understand what was going on.
 They could be easily confused, because there 15
 is a version here which we have to disprove.
 Now I remember. I think that's why we didn't
 even have this. You see, he didn't even
 change the date, he kept the date. It took
 him a day or two basically to finalise that. 20
 I was a bit worried as to that one.

MR TOM:

That one, as to the one you submitted to the
 NDPP?

MR MOSING:

Yes. You see what happened - and I'm not too
 sure how you got a copy of that thing. 25

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3 July/IPID
13.04.15

INNOCENT KHUBA

matters. MOSING was pressuring me, to say: This matter has been going on for a long time, you need to sign. I said: I will definitely sign, I'm going to sign. So I signed it.

MR JULY: You were signing the report ... 5

MR KHUBA: ... even though there were things that were outstanding. But I signed a report with recommendations.

MR JULY: In other words, what ANGUS says, is that what you believed to be the factual situation at the time when you signed the report, even if it changes later on, that report remains the final report. If things have to change you will then have to deal with it, and how do you deal with those issues that have cropped up? 10 15

MR KHUBA: What you are talking about I don't think is an issue of only departmental procedure. It's an issue of commonsense, that once you have made a recommendation you have done your investigation. If new evidence surfaces to rebut that, then you are able to advance: Now I have this and that and that. But you need to understand that when I was requested to submit the report, which I had already updated 20 25

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5 July/IPID
11:14:15

ANTHONY MOSING

discussions with the investigating team, so at no stage did he disagree really as to what was happening. I think there was a lot of pressure as well to terminate the investigation, to move over to arrest. We basically had to say: Make your investigation complete first, make sure you've got all the evidence, which at least indicates a *prima facie* case so that a prosecutor can take it forward and at least is assured of getting a conviction. But really there wasn't any pressure from anybody to say: Arrest this person and arrest that person, in a sense. But I'm saying of course this matter happened some time ago already, and there was some delay in really getting to the nitty-gritty, to the truth of the whole event, until we started making progress. It was just to make sure: Finish your investigation so that there is nothing extra to go and get. So by the time he then wrote the final report, which we then had agreed in terms of who would be charged, and so on - as I said, where we had agreed, and we mentioned names as well, as was mentioned in this report dated 22 January

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Varana Chutterpaul

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

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



[Handwritten signature]

MP

[Handwritten signature] ORG

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ipid

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

Private Bag X9525, Polokwane, 0700, 66 A Market Street, Fennie Building, 2nd Floor, Polokwane
Tel: (015) 291 9900 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)(l) 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

Secret

Page 1

MP

OPG

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1. BACKGROUND

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

2. SUMMARY OF ALLEGATIONS

The following allegations were made:

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

4. AVAILABLE EVIDENCE

4.1 STATEMENTS OBTAINED FROM INDEPENDENT WITNESSES

The following witnesses were interviewed and statements obtained.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Handwritten signatures and initials: A stylized signature, "MP", and "GPG" with a signature flourish.

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

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

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

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

4.2 STATEMENTS OF MEMBERS AT ORLANDO POLICE STATION

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

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

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

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

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

4.3 STATEMENTS OF HOME AFFAIRS OFFICIALS

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

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

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

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

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

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

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

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

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

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

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

4.4 STATEMENTS OF MEMBERS OF SAPS IN LIMPOPO

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATEMENTS OF DIEPSLOOT SAPS MEMBERS REGARDING GORDON DUBE

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

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

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

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

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

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

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

5. DOCUMENTARY EVIDENCE ACQUIRED FROM VARIOUS POLICE STATIONS

5.1.1. EXTRACTS FROM OCCURRENCE BOOKS & SAPS 14 REGISTERS

The investigation at Orlando Police Station uncovered the following:

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

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

The investigation at Alexandra Police Station uncovered the following;

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

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

The investigation at Silverton Police Station uncovered the following;

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

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

The investigation at Pretoria Moot Police station uncovered the following;

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

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

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

The investigation at Wierdabrug Police Station uncovered the following;

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

Body Receipts SAPS 216: They show that Gordon Dube, Andrew Dube and Dumani Silmusy 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

Handwritten signatures and initials: A large signature, MP, and a signature with 'CPG' next to it.

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

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

5.2 DOCUMENTARY EVIDENCE ACQUIRED FROM DPCI OFFICES.

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

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

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

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

5.3 EVIDENCE ACQUIRED FROM CAPTAIN MALULEKE'S SEIZED LAPTOP.

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

Handwritten signatures and initials: H, MP, and a large signature.

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

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

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

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

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

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

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

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

5.4 DOCUMENTARY EVIDENCE FROM HOME AFFAIRS

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

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

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

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

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

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

5.5 EVIDENCE IN TERMS OF SECTION 205 OF THE CRIMINALPROCEDURE ACT.

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

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 [Handwritten signatures]

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

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

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

5.6 **STATEMENTS OF SENIOR MEMBERS OF SAPS**

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

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

6. ANALYSIS OF EVIDENCE AND FINDINGS.

The following findings were made;

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

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 [Handwritten signatures and initials]

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

- Evaluation of the above findings: The success report signed by Leonie Verster was traced to Lt Col Maluleke's laptop as picked from the retrieved deleted data. The report was amended on 26/01/2011 and 31/01/2011 before it could be emailed to a female officer, Warrant Officer Thabiso Mafalla on 09/02/2011 at 14h32. There is no material difference between the document retrieved from the laptop and that found at the Hawks offices during investigation. This proves that Leonie Verster did not generate success report but only signed the report drafted by Captain Maluleke. The date of the meeting between Zimbabwean Police and General Dramat which took place on 05/11/2010 coincide with the date of the 4th of November 2010 which according to cellphone records, General Dramat was called at 20h56 by Lt Col 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 Gauleng late at night, leaving them with the opportunity to have the meeting with General Dramat in the morning of the 5th of November 2010.
- o He committed the government resources into the operation: Apart from other resources used, on 08/11/2010 Captain Maluleke went to Beit Bridge (Limpopo) for Transporting Zimbabwean Nationals and claimed overtime. On 24/11/2010 he went to Beit Bridge and also claimed overtime. On 28/01/2011 he went to Beit Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.
 - Evaluation of the above findings: Despite the fact that General Dramat as an Accounting Officer did not sign any claim of Captain Maluleke, delegating responsibility to Major General Sibiya to assist the Zimbabwean Police in tracing wanted suspects invariably commit government resources into an unlawful operation that amount to a criminal offense.
- o He congratulated officers for arresting Johnson Nyoni and advised them to keep it a secret: According to Constable Mkasibe and Mgwenya, shortly after the photos were taken, they saw General Dramat of the Hawks walking towards them from house number 1. General Dramat addressed them and thanked them for arresting the suspect. He warned them not tell anyone about the operation they had just done.
 - Evaluation of the above findings: Words of appreciation from General Dramat show both interest in the arrest of the Zimbabwean Nationals and his knowledge of the unlawfulness of the operation. If the operation was lawful he would not have warned them not to tell anyone about it.

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





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

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

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

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

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

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

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

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

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

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

RECOMMENDATION

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

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

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

Mr. HI KHUBA
ACTING PROVINCIAL HEAD
IPID: LIMPOPO



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RJM7
976S July/181D
17.04.15

ANTHONY MOSING

properly. In fact, summarise all this evidence and mark it accordingly, to say: A1 says this, A2 that, A3 that. There were some inaccuracies in terms of that. But you will see I made pencil notes. So he went back and of course he did that. Then I think around 22 January 2014 was when the report was brought in this fashion, of which I have copies. There was one last thing that KHUBA needed to get before we could say we were closing the investigation from our perspective. Remember now, we were merely asked to assist the investigation. It was made clear to the investigators that the decision to prosecute is not ours, it's not myself and BILLY, it is going to be the DPP.

MR JULY: All they do even then, is they recommend.

MR MOSING: Yes, they recommend. But I'm saying our role in the matter we made clear to them, that this report is not given to me so that I can make a decision, we would submit it to the relevant DPP office, who would take it, and we were merely guiding that investigation and assisting them. As I said, we had continuous

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5 July/1P1D
27.03.15

INNOCENT KHUBA

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

MR JULY: Maybe before you proceed, all that you wanted to do with this new information was to make it part of the report? 5

MR KHUBA: Yes.

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

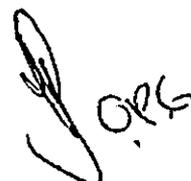
MR KHUBA: To tell you that straight, by that time I had not yet - you see, there is a difference 10 between updating new evidence in terms of saying what its impact is, and also the issue of ...

MR JULY: ... of saying how does it get you to a conclusion. 15

MR KHUBA: Yes, for me I was typing stuff in. I had not yet started with the issue of saying: What is the value of this, what is not the value of this, how does it impact and how does it not impact. I want to say that it was material to 20 the investigation, but I had not yet started with it. Because I got a request to say the ED wanted to get an update on the case, what I did, if I'm not mistaken, I emailed the report to MR SESOKO to give the report to 25



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5 July/191D
27.03.15

INNOCENT KHUBA

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

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MR JULY:

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

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MR KHUBA:

Mmm?

MR JULY:

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

MR KHUBA:

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

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S July/IPID
23.04.15

INNOCENT KHUBA

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

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MR JULY:

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

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MR KHUBA:

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

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RJM 10
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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 6588/2015

In the matter between:

ROBERT MCBRIDE

Applicant

and

MINISTER OF POLICE

First Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned

MOSES DLAMINI

do hereby make oath and say:-

1.

1.1. I am an adult male employed in the position of Director of Communications and National Spokesperson at the Independent Police



981

Investigative Directorate ("IPID") situated at City Forum Building, 114 Vermeulen St, Pretoria.

1.2. The facts herein contained herein fall within my own personal knowledge and are, to the best of my belief, both true and correct unless the context indicates otherwise.

2.

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

MOSES DLAMINI

Thus signed and sworn to, before me, at PRETORIA on this the ____ day of JUNE 2015, by the Deponent, who has acknowledged that she knows and understands the contents of this affidavit, that she has no objection to taking the prescribed oath and that the prescribed oath is binding on her conscience.

COMMISSIONER OF OATHS

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MP *[Handwritten signature]* *OPG*

RJM II
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**Fw: Emailing: RESPONSE TO QUESTIONS POSED BY IPID - MAJOR
GENERAL SHADRACK SIBIYA**
Innocent Khuba to: Louisa Tempo

2015/05/20 09:58 AM

— Forwarded by Innocent Khuba/Limpopo/IPID on 2015/05/20 09:58 AM —

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

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

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

TEL: +27 128456366
MOBILE: +27 847388076

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

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

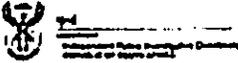
From:	Matthews Sesoko/NorthWest/IPID
To:	Innocent Khuba/Limpopo/IPID@IPID
Date:	2014/02/27 12:58 PM
Subject:	Fw: Emailing: RESPONSE TO QUESTIONS POSED BY IPID - MAJOR GENERAL SHADRACK SIBIYA

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

MP *OPG*

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Cell: 0836328749



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

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

FYI

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

From:	GP:DPC DPCI Secretary <gdpdcisec@saops.gov.za>
To:	<TMahibila@ipid.gov.za>
Date:	2014/02/28 02:23 PM
Subject:	Emailing: RESPONSE TO QUESTIONS POSED BY IPID - MAJOR GENERAL SHADRACK SIBIYA

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

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

Respectfully

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

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

[Handwritten signatures]
MP
OPG

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A good head and a good heart are always a formidable combination - Nelson Mandela

--- on Thu, 13 Feb 2014 17:15:59 +0200 <Ikhuba@lpd.gov.za> Message from ---

gdpdcisec@saps.gov.za	"GP:DPC DPCI Secretary"	To:
	warning statement	Subject:

Good day General

Attached please find the questions for the purpose of a warning statement as discussed with Mr Sesoko

Kind Regards

I H KHUBA

Confidentiality and Disclaimer

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The National Prosecuting Authority of South Africa

6 July/1970
27.03.15

INNOCENT KHUBA

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

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MR JULY: Why don't we ...

MR KHUBA: ... eat? I think you would want energy. 10

THE INTERVIEW ADJOURNS FOR LUNCH

THE INTERVIEW RESUMES

MR JULY: We are back now.

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

MR JULY: Yes.

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

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3 July/IPID
27.03.19

INNOCENT KHUBA

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

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

MR JULY:

Yes, I remember. He started late.

MR KHUBA:

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

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S July/1P:D
27.03.15

INNOCENT KHUBA

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

MR JULY: Maybe before you proceed, all that you wanted to do with this new information was to make it part of the report? 5

MR KHUBA: Yes.

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

MR KHUBA: To tell you that straight, by that time I had not yet - you see, there is a difference 10
between updating new evidence in terms of saying what its impact is, and also the issue of ...

MR JULY: ... of saying how does it get you to a conclusion. 15

MR KHUBA: Yes, for me I was typing stuff in. I had not yet started with the issue of saying: What is the value of this, what is not the value of this, how does it impact and how does it not impact. I want to say that it was material to 20
the investigation, but I had not yet started with it. Because I got a request to say the ED wanted to get an update on the case, what I did, if I'm not mistaken, I emailed the report to MR SESOKO to give the report to 25

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5 July/TPID
27.03.16

INNOCENT KHUBA

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

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MR JULY:

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

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MR KHUBA:

Mmm?

MR JULY:

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

MR KHUBA:

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

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5 July/IPID
27.03.15

INNOCENT KHUBA

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

I sent that report. After I sent that report I got a call to say that the ED would want to

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

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

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because I met him again for a second time, but the first day what I did was to explain to him exactly what I explained to him in terms of

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the processes from the beginning to the end: how I received this case, how I investigated this case, and what happened, until the conclusion. There was nothing about anything

except for me to brief him. After I briefed him, he said: Okay, we are going to meet again. I left his office and went through to

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MR SESOKO. At that time MR SESOKO was at home, somewhere in KEMPTON PARK, because we were supposed to have an investigator's

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5 July/IPID
27 07.15

INNOCENT KHUBA

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

MR JULY: Oh, yes, on the EAST RAND? 5

MR KHUBA: Yes, on the EAST RAND.

MR JULY: I know about that.

MR KHUBA: I was staying at CITI LODGE, just before the airport, when you come from PRETORIA. I was staying around that side. I firstly went to 10

MR SESOKO and I briefed him. I said: Mr SESOKO, I had a meeting with the boss, and the boss wanted me to brief him about the case.

After I indicated to MR SESOKO what happened, I went back to the hotel and the following day 15

we had to meet. I think it was a continuation of the briefing, because MR SESOKO did not call me. At that time I did not even have his number. I received a call from MR SESOKO to say that we are going to meeting again. 20

After leaving the hotel I went straight to PRETORIA to meet with McBRIDE, as well as the...

MR JULY: This is now the following day?

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

MP OPG

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5 July/1910
27 30.15

INNOCENT KHUBA

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

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5 July/TP10
27.03.15

INNOCENT KHUBA

came back to me.

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

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5 July/EPID
27.03.15

INNOCENT KHUBA

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

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

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5 July/1910
27.03.15

INNOCENT KHUBA

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

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5 July/TPID
27.03.15

INNOCENT KHUBA

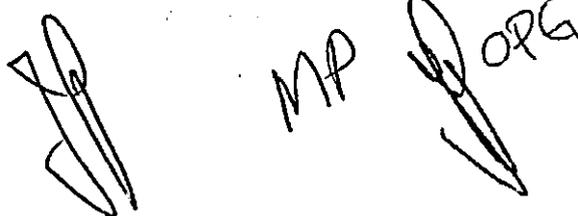
operation was illegal, there was a possibility. But my question was: How possible is it that I can win this case, most especially if you present this. The defence attorney is going to tear you apart, to say: 5
How can you make a point out of assumptions? I had a challenge with that. So I indicated, to say: My biggest problem is that this part of the evidence here is really a challenge. 10

MR JULY:

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

MR KHUBA:

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



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5 July/1PID
27.03.19

INNOCENT KHUBA

committed. I think he asked that, he said:
Where was crime committed? Who are these
people who are involved. He said he is not a
legal person, but he just wanted to know where
a crime was committed. So even though we did 5
not answer this question there, when we went
to check the report, because we had to come up
with a final one, based on the new evidence.
Either way I had to include the new evidence.
There were a number of questions he asked, but 10
I cannot remember the detail of this
and that, and that. What I remember is he
said: When was the crime committed, was it
committed when these people were searched for,
when these people were arrested - there were 15
a lot of issues that we debated regarding that
issues, because we had to check where crime
was ...

MR JULY: Is the crime not that here the crime starts -
you can have a number of activities ... 20

MR KHUBA: ... that complete the crime?

MR JULY: ... that complete the crime. Assault would be
an activity which is committed on those people
who were assaulted, but when something happens
with my knowledge, I know that there are 25

 MP  OPG

5 July/IPID
23.04.15

INNOCENT KHUBA

went to JOHANNESBURG.

MR KHUBA:

Yes.

MR JULY:

To the office of the DPP, SOUTH GAUTENG.

MR KHUBA:

Yes.

MR JULY:

What was your reason for going there?

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MR KHUBA:

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

MR JULY:

Who asked?

MR KHUBA:

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

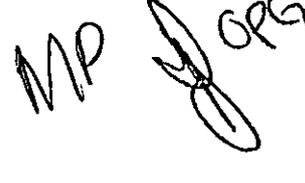
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The question was where? Because the following day there was a very important summit which I was supposed to attend near BOKSBURG. But we said no, we were not going to attend. We were given an opportunity to say: Don't attend, go straight. On the issue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

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 MP  OPS

5 July/1P1D
23.04.15

INNOCENT KHUBA

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

MR JULY: So you went to ... 15

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

MR JULY: That now we have the docket?

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

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

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

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5 July/IPID
23.04.15

INNOCENT KHUBA

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

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MR JULY:

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

MR KHUBA:

The docket?

MR JULY:

Yes.

MR KHUBA:

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

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MR JULY:

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

MR KHUBA:

Probably the question should be: If you alone

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RJM15

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July/IP.D
31.03.15

GLEN ANGUS

I'm very honest about that.

Then we went up to SESOKO's office, but it was very uncomfortable because they were not really speaking to me either, and I felt very much like the outsider. When we got to the office, they were saying that they don't understand. I said: Look, guys, with all respect ...

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MR JULY:

You went to SESOKO's office?

MR ANGUS:

Yes, me, SESOKO and KHUBA. Now they were saying to me that they don't understand. I said: Look, I don't understand either. The boss called me, I had to be here this morning at 8:00, I'm here, he told me I must go with you guys now and have a look at what is going on. I told them straight, and said: I'm uncomfortable about this, and I really don't want to get involved in this. I don't know what it's about, I don't know, but why must I be second-guessing your work, is there something that is wrong, or whatever? They were saying no, and this and that, they were still busy with the investigation, they've still got to do this, there was something about the plotting that needed to be done, the

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SJuly/IP:D
31.03.15

GLEN ANGUS

Analyst Notebook, and all of that type of stuff.

Now, I know Analyst Notebook, and I know how those things work, and everything. I said: Okay, it's fine. They said the next morning KHUBA was going to go to the service providers, and he was going to go and collect the information of the plotting of the cellphone numbers, and all of that stuff. I said: No, that's fine, let me go with you, because what else am I supposed to be doing now? 5 10

The next morning - by chance we found out that we were staying at the same hotel near the airport, a TOWNLODGE or CITILODGE because the conference was in that direction. So I didn't speak to them for the rest of the day, I left head office and went to the hotel and carried on. The next morning, just after breakfast, I met KHUBA outside, and I went with him in his car. We went to a place somewhere in JOBURG - I don't even know where it was. On the way there in actual fact we didn't even talk about the case, that I can recall. He spoke about how Analyst Notebook works, and this and that. I didn't want to cut him short, 15 20 25

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RJM 16

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S July/TPID
27.03.15

INNOCENT KHUBA

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

MR JULY:

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

MR KHUBA:

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

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5 July/1910
27.03.15

INNOCENT KIUWA

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

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

MP JORG

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

1

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

2

On 23 February 2015 I received a call from a person who introduced himself as Advocate George Baloyi from Director of Public Prosecution. He indicated that he is dealing with Diepsloot Cas 390/07/2012 and he would want to talk to me about the evidence in the case. We discussed the evidence of case over the phone including evidence against General Sibiya and General Dramat. He said that he had studied the dockets without the use of the so called new or old report because he wanted to gain proper perspective of the evidence without being influenced by the report. He told me that with the available evidence and the absence of the key witness Col Madllonga, there is no way that he will be able to prosecute General Dramat. He requested me to e-mail him the so called old report on rendition case as he only heard about it in the media.

3

On 03 March 2015 I went to Advocate George Baloyi's office accompanied by Mr V Maoka of legal services. Upon our arrival we greeted him and I discovered that Mr Maoka and Advocate George know each other. We then discussed the evidence in the case including evidence against General Sibiya and General Dramat. He indicated that he thinks that there is a case against General Dramat and General Sibiya despite Mr Maoka's opinion on the evidence at hand against the two Generals. We then informed him that IPID can only make recommendation but he has to make final decision on the matter.

4.

On our way out Advocate George Baloyi said that in situation like this, it is very difficult but one had to bite the bullet. He promised to send guidelines for further investigations including interpretation of cellphone records by the service provider. Since then I have not yet received any guidelines from him.

That is all I can declare.





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I know and understand the content of this statement.

I have no objection in taking the prescribed oath.

I consider the prescribed oath binding on my conscience.

I swear that everything I said is the truth, so help me God.

SIGNATURE OF DEPONENT: [Signature]

PRINT SURNAME AND INITIALS: INNOCENT H IKHUSA

DATE: 2015/03/20

I certify that the above statement was taken down in my presence and the deponent acknowledges that he/she knows and understands the contents of this statement. This statement was sworn/confirmed before me and the deponent's signature was put in my presence.

DATE: _____ COMMISSIONER OF OATH: [Signature]

TIME: _____ NAME AND SURNAME: MADISA P. UH

PLACE: _____ RANK: DIRECTOR: LITIGATION SERVICES

IPID

INDEPENDENT POLICE INVESTIGATIVE
DIRECTORATE
2015 -03- 23
PRIVATE BAG X941
PRETORIA
0001

[Signature] MP [Signature] OPS

SWORN AFFIDAVIT

I, the undersigned

PULE VICEROY HILLARY MAOKA

do hereby state under oath and say:-

1.

On the 3 March 2015, I accompanied Mr Innocent Khuba, the Provincial Head for the Limpopo Province of the IPID and the Investigator of the Diepsloot CAS 390/07/2012 to the offices of the DPP, Pretoria in order to meet Advocate George Baloyi.

2.

The purpose of the meeting was that, Advocate Baloyi wanted to discuss the Diepsloot case with Mr Khuba as the investigator.

3.

The reason I accompanied Mr Khuba was to understand and share in the discussion because of my prosecutorial background.

[Handwritten signature]

[Handwritten initials: @ MP, 185]

[Handwritten signature: OPG]

4.

Discussion ensued about our views regarding who must be charged and on what charges. Mr Khuba and I made it clear to Advocate Baloyi that we stand by our recommendations.

5.

He indicated to us that the view of his "Boss" (the DPP), is that Lt. General Dramat must also be charged because, as the head of the unit, there is no way that Dramat could not have known about the conduct of Maluleke and others. We were surprised by the sudden turn of events, because on the 23 February 2015, Advocate Baloyi informed Mr Khuba that based on the evidence he was not going to prosecute Sibiya and Dramat.

6.

I told Advocate Baloyi that although it his prerogative to decide, the decision to charge Sibiya and Dramat, was based on speculation and suspicion.

7.

I canvassed with him the fact that Madifonga (the deceased witness) statement is inadmissible because it is not a dying declaration. Further, that reliance on the phone records proves nothing other than that there was communication between the Beilebridge border post telephone numbers with the cell phone number belonging to Dramat.

8.

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Regarding the SMS' report, I brought to the attention of Adv. Baloyi that, it is my view that there is no evidence that Dramat is or was aware about the contents of the success reports, however, in the case of Lebea, there is stronger evidence to the effect that he was aware about the contents of the success report due to the fact that Lebea had acknowledged one report. As a result, should a decision be made to charge Dramat, based on the success report, it follows that Lebea must also be charged. In fact, in the case of Lebea there was strong proof that he received same. I also brought to the attention of Adv. Baloyi that this case was similar to the case of Major General Booysen. Further, the fact that Sibiya sent SMS' to both Lebea and Dramat, which was the DPCI's mode of communication does not prove anything or suggests any impropriety.

9.

Regarding the meeting held at DPCI Head office in Silverton, there are conflicting statements about whether or not Dramat was present. Further, that whatever Dramat may or may not have said does not in any way suggest that he knew that the operation was conducted illegally or that the illegal operation had his blessings.

10.

Interestingly, Advocate Baloyi made the same observation that it would seem the crime intelligence police falsely implicated Sibiya whilst they knew that the actions of Maluleke were unlawful, referring to a statement by one of the witnesses.

11.

Advocate Baloyi told us that he wanted to consult with his DPP (Adv Mzinyathi) and left us in his office. On his return he told us that they have decided that Dramat must be charged and that we will have to bite the bullet.

Handwritten signatures and initials, including 'MR' and 'DPP', are present at the bottom right of the page.

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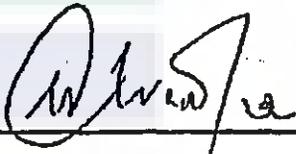
12.

I requested Adv. Baloyi to send us a minutewith his instructions indicating which investigations he still wanted to be conducted further. To-date we have received nothing despite an e-mail by Mr. Khuba reminding him of same.

13.

I was surprised to learn from City Press that Advocate Mziyanyathi, stating that there are few things to be followed up. However, to-date still we have received nothing from his office.

DATED AT PRETORIA ON THIS THE 23 MARCH 2015.


DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, that he has no objection to the taking of the prescribed oath and that he considers this oath to be binding on his conscience.

Signed and sworn before me at PRETORIA on this the 23 March 2015.

COMMISSIONER OF OATH:  MP

NAME AND SURNAME: MZIYANYATHI

RANK: PH - CHIEF DIRECTOR

Business Address: 15 WEST BURGUM STREET
BLOEMFONTEIN
9301.

 OPG

INDEPENDENT POLICE INVESTIGATIVE
DIRECTORATE
2015-03-23
PRIVATE BAG X941
PRETORIA
0001

**Director of Public Prosecutions
Gauteng Local Division**



Reference Number: 9/2/12(2014/236)
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Telephone number: (011) 220-4000

23 April 2015

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The Acting Executive Director
Independent Police Investigative Directorate
Private Bag X941
Pretoria
0001

BY HAND: Mr G Angus

RE: RENDITION CASES: DIEPSLOOT CAS 390/7/2012

1. The following further investigation must be done before a decision can be taken:

- i. An expert analysis of the cell-phone data in respect of Major General Sibilya in relation to the allegation by witnesses that Maj Gen Sibilya was at the scene of the crime where the victims were assaulted and in Fourways where a meeting was held on 5 November 2010 about the operation. The same applies for the operation conducted on 23 November 2010 as well as the "braai" at Silverton on 26 January 2011.
- ii. A transcript of SMS messages sent or received by Lt Col Maluleke, Maj Gen Lebeya and Lt General Dramat during the period of the operations must be obtained.
- iii. The cell phone records of Col M Potele for 26 January 2011 must be obtained and his location must be established during the alleged braai. The position or location of Lt General Dramat must also be established. See in this regard A.68; A.69; and A.79.

Justice in our society, so that people can live in freedom and security

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- IV. Chain statements regarding the success reports sent to Lt General Dramal to establish proof of receipt and knowledge of the content thereof must be obtained.
- V. The annexures referred to in Willem Carel Stephanus Vorster, A50, must be attached to his statements.
- VI. Death certificates of all suspects allegedly killed by the police and a copy of the transcript of the court proceedings in Zimbabwe against Gudi Duba who was allegedly sentenced to life imprisonment.
- VII. The relevant Department of Home Affairs directive (that is, the so-called amnesty document) as it applied to Zimbabwean nationals during the period of arrest and deportation of the suspects by the police.
- VIII. The Integrity Management Unit (IMU) file compiled by DANIO Ntshamu (A.80).
- IX. A sworn statement from Interpol about whether or not they were approached or consulted by the SAPS regarding the suspects being wanted for any crime.
- X. A statement from the prosecutor who dealt with the Atteridgeville cases against the accused regarding their withdrawal. According to A.70 and A.72 Lt Col Matuleke had a discussion with the prosecutor. The relevant docket must also be obtained.
- XI. It must be established which car/s Maj Gen Sibuya used in his official capacity during the relevant times. Description and colour is required.
- XII. A copy must be obtained of all the photos in possession of Emmanuel D Mkasibe (A.68).
- XIII. According to W/O P Jawuke (A.5) as well as D Campbell (A.6) a case docket was opened against them for attempted murder or wanting to kill Maj Gen Sibuya. This was the result of their refusal to take part in the harassment and/or disarming of Col Ximba. The Guided by the Constitution, we in the National Prosecuting Authority ensure justice for the victims of crime by prosecuting without fear favour or prejudice and by working with our partners and the public to solve and prevent crime



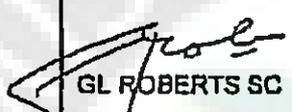
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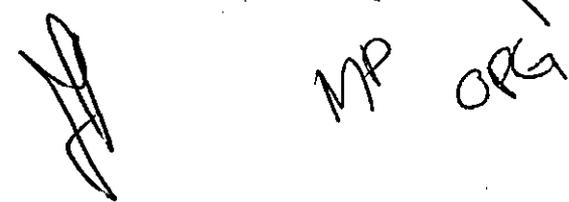
CAS number of this docket must be obtained and the docket must be submitted to this office for perusal. The I/O in this matter was Lt Col Lebeya who must also submit an affidavit in this regard. See A.6.

2. The matter must be regarded as urgent and the investigation must be completed on or before 12 May 2015.
3. The police docket CAS 3907/2012 is attached, but must be returned to this office together with the required information.


GL ROBERTS SC
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS
GAUTENG LOCAL DIVISION, JOHANNESBURG
TF

Guided by the Constitution, we in the National Prosecuting Authority
honour justice for the victims of crime by prosecuting without fear
favour or prejudice and by working with our partners and the public to
solve and prevent crime

Page 3 of 3


MP ORG

Research Report
**South African Police Services' (SAPS)
Compliance with Recommendations by
the Independent Complaints Directorate**

Johan Burger, ISS & Cyril Adonis, ICD

Joint Research Project conducted by the
Independent Complaints Directorate (ICD) &
the Institute for Security Studies (ISS)

December 2007



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The vision of the Institute for Security Studies (ISS) is one of a stable and peaceful Africa characterised by sustainable development, human rights, the rule of law, democracy and collaborative security. As an applied policy research institute with a mission to conceptualise, inform and enhance the debate on human security in Africa the organisation supports policy formulation and decision making at every level towards the enhancement of human security for all in Africa. The Institute supports this vision and mission by undertaking applied research, training and capacity building; working collaboratively with others; facilitating and supporting policy formulation; monitoring trends and policy implementation; and collecting, interpreting and disseminating information.

The Independent Complaints Directorate (ICD) is a government department, which operates independently to investigate complaints of brutality, criminality and misconduct against members of the South African Police Service (SAPS), and the Municipal Police Service (MPS). ICD's vision is a transformed police service in line with the spirit and purport of the Constitution. ICD's main aim of existence is to serve the public against infractions by the police, and this role is a commitment to transforming SAPS so that it responds to the natural needs of security which the average person naturally aspires to. Closely allied to this is ensuring that those who do not apply the basic legal tenets of protecting the general public within accepted norms of equity and justice, realize that their actions cannot be tolerated within the constitutional framework. ICD's mission of promoting proper police conduct is what clearly defines its work and is a tool that it uses to measure its contributions to society.

It should be noted that any opinions expressed in this report are the responsibility of the authors and not of the ICD or of the ISS, its Advisory Council, the Trustees or any funder or sponsor of the ISS.

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The Proactive Research Unit (PRU) of the Independent Complaints Directorate (ICD) and the Institute for Security Studies (ISS) would like to acknowledge and express its sincere gratitude to the following individuals/parties who made this study possible:

- ICD National Office and the ICD Provincial Offices, which facilitated the research through direct participation and allowing the research team access to case dockets;
- Provincial Commissioners of the South African Police Service (SAPS) who participated in the study;
- The Open Society Foundation of South Africa (OSF-SA) for their generous funding contribution towards the project;
- The research team who worked tirelessly to bring the project to fruition.



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Executive Summary

The Independent Complaints Directorate (ICD) is an independent mechanism established to promote proper police conduct and to ensure a transformed police service in line with the spirit and purport of the Constitution. In an effort to ensure that those police officers who do not uphold the rule of law are held accountable for their actions, the ICD makes recommendations as to how these officers should be dealt with, both departmentally and criminally. As a result, the role of the ICD forms part of the ongoing commitment to transform policing in South Africa. This project had its roots in an agreement between the ICD and the Institute for Security Studies (ISS) to undertake a joint research project to, firstly, establish the extent to which the police comply with recommendations made by the ICD and, secondly, to make recommendations that would address areas of non-compliance.

Researchers employed a triangulated methodology consisting of both qualitative and quantitative approaches in order to maximize the potential for meeting research objectives. The sample for the quantitative component of the study consisted of 573 case dockets of substantiated and closed cases lodged with the ICD since its inception. The qualitative sample consisted of 8 ICD provincial heads and 5 SAPS provincial commissioners (or senior officials delegated by them). A structured questionnaire was designed to systematically extract relevant data from the case dockets. Furthermore, two semi-structured questionnaires containing open-ended questions were administered to the ICD Provincial Heads and the SAPS Provincial Commissioners. The open-ended nature of the items provided for the generation of qualitative data. Quantitative data was statistically analysed using the Statistical Package for the Social Sciences (SPSS), while Qualitative data was thematically analysed.

Several findings were made with regards to the following:

- ❑ The relationship between the ICD and the police;
- ❑ The processes and procedures used by the ICD;
- ❑ The (lack of) resources at the disposal of the ICD;
- ❑ The level of police compliance; and
- ❑ The impact of ICD recommendations.

From these findings, recommendations aimed at the following, emerged:

- ❑ Enhancing the independence and credibility of the ICD;
- ❑ Legislative changes aimed at addressing legislative deficiencies in the ICD's mandate;
- ❑ Measures that will regulate co-operation and co-ordination between the ICD and the police;
- ❑ Regulations for the provision of regular inspections at police offices to determine the outcome and impact of ICD recommendations;
- ❑ Measures for ensuring that, in the event of ICD recommendations not being implemented, acceptable reasons for non-compliance are provided;
- ❑ An ICD policy that sets out the conditions and circumstances for both the taking over of investigations from the police and the referral of investigations to the police, including the monitoring of and reporting on such investigations;
- ❑ The provision of in-service training by the ICD at police stations, inclusive of the sharing of information on the purpose, structure and functioning of the ICD;
- ❑ Involvement of the ICD in the development of training curriculum for the police and the provision of relevant formal training (at police training colleges); and
- ❑ Measures that will ensure that decisions made at disciplinary hearings resulting from misconduct cases are arrived at objectively.

STATE CAPTIVE

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CHAPTER 1

Introduction

The Independent Complaints Directorate (ICD) is an independent mechanism established to promote proper police conduct and to ensure a transformed police service in line with the spirit and purport of the Constitution. In an effort to ensure that those police officers who do not uphold the rule of law are held accountable for their actions, the ICD makes recommendations as to how these officers should be dealt with, both departmentally and criminally. As a result, the role of the ICD forms part of the ongoing commitment to transform policing in South Africa (ICD Strategic Plan 2007-2010).

This project had its roots in an agreement between the ICD and the Institute for Security Studies (ISS) during October 2006. It was agreed to undertake a joint research project to, firstly, establish the extent to which the police¹ comply with recommendations made by the ICD and, secondly, to make recommendations that would address areas of non-compliance. The project team was comprised of four representatives from the ICD and two from the ISS. The ICD recommendations relate to cases investigated against members of the police in terms of section 53 of the *South African Police Service Act, 1995 (Act No 68 of 1995)* which makes provision for misconduct and/or criminal offences.

This research proposed to develop a clear understanding of the relationship between the ICD and the police and to examine the processes and procedures used by the ICD to present their recommendations relating to disciplinary or administrative action, as well as recommendations pertaining to criminal matters dealt with by the Directorate of Public Prosecutions (DPP). In turn, the crux of the study was to establish the general level of police compliance and the impact of recommendations made by

the ICD. Consequently, it would be possible to identify potential reasons for non-compliance; and to make recommendations that would address areas of non-compliance.

As will be discussed in more detail under research methodology, the research team initiated the project by developing two sets of questionnaires: Form A (Annexure A) is aimed at the gathering of data from ICD files and Form B (Annexure B) at determining the relationship between the ICD and SAPS by either interviewing their respective heads (or other senior staff) in the provinces or requesting them to complete the questionnaire and return it by fax or e-mail. This was followed by visits to the nine provincial offices of the ICD and physically working through the relevant files.

The report is organised as follows: the rationale for the study; contextualization of the study comprising of a delineation of the mandate of the ICD, as well as an overview of international practices and standards with regards to police oversight; the study objectives; an outline of the applied research methodology; presentation and discussion of research findings; recommendations; and conclusion.

Subsequent to the compilation of this draft report, a round table discussion on the report was held on the 2nd of October 2007. This was attended by all relevant stakeholders, including inter alia the ICD, ISS, Open Society Foundation for South Africa, the Office of the National Commissioner of the South African Police Service, various Provincial Commissioners of the South African Police Service, and various heads of the Metro Police Service. Comments and inputs from discussants were considered and where appropriate were included in the final report.

¹ Initially reference to the police was limited to the South African Police Service (SAPS), but with the subsequent establishment of the Metropolitan Police Service (MPS) the latter are now included in the general term 'police' or where reference is made to SAPS, unless explicitly excluded.

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CHAPTER 2

Research Rationale and Objectives

RESEARCH RATIONALE

The ICD is concerned that, apart from resource shortages, deficiencies within its legal mandate and procedural guidelines, as well as poor ICD/police relations in some areas, may negatively impact on its ability to achieve its constitutional object. This 'object' is to ensure that complaints in respect of offences and misconduct by members of the police are investigated in an effective and efficient manner. For example, according to the ICD Annual Report for 2004/2005, the ICD achieved a finalisation rate of only 44% of new cases of misconduct within 90 days against a service standard of at least 80%. For 2005/2006, the finalization rate of new cases of misconduct within 90 days was 73% against a service standard of at least 60%. This inability to perform according to set standards should also be seen against the background of a growing number of misconduct cases that relate to poor service delivery. Table 1 below gives an indication of the misconduct cases the ICD had to deal with over a seven-year period.

Table 1: Misconduct Cases Relating to Poor Service Delivery

Year	Total	% Increase/decrease
1999/2000	1 675	
2000/2001	1 707	2%
2001/2002	2 066	21.03%
2002/2003	2 601	25.9%
2003/2004	3 716	42.9%
2004/2005	3 407	-8.3%
2005/2006	2 855	-16.2%

Sourced from the ICD Annual Reports

In terms of the above table, the number of misconduct cases related to service delivery increased dramatically between the 1999/2000 and 2003/2004 financial years. According to Bruce (in Mistry & Lue-Dugmore, 2006:19), the percentage of misconduct cases that relate to poor service delivery increased from 76.2% in 1999/2000 to 93% in 2003/2004. However, between 2003/2004 and 2005/2006 there was a significant decrease in the number of misconduct cases that relate to poor service delivery. Thus the numbers fell from an all time high of 3716

in 2003/2004, to 3407 in 2004/2005, representing an 8.3% decrease. It fell even further in the following year to 2855, representing a 16.2% decrease. Yet, despite this significant decrease, the number of reported cases of misconduct related to service delivery in 2005/2006 was still significantly higher than reported during 1999/2000 financial year.

Irrespective of whether the ICD investigate cases of misconduct themselves or whether they refer it to the police for investigation, they can only make recommendations to the police in terms of possible steps to be taken. Even the power to make such recommendations is only a discretionary power. The legislation also places no obligation on the police to either act on the recommendation or to inform the ICD about whether indeed any steps were taken. This position renders the ICD powerless in all cases of misconduct where only disciplinary steps against a member are required, with the exception of cases that relate to the Domestic Violence Act (No. 116 of 1998).

It is therefore important for the ICD to determine the extent to which the police do comply with their recommendations, and to determine – in addition to deficiencies within their legal mandate – what other factors negatively impact on their ability to achieve their constitutional object.

RESEARCH OBJECTIVES

The research objectives of the project are described in the research agreement as follows:

- ❑ to develop a clear understanding of the relationship between the ICD and the police;
- ❑ to examine the processes and procedures used by the ICD to present their recommendations relating to disciplinary or administrative action, as well as recommendations pertaining to criminal matters dealt with by the Directorate of Public Prosecutions (DPP);
- ❑ to establish the general level of compliance by the police with recommendations by the ICD;
- ❑ to evaluate the impact of recommendations by the ICD;
- ❑ to identify possible reasons for non-compliance; and
- ❑ to make recommendations that would address areas of non-compliance.

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CHAPTER 3

Context of the Study

This section outlines the contextual framework in which the study is grounded. This discussion will be confined to the following:

- ❑ The ICD's mandate in terms of the legislative provisions relating to its powers and obligations regarding criminal offences and misconduct by members of the police.
- ❑ An overview of international practices and standards with regards to police oversight.

Legislative Mandate² of the Independent Complaints Directorate (ICD) of South Africa

The legislative framework that provides for the establishment and functioning of the ICD can be traced back to the *interim Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993)*. According to section 222 of the interim Constitution:

"[t]here shall be established and regulated by an Act of Parliament an independent mechanism under civilian control, with the object of ensuring that complaints in respect of offences and misconduct allegedly committed by members of the Service are investigated in an effective and efficient manner".

The only reference to the ICD in the 1996 *Constitution of the Republic of South Africa* is in section 206 (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".

As a consequence of the above provision in the interim Constitution, section 53 of the *South African Police Service Act, 1995* provides for the establishment of an Independent Complaints Directorate and its functions. According to section 53 (1) (a), "... the principal function of the directorate shall be the achievement of the object contemplated in section 222 of the [interim] Constitution". In order to achieve this object the Directorate is given the following powers (section 53 (2) (a) – (c):

- (a) "[The Directorate] may *mero motu* or upon receipt of a complaint, investigate any misconduct or offence allegedly committed by any member, and may, where appropriate, refer such investigation to the Commissioner concerned;
- (b) [The Directorate] shall *mero motu* or upon receipt of a complaint, investigate any death in custody or as a result of police action; and
- (c) [The Directorate] may investigate any matter referred to [it] by the Minister or the member of the executive Council" (own emphasis).

In addition to the above powers, the Executive Director of the ICD may (in terms of section 53 (6) (b), (c) and (i):

- (b) "request and obtain information from any Commissioner or police official as may be necessary for conducting any investigation;
- (c) (i) monitor the progress of;
 - (ii) set guidelines regarding; and
 - (iii) request and obtain information regarding an investigation referred to a Commissioner under [section 53 (2) (a) above] and
 - (iv) make recommendations to the Commissioner concerned".

Subsection 8 of section 53 also obliges the National or Provincial Commissioner (of the SAPS) to notify the Directorate of all cases of death in police custody or as a result of police action. The rest of section 53 deals with procedural matters, the ICD's relationship with the prosecuting authority and the functioning of the ICD. Table 2 provides an outline of the legislative mandate of the ICD as it pertains to the police.

Finally, the *Domestic Violence Act, 1998* extends the mandate of the ICD to police misconduct in relation to the police's obligations provided for by this Act. According to section 18 (4) (a) of the latter Act:

"Failure by a member of the South African Police Service to comply with an obligation imposed in terms of this Act ... constitutes misconduct ... and the Independent Complaints Directorate ...

² It should be pointed out that according to Regulation 9 of the Regulations for Municipal Police Service, issued in terms of section 64P of the *South African Police Service Act, 1995*, and read with Columns 1 and 2 of Annexure 5 of the Regulations, the mandate of the ICD, as stipulated by section 53 of the above Act, includes the Metropolitan Police Service.



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Table 2: Summary of Legislative Framework Regarding ICD/Police

ICD	POLICE
South African Police Service Act, 1995 (Section 53)	
Discretionary power to investigate any misconduct or offence by members of police AND discretion to refer certain investigations to the police	Obligated to furnish ICD, on request, with information required for investigations AND with progress report on investigations referred by ICD
Obligated to investigate all deaths in police custody OR as a result of police action	Obligated to report all cases of death in police custody OR as a result of police action to the ICD
Discretionary power to make recommendations to the police	No obligation (e.g. no obligation to report back to ICD in terms of whether or not disciplinary steps were taken)
Domestic Violence Act, 1998 (Section 18)	
Indirect obligation to keep record of all incidents of misconduct reported by the police	Obligated to inform ICD of all incidents of police failures (misconduct) in terms of this Act
Indirect discretion to direct police in terms of steps taken	Obligated to institute disciplinary steps UNLESS directed otherwise by ICD
Obligated to a 6 monthly report to Parliament regarding above matters, including a report on recommendations to police regarding steps in specific cases	Obligated to a 6 monthly report to Parliament regarding above matters, including a report on steps taken as a result of ICD recommendations

must forthwith be informed of any such failure reported to the South African Police Service" (own emphasis).

Section 18 (4) (b) stipulates that, unless otherwise directed by the ICD, the police "... must institute disciplinary proceedings against any member who failed to comply with an obligation referred to in paragraph (a)".

In terms of section 18 (c) and (d), both the ICD and the National Commissioner of the SAPS must report to Parliament on a six monthly basis regarding the above matters. This includes a report by the ICD on the recommendations they made to the police and a report by the police indicating the steps taken as a result of these recommendations (Domestic Violence Act, 1998).

CHAPTER 4

An Overview of International Practices

With the disparate range of civilian oversight mechanisms that exist for police agencies across the world, it is a challenge to find best practices that can be regarded as universally acceptable. In the United States, for example, it is an ongoing debate as to whether, and to what extent, the discretion of police chiefs in relation to disciplinary action against police officials should be subject to civilian oversight (Stone & Bobb, 2002:1). However, some good examples of civilian oversight are provided in a 2005 report by the Commonwealth Human Rights Initiative (CHRI), entitled *'Police Accountability: Too important to neglect, too urgent to delay'*.

According to the CHRI Report (2005:62-63), some countries (e.g. Bangladesh, Swaziland and Mozambique) have no independent civilian oversight structures, and in others (e.g. Malaysia and Maldives) single structures exist. Countries such as South Africa have more than one, viz. the Human Rights Commission (HRC) and the ICD, although the HRC will invariably refer all complaints against the police to the ICD. In the Commonwealth, thirty six countries have ombudsmen, twenty have human rights institutions and only a few have dedicated police complaints agencies. Whereas ombudsmen and human rights institutions have broader mandates that may include oversight of the police, police complaints institutions are dedicated to investigating, reviewing and monitoring police related complaints.

In the discussion below, attention will be given to some international examples of good practice, followed by a brief review of aspects relating to the powers of oversight bodies, recommendations by such bodies and the minimum requirements for effective civilian oversight.

EXAMPLES OF INTERNATIONAL BEST PRACTICES

There is normally a world of difference between countries in terms of their various constitutional dispensations, laws and legal practices, organisation of their police agencies, historical development, etc. These often complicate any attempt at comparison or the use of what others do as an example of best practice. However, in spite of these differences, some lessons are clearly to be learned from the experience of other countries. In this regard, the oversight institutions of Mauritius, England and Wales, Australia and Uganda will be briefly considered.

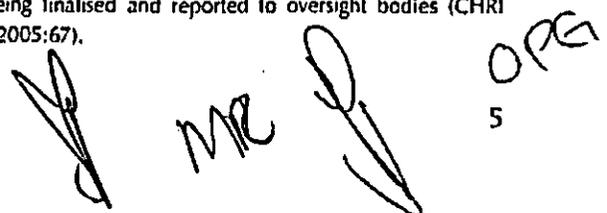
In Mauritius, the Human Rights Commission (HRC) is explicitly authorised to investigate complaints against the police, and also to

supervise the police's internal complaints management system. The Chief of Police is obliged to forward every complaint against the police to the HRC and to inform it of any criminal or disciplinary proceedings against the offending member(s). The HRC can ask for additional information and, where the police do not take action in instances where this is clearly warranted, the Commission can, itself, enquire into the matter (CHRI Report, 2005:62).

In England and Wales, the Independent Police Complaints Commission (IPCC), which was established in terms of the *Police Reform Act of 2002*, replaced its predecessor - the Police Complaints Authority (PCA) - in 2004 (IPCC Corporate Plan 2005-2008:8). The IPCC has new and wider powers than its predecessor and functions independently from both government and the police. It can supervise, manage or independently investigate the most serious complaints. The Act also provides complainants with the right of appeal to the IPCC against the outcome of a specific investigation if they feel that it was inappropriately handled.

According to the above Act, Chief Officers of the police are obligated to co-operate with the IPCC in terms of providing access to their staff, documentation and premises. As for the IPCC, the Act places a statutory duty on it to act as a guardian of the police complaints system as a whole (IPCC Corporate Plan 2005-2008:8). The guardianship role includes the responsibility to report to the police on operational lessons learned (arising from its work), the powers of audit and inspection and a duty to work with Her Majesty's Inspectorate of Constabulary (HMIC). Although the IPCC has inspection powers, it decided, at least for the time being, to rather work with the HMIC in this regard and has established a good working relationship and regular liaison with them (IPCC Annual Report 2005-2006:46).

In New South Wales, Australia, the Police Integrity Commission - in 1998 and after conducting an audit of 81 internal police investigations - recommended changes to the Police Service's existing complaints management systems. This resulted in the setting up, by the police, of Complaint Management Task Teams (CMTT's) and a Complaints Management Unit (CMU). The CMTT'S are tasked with the allocation of resources for investigations, as well as the monitoring and evaluation of the quality of investigations. The role of the CMU is to monitor and approve investigations relating to cases such as corruption, serious criminality or criminality that warrants dismissal, prior to these being finalised and reported to oversight bodies (CHRI Report, 2005:67).



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New South Wales have developed the following system for the classifying and managing of complaints:

- ❑ The State Police Service have the first responsibility to investigate;
- ❑ The Ombudsman oversees these investigations; and
- ❑ The Police Integrity Commission, which is mandated to address serious matters of corruption and misconduct, may include joint inquiries with the police or may refer cases back to the police for investigation and then monitor that investigation (CHRI Report, 2005:63).

In Uganda, parliament (and not the executive) is mandated by law to allocate resources and facilities to the HRC. This arrangement allows the HRC to function autonomously and enables them to criticize government and to address police brutality and other abuses of power (CHRI Report, 2005:64).

POWERS OF OVERSIGHT BODIES

According to the CHRI Report (2005:65), it is inevitable that there is tension between the police and civilian institutions that oversee them, but when this tension allows for disobedience and disregard of the latter institution, it undermines accountability. Bruce and Neild (2005:8) are also of the opinion that the task of oversight bodies to hold the police accountable is bound to engender an adversarial relationship. Tension is a natural characteristic in this type of relationship, but disobedience and disregard can become very destructive. Constructive tension, on the other hand, can lead to improvements in both behaviour and service delivery.

In the CHRI Report (2005:65), strong investigative powers are regarded as a key factor for the success of oversight bodies. To these must be added powers to compel police co-operation during investigations and for them to act upon recommendations both for action in individual cases and for systemic improvement.

In England and Wales, the IPCC, for example, apart from its powers to investigate and to oversee investigations by the police against police officials, has powers to 'direct' the police to convene a disciplinary tribunal. The IPCC may also, albeit in exceptional cases, present evidence at such a tribunal and require it to be held in public. In addition, they may set, monitor, inspect and review standards for the operation of the police complaints system (IPCC Annual Report 2005-2006:8). Of particular importance is the fact that the IPCC will not conclude a case unless, and until, the criminal case or disciplinary proceedings have been completed (IPCC Annual Report 2005-2006:26).

RECOMMENDATIONS BY OVERSIGHT BODIES

Most of the police complaints authorities in the Commonwealth lack the power to enforce or follow up on their recommendations to the police. Notable exceptions are the HRC in Uganda and the

IPCC in England and Wales where they are empowered by law to make binding recommendations (CHRI Report, 2005:67).

In some Commonwealth countries, the responsible Minister or police department are required by law to publicly respond to the recommendations by the oversight body. For example, in Tanzania the police has three months to explain to the HRC, in writing, what they intend to do, while in India they have one month. In Canada, if the police reject the findings and recommendations by the Commission for Public Complaints against the Royal Canadian Mounted Police (RCMP), this must be accompanied by a reasoned response to the Commission and the relevant Minister. This response is included in the Commission's annual report and brought to the attention of parliament. In some countries, where the police or government fails or unduly delays the implementation of recommendations, the oversight bodies can approach the courts to enforce their recommendations (CHRI Report, 2005:68).

According to the Commonwealth Human Rights Initiative (CHRI):

"[e]xperience shows that even independent oversight agencies with sufficient resources and strong investigative powers have proven ineffective if the police and government routinely ignore their recommendations" (CHRI Report, 2005:67).

MINIMUM REQUIREMENTS FOR EFFECTIVE CIVILIAN OVERSIGHT

It is imperative, if there is to be any credible civilian oversight of the police, that minimum requirements are met. These requirements are succinctly phrased in the CHRI Report (2005:63-64) and are accordingly quoted in full:

"Much of how effectively complaints authorities, ombudsmen's offices and human rights commissions perform their functions depends on how truly separate they are from police and executive influence, and how autonomous and well embedded their status is in the country's legal architecture. Their effectiveness also depends upon the width and clarity of their mandate, the scope of their investigative powers, the composition and competence of their leadership and staff, and the adequacy and sources of finance. A particularly crucial factor is their ability to compel obedience to their recommendations and the attention and clear support their reports and findings receive at the hands of the government and police."

These minimum requirements are internationally recognised and appear in summarised form in the so-called Paris Principles for National Human Rights Institutions. The Paris Principles are equally applicable to oversight agencies (CHRI Report, 2005:64).

In conclusion, the minimum requirements for successful oversight bodies are summarised as follows in the CHRI Report (2005:64):

- ❑ "Independence: should be independent of the executive and the police and empowered to report directly to parliament.

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- ❑ Sufficient powers: should have the authority to independently investigate complaints and issue findings. This requires concomitant powers to conduct hearings, subpoena documents and compel the presence of witnesses including the police. It should also be able to identify organisational problems in the police and suggest systemic reforms.
- ❑ Adequate resources: should have sufficient funds to investigate at least the more serious complaints referred to it. Skilled human resources to investigate and otherwise deal with complaints should also be available.
- ❑ Power to follow up on recommendations: should be empowered to report its findings and recommendations to the public, and to follow up on actions taken by the police chief in response to its recommendations. It should also be able to draw Parliament's attention to instances where police take no action."



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CHAPTER 5

Research Methodology

The project employed a methodology commonly referred to as triangulation. Triangulation involves combining qualitative and quantitative approaches in order to maximize the potential for meeting research objectives. According to Creswell (1994), triangulation is based on the assumption that biases in a particular methodology would be neutralized and other shortcomings counter-balanced if used in conjunction with other methodologies. Thus the advantage of this approach lies in the fact that the strength of one approach will compensate for the weakness in the other (DeVos, Strydom, Fouche, & Delpoit, 2005). Furthermore, triangulation will have positive implications for the study's generalizability (DeVos et al, 2005). Most importantly though is the assumption that triangulating a qualitative and quantitative approach is likely to facilitate an in-depth understanding of the extent to which the SAPS complies with recommendations made by the ICD in relation to criminal misconduct by members of the SAPS. This further allows for the identification of measures that can be implemented to increase compliance.

SAMPLE

The sample for the quantitative component of the study consisted of case dockets of substantiated and closed cases lodged with the ICD since its inception. A case which has been substantiated and closed means that the ICD, in its investigation of the case, found evidence of misconduct or criminality on the part of SAPS member/s and thus made recommendations for appropriate disciplinary or criminal steps to be taken. The dockets contain information from both the police and the ICD and should include all witness statements, copies of all related correspondence and subpoenas, details of all evidentiary materials, exhibits and post-mortems, as well as the investigator's investigation diary. Case files of substantiated and closed cases, therefore, represent the most viable source of information for anyone who is interested in determining the level of compliance by SAPS with ICD recommendations. In addition to this, we further focused only on CLASS I (Death in police custody or as a result of police action), CLASS III (Criminal offences committed by members of the police), and CLASS IV cases (Less serious misconduct committed by members of the police). The advantage of studying the case dockets is that they contain case details that can be subjected to quantitative analyses. However, due to the fact that these

dockets are completed by investigators, they may be subject to human error in that they might contain incorrect information. In addition to this, there is the likelihood that some case dockets may be incomplete. Cases dockets of complaints lodged at the 9 provincial offices of the ICD were examined. The exact quantitative sample consisted of 573 case dockets. Of these, 91 were lodged in the Eastern Cape; 90 in the Free State; 89 in Limpopo; 68 in Gauteng; 55 in North West; 53 in the Western Cape; 48 in Mpumalanga; 46 in KZN; and 33 in the Northern Cape.

We had initially planned to randomly sample cases from the ICD provincial offices. Random sampling means that all substantiated and closed cases that have been lodged with the ICD provincial offices since the organization's inception until now would have an equal chance of being selected. The main motivation behind the random sample was that the sample's representativeness would have been enhanced and that this would then enable us to generalize our research findings. In addition to this, a random sample, at least theoretically, also allows for the performance of more sophisticated and complex statistical procedures on the data. However, circumstances beyond our control (such as lack of access to all case dockets) prevented us from obtaining a random sample. The cases examined for the purpose of this report were therefore conveniently sampled.

The qualitative sample consisted of the ICD provincial heads and SAPS provincial commissioners (or senior officials delegated by them). In total, 8 ICD Provincial Heads and 6 SAPS Provincial Commissioners constituted the qualitative sample for the study.

DATA COLLECTION

A structured questionnaire was designed to systematically extract relevant data from the case dockets. The research objectives served as a basis for the design of the questionnaire. The ultimate aim was to come up with a clear and concise questionnaire that would allow us to achieve our research objectives. The design of the questionnaire followed a number of steps. Using the research objectives as a guide, the different members of the research team had to suggest items for inclusion in the questionnaire. This was followed by a brain-storming session whereby each suggestion was discussed and evaluated for clarity as well as appropriateness for inclusion in the questionnaire. Consistency with the research objectives was used as a basis for evaluating appropriateness of suggested items, while their clar-

ity was measured in terms of their (lack of) ambiguity. A rule of consensus was applied whereby items were included in the questionnaire only if they had the support of the entire team. This process resulted in a questionnaire which the team deemed appropriate for achieving its research goals.

However, in order to finalize the questionnaire, it was decided to conduct a pilot study. The pilot constituted a type of dress rehearsal for the actual research. The aim of a pilot is to detect the flaws in a measuring instrument (Welman, Kruger, & Mitchell, 2005). It needs to be added that the way the questionnaire was used in this study was different from the way questionnaires are conventionally administered. In the conventional sense, research participants are required to complete the questionnaire by noting their responses to questions or questionnaire items. However, in the present study, the questionnaire was used to systematically extract information from the case dockets.

Notwithstanding this difference, there were a number of reasons why we considered it appropriate to pilot the questionnaire. Since the questionnaire was structured, we anticipated that the case dockets would contain relevant information which the questionnaire in its pre-piloted form would not be able to accommodate. The pilot thus allowed us to identify that information and to modify the questionnaire accordingly so that we could accommodate that information when the actual research took place. Furthermore, the pilot study enabled us to eliminate items that were redundant, and to change those which though relevant, were unclear or ambiguously formulated (Welman et al, 2005).

The questionnaire was piloted at the ICD North West Office in Mafikeng on 4th October 2006. Based on the results of the pilot study, the questionnaire was modified, thus resulting in the final questionnaire which contained items aimed at yielding quantitative, as well as qualitative information regarding the extent to which SAPS complies with ICD recommendations.³

Researchers administered this final questionnaire in the relevant provinces as follows:

- ❑ 30th - 31st October 2006 - ICD North West Provincial Office in Mafikeng
- ❑ 11th - 15th December 2006 - ICD Mpumalanga Provincial Office in Nelspruit
- ❑ 11th - 12th January 2007 - ICD Gauteng Provincial Office in Johannesburg
- ❑ 22nd - 25th January 2007 - ICD Limpopo Provincial Office in Polokwane
- ❑ 29th January - 02nd February 2007 - ICD Western Cape Provincial Office in Cape Town,
- ❑ 16th - 17th April 2007 - ICD Free State Provincial Office in Bloemfontein.
- ❑ 18th - 19th April 2007 - ICD Northern Cape Provincial Office in Kimberly.

- ❑ 23rd-26th April 2007 - ICD Eastern Cape Provincial Office in King Williamstown.
- ❑ 07th-09th May 2007 - ICD KwaZulu-Natal Provincial Office in Durban.

The qualitative component of the research was mainly geared towards examining the relationship between the police and the ICD in the provinces. For this purpose, two semi-structured questionnaires were designed containing open-ended items (See Annexure B). One questionnaire was administered to the ICD Provincial Heads and the other to the SAPS Provincial Commissioners who participated in the study. The open-ended nature of the items provided for the generation of qualitative data. This questionnaire was administered to the qualitative sample consisting of 8 ICD Provincial Heads and 6 SAPS Provincial Commissioners. The ICD questionnaires were completed by the research team during their visits to the relevant ICD provincial offices. The SAPS questionnaires were self-administered by the SAPS Provincial Commissioners or their delegates and the responses were either faxed or e-mailed to the project team.

DATA ANALYSIS

Quantitative data analysis

Quantitative data gained from the questionnaire was subjected to statistical analyses using the Statistical Package for the Social Sciences (SPSS) Student Version 11.0 for Windows. SPSS is a statistical software package that enables researchers to do both basic and complex statistical procedures with quantitative data (Field, 2005). In addition to statistical procedures, SPSS also allows for the graphic display of data by means of bar charts, pie charts, histograms, scatter plots, etc. Preparing the questionnaires for statistical analyses involved a number of steps. This included, *inter alia*, developing a coding scheme for the different variables, cleaning the data by dealing with missing responses, and entering the variable information, as well as the data, into SPSS data editor. Once this was done, a number of SPSS statistical tests were run in order to generate statistics. In statistical theory, the type of test one can do generally depends on the measurement levels of the various variables. Since most of the questionnaire variables were measured at the nominal level, the statistics generated were limited to frequencies, descriptive statistics, and cross tabulations. These are discussed in the results section.

Qualitative Data Analysis

According to Vermeulen (1998:10), qualitative research involves a study of cases and other sources of information, but, unlike quantitative research, makes very little use of numerical data or statistics. To Henning, Van Rensburg and Smit (2004:3), qualitative research is a method that enables the researcher to understand and also to explain in argument, by the use of evidence

³ See Annexure A for a copy of the final questionnaire.

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from the collected data and the literature, what the phenomenon that is being studied is all about. Accordingly, the qualitative data analysis for this report will include the interview responses to the listed questions (Form B) by the heads of the ICD and the police (SAPS) in the provinces and the data gathered from the ICD files (Form A). These were thematically analysed. The results of the thematic analysis are presented in the results section contained in this report.

RESULTS

Quantitative results

In this section, the results of the quantitative data are discussed. The following are the range of variables examined; whether SAPS complied with the ICD's recommendations; how the ICD cases that were examined were spread across provinces; the case's complaint class; the case's incident description code; the victim's age; the victim's race; the victim's gender; the perpetrator's race; and the perpetrator's rank. Of all these variables, the issue of compliance is the most important since it is ultimately what the study was about. The remaining variables will therefore be discussed in relation to compliance since, within the context of this particular study, they derive their meaning from their embeddedness within this variable.

As mentioned previously, the sample consisted of 573 cases examined across the nine provinces. For a breakdown and graphic presentation of this, see Table 3 and Pie Chart 1.

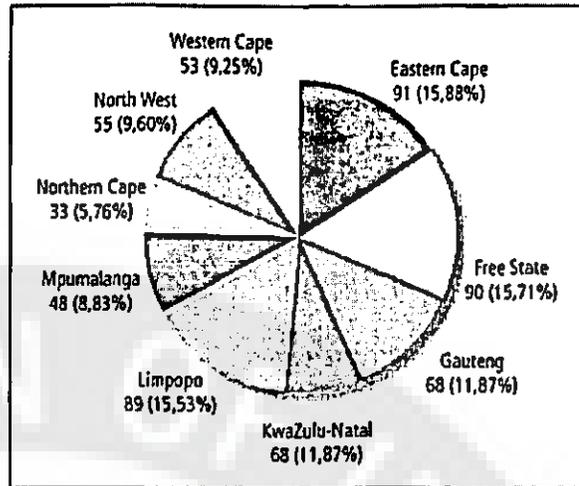
Table 3: Distribution of Cases per Province

	Frequency	Percent	Cumulative Percent
Eastern Cape	91	15.9	15.9
Free State	90	15.7	31.6
Gauteng	68	21.7	43.5
KwaZulu Natal	46	8.0	51.5
Valid Limpopo	89	15.5	67.0
Mpumalanga	48	8.4	75.4
Northern Cape	33	5.8	81.2
North West	55	9.6	90.8
Western Cape	53	9.2	100.0
Total	573	100.0	

Due to a number of reasons we could not sample an equal number of cases in the different provinces. These reasons included, among others, the fact that ICD provincial offices have different case loads, and the specific sampling methodology that was utilized, as well as other practical constraints. The most cases were examined in the Eastern Cape (91) and the least cases were examined in the Northern Cape (33). The average number of cases examined per province was 64.

The compliance variable was examined in terms of instances where SAPS complied with ICD recommendations, instances where SAPS did not comply, and instances in which they com-

Figure 1: Distribution of Cases per Province



plied only partially. It needs to be added that there were cases in which the researchers were unable to determine any level of compliance or non-compliance because this information was not contained in the case files that were examined. For a breakdown of the compliance variable, see Table 4.

Table 4: SAPS Compliance with ICD Recommendations

	Frequency	Percent	Cumulative Percent
Valid	Compliance	333	58.1
	Non-compliance	82	14.3
	Partial compliance*	20	3.5
	Not known	138	24.1
Total	573	100.0	

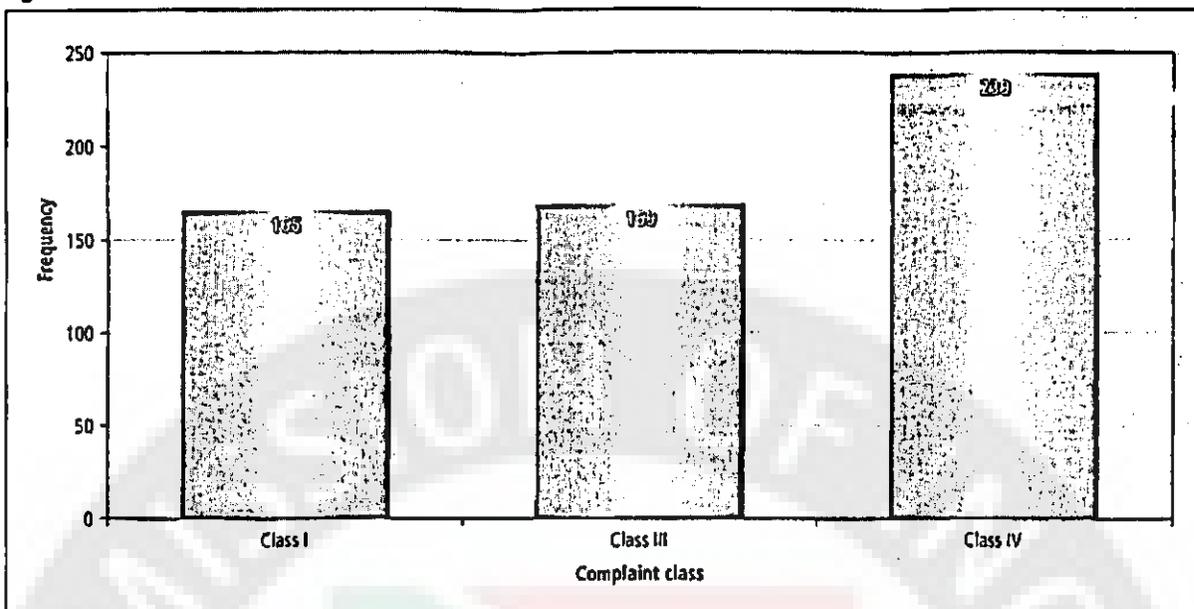
* Here, partial compliance is defined in terms of the ICD having made recommendations with regards to criminal and departmental steps to be taken against a perpetrator and SAPS only complying with either criminal or departmental steps

It was found that there was compliance with ICD recommendations on the part of SAPS in 333 of the total number of 573 cases examined, which constitutes 58.1%. In 82 cases (14.3%) there was non-compliance, while there was partial compliance in 20 cases or 3.5% of the 573 cases. In 138 cases (24.1%) researchers were unable to determine whether there was compliance or not.

From the above analysis, the level of compliance appears to be relatively high. However, the picture changes slightly when one considers compliance in relation to the composition of the 573 cases. These can be divided into different types on the basis of a class classification system used by the ICD. In terms of this system, Class I cases refer to Death in police custody or as a result of police action; Class III refer to cases involving criminal offences committed by members of the police; and Class IV refer to cases involving less serious misconduct committed by members of the police. Thus, Class I accounted for 165 (28.8%) of the 573 cases, Class II accounted for 69 (29.5%), and the remaining 239 (41.7%) were Class IV cases. See Bar Chart 1 for a graphic representation of the different types of cases.

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Figure 2: Class Classification of Cases



Cross-tabulation 1: Complaint Class and Whether SAPS Complied with ICD Recommendations

		Complaint class			Total
		Class I	Class III	Class IV	
Did SAPS comply with ICD recommendations	Yes	105	108	120	333
	No	19	19	44	82
	Partial compliance	3	7	10	20
	Not known	38	35	65	138
Total		165	169	239	573

The importance of the classification is apparent considering the statutory imperative on the part of SAPS to inform the ICD of all Class I cases, i.e., where someone died as a result of the action of a police officer or when someone dies while in police custody.

A cross tabulation of the complaint class and compliance reveals that the level of compliance per class ranges from between 50.2% for Class IV cases, 63.9% for Class III cases, and 63.6% for Class I cases. For a breakdown of the level of compliance per class, see Cross Tabulation 1. Most notable here is that the level of non-compliance is highest for Class IV cases (44), more than Class I (19) and Class III (19) combined. It thus appears that the less serious the offence, the more likely it is that the police will ignore the recommendations. Less serious offences would generally involve recommendations to take departmental action against offending member(s). Whether the police complies or not, remain, in terms of current legislation, their prerogative. Even in the event of compliance, the disciplinary panels tend to consist exclusively of SAPS members who are expected to decide the fate of a colleague. This raises serious questions about the independence and objectivity of such panels. Thus, in these cases, although there is compliance with ICD recommendations in terms of instituting disciplinary measures, the eventual outcome remains questionable.

Other variables examined relate to the characteristics of the victims involved in these cases. The victim age statistics are presented in Table 5. Age was determinable in approximately half (281) of the 573 cases. All measures of central tendency were more or less the same (mean = 32.99; median = 31; and mode = 29)

Table 5: Descriptive Statistics – Victim's Age

N	Valid	281
	Missing	292
Mean		32,99
Standard Error of Mean		0,814
Median		31,00
Mode		29
Standard Deviation		13,640
Minimum		2
Maximum		94

The histogram below shows the distribution of the ages of the victims involved in the 573 cases.

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SAPS Compliance with Recommendations by the Independent Complaints Directorate

Histogram: Victim's Age

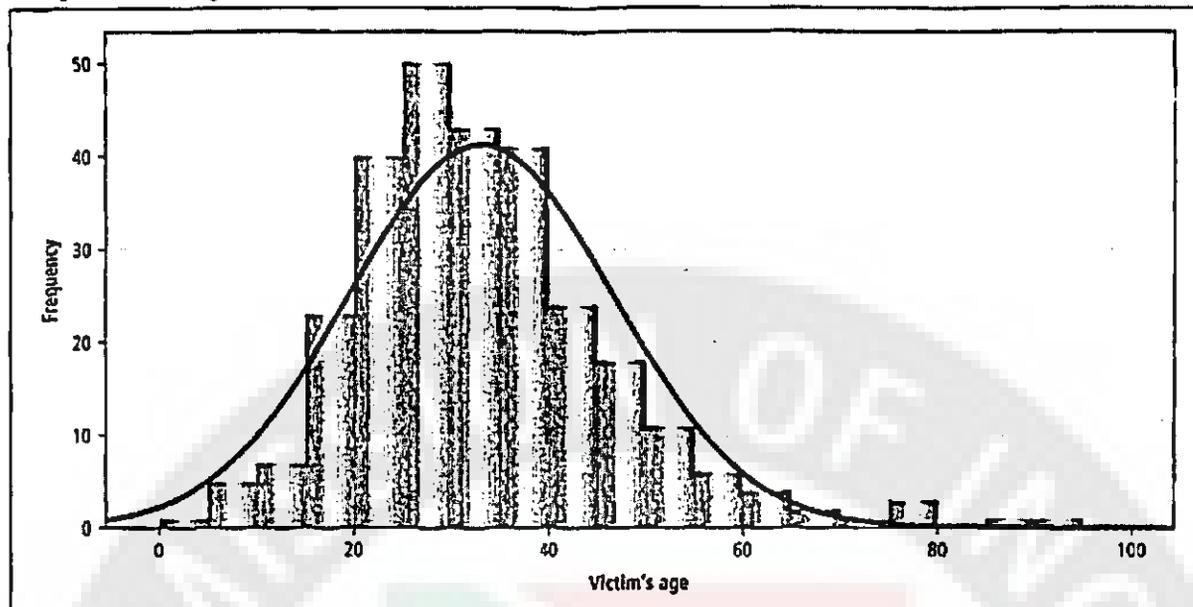


Table 6: Victim's Race

		Frequency	Percent	Valid percent	Cumulative percent
Valid	Black	428	74.7	74.7	74.7
	White	30	5.2	5.2	79.9
	Indian	8	1.4	1.4	81.3
	Coloured	28	4.9	4.9	86.2
	Don't know	79	13.8	13.8	100.0
Total		573	100.0	100.0	

Of greater interest in terms of this study, would be how these victim variables relate to the issue of compliance. Thus, a cross tabulation of compliance with the victim's race and gender is presented in the cross tabulation table below. In most of the cases involving non-compliance and partial compliance, the victims were black. This tendency is probably only reflective of the demographics of our society. At the same time, it has to be mentioned that, proportionately, it appears that non-compliance was highest in cases where victims were black (52 out of 82 non-compliant cases) than in the cases of other groupings. Also not surprising is the fact that most of the victims were males (53 out of 82 non-compliant cases).

As stated previously, perpetrator variables were also examined. A cross tabulation of compliance with the perpetrator's race and rank variables is presented in the cross tabulation below. In terms of race, most of the perpetrators were either Black or White in cases where there was either compliance, non-compliance, or partial compliance. Again this is perhaps merely a reflection of the representation that these two groupings have in SAPS. In terms of the rank of perpetrators, different ranks were distinguished and some were clustered⁴ in cases where two or more officers of different ranks were involved in a particular case. The results indicate that sergeants and inspectors

Table 7: Victim's Gender

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Male	387	67.5	67.5	67.5
	Female	117	20.4	20.4	88.0
	Don't know	69	12.0	12.0	100.0
Total		573	100.0	100.0	

⁴ Ranks were clustered on the basis of whether they were on the higher end or lower end of the ranking spectrum.

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Cross-tabulation 2: Compliance, Victim's Race and Victim's Gender

Compliance	Victim's race	Victim's gender			Total
		Male	Female	Don't know	
Yes	Black	187	57	3	247
	White	18	5	0	23
	Indian	3	2	0	5
	Coloured	9	6	0	15
	Don't know	4	3	36	43
	Total	221	73	39	333
No	Black	43	6	3	52
	White	1	2	0	3
	Indian	1	0	0	1
	Coloured	5	2	0	7
	Don't know	3	3	13	19
	Total	53	13	16	82
Partial compliance	Black	12	2	0	14
	White	1	0	0	1
	Coloured	1	0	0	1
	Don't know	1	1	2	4
	Total	15	3	2	20
Not known	Black	85	26	4	115
	White	1	2	0	3
	Indian	2	0	0	2
	Coloured	5	0	0	5
	Don't know	5	0	8	13
	Total	98	28	12	138

Cross-tabulation 3: Compliance, Perpetrator's Race and Perpetrator's Rank

Compliance	Perpetrator's race	Perpetrator's rank									Total
		Student constable	Constable/Reservist	Sergeant	Inspector	Captain	Superintendent	Senior Superintendent	SI-4	Don't know	
Yes	Black	3	7	53	77	10	5	2	3	10	170
	White	1	2	17	29	6	4	1	0	4	64
	Indian	0	0	0	2	2	0	0	0	0	4
	Coloured	1	0	3	1	0	0	0	0	1	6
	Unknown	2	5	13	11	2	0	0	1	55	89
	Total	7	14	86	120	20	9	3	4	70	333
No	Black	2	1	6	14	1	1	0	0	4	29
	White	0	0	7	5	1	1	0	0	2	16
	Coloured	0	0	0	1	0	0	0	0	0	1
	Unknown	0	1	1	3	1	0	0	0	30	36
	Total	2	2	14	23	3	2	0	0	36	82
Partial compliance	Black	0	0	1	9	2	0	0	1	1	14
	White	0	0	0	1	1	0	0	0	0	2
	Indian	0	0	0	0	0	1	0	0	0	1
	Coloured	0	0	0	1	0	0	0	0	0	1
	Unknown	0	0	0	0	1	0	0	0	1	2
	Total	0	0	1	11	4	1	0	1	2	20
Not known	Black	2	12	14	23	4	2	2	6	3	68
	White	0	1	3	10	1	1	0	0	2	18
	Indian	0	0	0	1	0	0	0	0	0	1
	Coloured	0	1	0	1	0	0	0	0	0	2
	Unknown	0	1	1	5	1	0	0	0	41	49
	Total	2	15	18	40	6	3	2	6	46	138

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SAPS Compliance with Recommendations by the Independent Complaints Directorate

Cross-tabulation 4: Compliance, Perpetrator's Gender and Perpetrator's Rank

Compliance	Perpetrator's gender	Perpetrator's rank									
		Student Constable	Constable	Sergeant	Inspector	Captain	Superintendent	Senior Superintendent	Chief Constable	Don't Know	Total
Yes	Male	5	14	77	104	18	8	3	3	14	246
	Female	1	0	1	6	0	1	0	0	1	10
	Don't know	1	0	8	10	2	0	0	1	55	77
	Total	7	14	86	120	20	9	3	4	70	333
No	Male	2	1	14	18	3	2	0	0	5	45
	Female	0	0	0	1	0	0	0	0	0	1
	Don't know	0	1	0	4	0	0	0	0	31	36
	Total	2	2	14	23	3	2	0	0	36	82
Partial compliance	Male	0	0	1	10	4	1	0	1	1	18
	Female	0	0	0	1	0	0	0	0	0	1
	Don't know	0	0	0	0	0	0	0	0	1	1
	Total	0	0	1	11	4	1	0	1	2	20
Not known	Male	2	12	18	27	5	2	2	6	5	79
	Female	0	0	0	0	0	0	0	0	0	0
	Don't know	0	3	0	13	1	1	0	0	41	59
	Total	2	15	18	40	6	3	2	6	46	138

accounted for the majority of those cases on all dimensions of the compliance variable, i.e., compliance, non-compliance, and partial compliance. Thus, inspectors were the perpetrators in 120 cases and sergeants in 86 cases where there was compliance. This accounts for 36% and 25.8% respectively of the 333 cases in which SAPS complied with ICD recommendations.

Furthermore, inspectors were involved in 23 cases and sergeants in 14 cases where there was non-compliance. This accounts for 28% and 17% respectively of the total of 82 non-compliant cases. The exact same frequencies were recorded for the partial compliance cases, accounting for 33.8% and 20.5% respectively for inspectors and sergeants of the 68 cases in which there were partial compliance with ICD recommendations on the part of SAPS. However, when the compliance variable is cross tabulated with perpetrator rank and gender variables, inspectors dominate the female representation on all dimensions of the compliance

variable. Therefore, where there was compliance, 6 of the 10 female perpetrators involved in the cases were inspectors. With non-compliance, the only female perpetrator was an inspector. Finally, with partial compliance, 11 of the 20 female perpetrators were inspectors.

The data from the ICD files also included information such as type of complaints, nature of referrals or recommendations to the police, communication between the ICD and the police and how cases were finalised. A summary of this is provided in the table below.

All the cases studied by the project team were reported to the ICD between 1997 and 2006 and the data shown in Table 8 reflects only the 331 cases – out of the 573 studied – that were referred to the police. These referrals were either for investigation, further investigation or actions related to investigations, or referrals in terms of specific recommendations related to

Table 8: Summary of Investigations Details with Reference to Referrals

Total number of cases	Number of referrals to police	Type of referrals	How reported to ICD	Number of letters to police	Number of letters from police	No reply from police	Unknown how finalised
573	331	Investigations 187	Directly 559	761	439	143	39
	Class I 30	Disciplinary action 131	By police: 9				
	Class III 185	Unknown 32	Taken over from police				
	Class IV 101		Ref by MEC				
	Offence unknown 15						

Handwritten signatures and initials: SP, MP, and OPG.

Table 9: Summary of Questions and Responses in Form B

SAPS		ICD	
Questions	Response	Questions	Response
What, if any, problems does SAPS have with ICD recommendations?	<ul style="list-style-type: none"> 4 Provinces said 'None' 1 Prov said regular meetings are necessary 1 Prov said that evidence to support recommendations are not attached 	What, if any, impediments exist to police compliance?	<ul style="list-style-type: none"> Gaps in legislation (esp re disciplinary action) Police management at various levels are protective of their members SAPS see ICD as interfering with their management or the way they work Undue delays in finalising cases Absence of time targets for police re recommendations Min of police also resp for ICD – conflict of interest Present MOU is not effective Neg impact of restrict on morale of police
Do you have regular contact with Prov Head of ICD?	<ul style="list-style-type: none"> 1 Prov do not meet regularly 5 Prov's have regular meetings (1 refer to forum for monthly meetings & working procedure doc, and 1 replied that PC and ICD Prov Head meet at least once a week. All use telephonic contact & written communication) 	Do you have regular contact with PC or his representative?	<ul style="list-style-type: none"> 1 Prov said NO. Also no telephonic contact, only written com's. 1 Prov has occasional contact Other Prov's said YES. They have structured meetings (e.g. Prov IOINTS) and meetings arranged when necessary. Share info and ICD points out where stations need improvement
Do you have a dedicated person to liaise with the ICD?	<ul style="list-style-type: none"> 4 Prov's said YES (Captain, Supt. & 'when need arises' respectively) 2 Prov said NO 	Do you have a dedicated person to liaise with SAPS?	<ul style="list-style-type: none"> Situation varies from prov to prov – no standard Investigators liaise directly with police Prov Head normally liaise with PC 1 Prov indicated for DVA and monitoring they have a dedicated person (in 1 prov it is the Dep Head)
What can ICD do to improve SAPS compliance?	<ul style="list-style-type: none"> Regular meetings and correspondence Better co-operation and working relations Visits by ICD to p/stations for in-service training Liaise/communi-cate with SAPS as part of IIS and not as 'enemies or witch-hunters' of police Attach supporting statements with recommendations 	What measures can be put in place to improve SAPS compliance?	<ul style="list-style-type: none"> Legislation & Regulations to enforce compliance Structured communication & coordinating structures Educating the police, esp at lower levels, about the ICD SAPS and ICD at nat. level should set example
What can SAPS do to improve compliance?	<ul style="list-style-type: none"> Regular feedback from members handling ICD recommendations Bi-lateral talks on different levels Regular inspections at p/stations Accept that nobody is above the law & comply with SAPS Code of Conduct and Constitution 		
Do you have any problems with type of recommendations?	<ul style="list-style-type: none"> All 6 provinces said NO to this question (1 said it is reasonable and sound; 1 said there is an interdept understanding) 	To what extent are you satisfied with SAPS's response to recommendations?	<ul style="list-style-type: none"> 2 Provinces said that they are NOT satisfied (Reasons: police preference to finalise crim. case before dealing with disciplinary action; No clear indication who in police re-sponsible for disciplinary steps) Others responded that it needs attention – SAPS often 'drag feet' – esp if offender is a senior official
How do you as a police officer personally feel about the ICD?	<ul style="list-style-type: none"> 6 Provinces agreed that ICD is NECESSARY (Reasons: community need independent appeals authority; to ensure professionalism & transparency; to ensure realisation of HR & Implementation of DVA) 	How do you think SAPS feel about being policed by an external civilian authority such as the ICD?	<ul style="list-style-type: none"> Police do not accept ICD as partners / problem starts with attitude of Nat Com Police attitude re ICD is negative / pockets of resistance still exist Problem primarily with lower ranks (who stand biggest chance of being investigated) Police question training and ability of ICD members to police the police / see themselves as experts At PC level there is good understanding, but not at p/station level
How do SAPS members generally feel about the ICD?	<ul style="list-style-type: none"> All 6 provinces said majority of members are positive about the ICD, however always room for improvement There was a problem with acceptance, but this 'scourge' is gradually fading 	What is your relationship with SAPS?	<ul style="list-style-type: none"> Generally good, but less good with lower ranks Lower ranks see ICD as intent to 'bring police down' Room for improvement at CSC level In some prov's good co-operation (to joint training, ce1 inspection and DVA audits)

disciplinary action against identified police officials. The remaining cases (242) were either referred to the Director of Public Prosecutions (DPP) or were closed by the ICD for various reasons (e.g. complainants or witnesses who died or disappeared, etc.). Where there were no prospects of a successful prosecution, the relevant cases were still closed as substantiated.

As shown in Table 8, the 331 referrals to the police can be divided per class as follows:

- ❑ Class I (Deaths in police custody or as a result of police action): 30
- ❑ Class III (Criminal offences by members of the police): 185
- ❑ Class IV: (Misconduct by police officials): 101

The discrepancy in the numbers for referrals (331) and type of referrals (350) can be explained by the fact that, in some cases, a single referral was for both investigative purposes and disciplinary action. The 32 referrals that are listed as 'unknown' could not be clarified from the contents of the files. Similarly, in 39 cases, it could not be determined from the files if and how they were finalised.

Of the 573 cases studied, 559 were reported directly to the ICD. However, these cases include 'deaths in police custody or as a result of police action' that the police are obligated to report to the ICD. Nine (9) other cases were reported by the police, 2 were referred by MEC's and 2 investigations were taken over by the ICD. In some of the files it was difficult to determine whether a case was reported to the ICD directly, reported by the police or taken over from the police.

In the 331 cases where the ICD made referrals to the police, they wrote 761 letters and received only 439 in reply. In 143 cases there were no written responses from the police. Most of the ICD correspondence relates to attempts to determine progress with referrals they made to the police, including where specific recommendations were made regarding disciplinary action against police officials accused of misconduct. The poor response by the police makes it extremely difficult for the ICD to close or finalise their files. The result is that the ICD, at least in some cases and after repeated attempts to get a response from the police, close their files prematurely when a response is not forthcoming. In this instance the ICD is relatively powerless, as indicated in the discussion of the ICD's mandate, to force the police to report on their actions *vis-à-vis* the ICD's recommendations.

Qualitative results

The responses by the Provincial Heads of the ICD and their SAPS counterparts (or their representatives) to the listed questions will be presented in tabular form (Table 9) to summarise their views and opinions and to facilitate comparison.

RESULTS FROM QUESTIONS AND RESPONSES IN FORM B

From the above summary it is obvious that there are a number of inhibiting factors in the relationship between the police and the ICD which may negatively impact on the ability of the ICD to

achieve their constitutional object. There are also strong indications from both groups - apart from deficiencies within the ICD's legal mandate - of underlying problems such as poor personal relationships, distrust, perceptions of an attitude of superiority by the police *vis-à-vis* the ICD, a perceived reluctance by police management to act against members, etc. An analysis of the contents of Table 9 resulted in the following more specific conclusions:

- ❑ The SAPS indicate that they generally have no problem with ICD recommendations. In contrast, the ICD indicated a general dissatisfaction with the police's response to their recommendations. According to the ICD, the police tend to first deal with criminal charges against a member before considering any possible disciplinary action. It is also frustrating for the ICD not to know who in the police is responsible for the implementation of their recommendations.
- ❑ There seems to be a discrepancy between provinces as far as personal or direct contact between the police and ICD is concerned. Some provinces indicate regular personal contact (including meetings) and some only written communication. Three of the four provinces (SAPS) which responded to the questionnaire indicated the availability of a dedicated person to liaise with the ICD. According to the ICD, their Provincial Heads normally liaise directly with the respective Provincial Commissioners. ICD investigators also liaise directly with the police.
- ❑ The police generally agree that the ICD as an independent complaints mechanism is necessary, but they feel it should treat the police as a partner within the criminal justice system and not behave as an 'enemy or a witch-hunter' in relation to the police. According to the ICD, it is the police that fail to accept them as partners. They see the attitude of the police, especially at the lower ranks (who are more at risk of being investigated), as negative towards the ICD.
- ❑ Based on proposals by both the police and the ICD, the following steps appear to be necessary for the ICD to enable it to perform its constitutional duty:
 - ❑ Deficiencies in terms of the ICD's legal mandate need to be addressed.
 - ❑ The Minister can issue Regulations to regulate identified problem areas such as the lack of structured co-ordination, co-operation, communication and liaison.
 - ❑ Regular inspections (by the ICD and/or police) should be carried out at police stations to determine and ensure compliance.
 - ❑ Given the necessary resources, the ICD should provide continuous in-service training at police stations, inclusive of the sharing of information on the purpose, structure and functioning of the ICD.
 - ❑ The ICD should be involved in the curriculum design for police training and play an active role in the formal training of police officials (at training colleges).
 - ❑ A new Memorandum of Understanding (MOU) between the police and the ICD is required. Such a MOU should be enforceable and should form the basis of a clear set of Standard Operating Procedures (SOP's).

CHAPTER 6

Findings

For purposes of clarity and conciseness, the findings of this study are discussed under sub-headings in line with the research objectives of the project. It is based entirely on the data collected during the research process, excluding the information gleaned from the overview of international practice. The latter information will, however, inform the recommendations below.

RELATIONSHIP BETWEEN THE ICD AND THE POLICE

The relationship between the ICD and police management in the provinces is generally good, although the same can not be said about middle and lower level staff in the two organisations. There is evidence of poor personal relationships in some areas, mutual distrust, perceptions of an attitude of superiority by the police *vis-à-vis* the ICD, and a perceived reluctance by some police managers to act against members, notwithstanding ICD recommendations. The ICD appear to distrust the police to the extent that only approximately 30% of the cases that are reported to them, are referred to the police for investigation or further investigation. This includes cases of misconduct. It would probably have made more sense, especially in view of the growing numbers of the police and the resource limitations of the ICD, to refer more investigations to the police, closely monitored by the ICD. In addition to these factors, relations between the ICD and the police are also negatively influenced by the following conditions:

- ❑ Based on the views expressed during some of the structured interviews, it would seem that the independence and credibility of the ICD is compromised by its location within the Department of Safety and Security and having to report to the Minister who is also the Minister responsible for the police (*viz.* conflict of interest).
- ❑ The lack of legal authority by the ICD to compel the police to report back on whether or not the ICD recommendations were implemented, or to provide documented reasons for non-implementation.
- ❑ The general practice by the police either not to respond to written communication from the ICD or to respond irregularly.

- ❑ The absence of a prescribed co-ordinating mechanism between the ICD and the police, which leaves liaison between the two organisations to personal arrangements. In practice, this has led to situations where there is either no contact or contact only *via* correspondence. Not all provinces have dedicated police liaison officers and in many cases liaison with the police are left to individual ICD investigators.
- ❑ The ICD is frustrated by the police practice to first wait for the conclusion of a criminal trial before they consider the possibility of departmental steps against an accused member. It is also not always certain who in the police are responsible for such decisions or for implementing ICD recommendations.

PROCESSES AND PROCEDURES USED BY THE ICD

In the ICD, cases are finalized according to various categories, such as substantiated, unsubstantiated, dismissed, withdrawn or referred. For the purposes of this study, the focus was on cases which have been finalized as substantiated and in which recommendations were made. When cases have been closed as substantiated, it is expected that there would be sufficient and comprehensive detail regarding the outcome of the case and the recommendations made. However, there was incomplete or missing information in a number of files and many of the case files also had no indication as to the final outcome of criminal or disciplinary proceedings. Consequently, this presents a hindrance in accurately determining the levels of SAPS compliance with ICD recommendations. Manpower constraints are partly to blame for this problem. Understandably it would not be practical or even possible for the ICD to keep cases open indefinitely, especially given the fact that it has limited resources and has new cases to deal with on a regular basis. In fact, it would be reasonable to assume that there is a disparate rate at which the ICD are able to close old cases as compared to the rate at which they get new cases to deal with. At the same time it needs to be added that the criteria used for the closing of especially substantiated cases is not always clear and it appears that there is no uniform way in which this is done by the ICD at the level of the provinces. Although the ICD did undertake a Business Processes Re-engineering (BPR)

process at the end of 2006, it appears that the recommendations emanating from these had not been implemented when fieldwork for this study was completed.

RESOURCES

The ICD is severely understaffed, especially when considering the increasing numbers of SAPS members. In addition, the investigators who fulfil the core mandate of the ICD need increased administrative support in order to effectively carry out their duties. Their effectiveness is also marred by insufficient government vehicles at their disposal with which to attend, amongst others, crime scenes and court hearings.

A work-study conducted by the Department of Public Service and Administration (DPSA) led to the allocation of 535 posts in the ICD, including 339 posts for investigators, in order for the ICD to fulfil its statutory duty. These were to be phased in as from April 1998 over the next three financial years. The 1998/99 budget, however, only allowed for the filling of 160 of these posts. To fill all the posts would have cost an additional R 40 million in personnel expenditure alone. Now ten years later, the ICD's national staff complement has grown to 247. However, this is still less than half of the 1998 DPSA allocation of 535. Although progress has been made with two satellite offices currently in the process of being established in KwaZulu-Natal and the Eastern Cape, it is just not adequate to deal with the amount of registered cases.

THE LEVEL OF POLICE COMPLIANCE

The level of police compliance with ICD recommendations appears to be relatively high, especially with regards to Class I cases. This is probably as a result of the constitutional imperative on the part of SAPS to inform the ICD of all Class I cases, i.e., where someone died as a result of the action of a police officer or when someone dies while in police custody. The nature of these cases makes non-compliance difficult. Furthermore, there is little possibility on the part of the police to influence the outcome of these cases as they are matters for the courts. Misconduct cases (Class iv) seem to have the highest frequency of non-compliance. Furthermore, even in cases where SAPS comply with ICD recommendations to take departmental action, the guilt or innocence of the accused, as well as the punishment in the case of guilt, is decided by disciplinary panels consisting exclusively of SAPS members. This raises serious questions about the independence and objectivity of such panels. Thus even where there is compliance with ICD recommendations in terms of instituting disciplinary measures, the eventual outcome could be questionable.

The 331 cases where referrals were made – out of 573 cases studied – were also considered as a function of compliance. The majority of these referrals (187) are related to investigations. This includes cases referred to the police for investigation, further investigation or to provide a case docket for scru-

tiny to the ICD. In 131 cases specific recommendations were made in terms of departmental steps (disciplinary action) and in 32 cases it was not possible to determine from the files what the nature of the referral was. In some cases a single referral was for both criminal and departmental prosecutions. The remaining cases were either referred to the Director of Public Prosecutions (DPP) or, in spite of being closed as substantiated, were closed by the ICD because there were no real prospects of a successful prosecution.

In the process of communicating with the police relating to the 331 referrals, the ICD wrote 761 letters and received only 439 in reply (i.e. approximately 58%). The majority of these letters were aimed at determining progress with referrals and, in particular with specific recommendations, to take disciplinary steps against accused members. In 143 cases (referrals) there were no written responses from the police. This poor reaction is indicative of the attitude of the police in relation to ICD referrals and recommendations. Not only is it impossible in these cases for the ICD to close their files conclusively, but they also have no way of knowing whether there was any compliance with their recommendations, or even where the police did not implement their recommendations, what the reasons are. This clearly undermines the *raison d'être* of the ICD as an independent complaints mechanism and as an oversight body.

POSSIBLE REASONS FOR NON-COMPLIANCE

There are a number of possible reasons for the non-compliance of the police. The primary reason seems to be in the wording of section 53 of the *South African Police Service Act, 1995*, and in particular the absence of an obligation on the police to report to the ICD in terms of referrals (particularly recommendations). In this regard, the wording of section 18 of the *Domestic Violence Act, 1998*, serves as an example of how the police can be obligated to comply with recommendations. Compliance does not mean that the recommendation should be understood as a directive, but that the police should at least report the outcome of their actions to the ICD. Should they decide to either take no action or to take alternative action, they should be compelled to inform the ICD both of the steps they have taken, as well as the reasons for their decision.

Other possible reasons have to do with the absence of a prescribed co-ordinating mechanism and other forms of formal interaction between the ICD and the police, e.g. formally appointed liaison officials. Formal contact and co-ordination should also contribute to the solving of many of the problems that relate to distrust and perceptions between members of the ICD and the police.

IMPACT OF ICD RECOMMENDATIONS

For reasons discussed above it is difficult to assess the impact of the ICD recommendations. When there is only a 58% response to the ICD's letters in those cases where there was a response,

and when, in the case of 143 investigations, there were no responses from the police, it would appear that the impact is relatively low. As was indicated in the research rationale, another indicator of the ICD's impact would be its finalisation rate in cases of misconduct. But, although misconduct cases (related to poor service delivery) increased from 76,2% in 1999/2000 to

93% in 2003/2004, the ICD – according to their Annual Report 2004/2005 - achieved a finalisation rate of only 44% for new cases of misconduct within 90 days against a service standard of at least 80%. In 2005/2006 the service standard was lowered to 60% and the finalization rate within 90 days increased to 73% (ICD Annual Report, 2005/2006).



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CHAPTER 7

Recommendations

The following recommendations appear to be necessary for the ICD to perform its constitutional mandate effectively:

- ❑ For purposes of independence and credibility, the ICD should report to a Minister who is not also the Minister responsible for the police. Alternatively, the ICD should report directly to parliament (a special parliamentary committee or, alternatively, the Portfolio Committee for Safety and Security).
- ❑ If the above recommendation is accepted, a separate 'Act of parliament' should be developed for the ICD. Such an Act should address the deficiencies in the ICD's mandate, especially the absence of an obligation on the police to report back to the ICD in terms of recommendations by the latter. The ICD should also provide for a reasonable explanation from the police in cases where recommendations are not implemented or where alternative steps are taken.
- ❑ If the above recommendations are not accepted, *section 53 of the South African Police Service Act, 1995*, should be amended to address the deficiencies raised above.
- ❑ The Minister for Safety and Security (parliamentary committee/alternative Minister) should consider the issuing of regulations in terms of the above Act (or new Act) to regulate co-operation and co-ordination between the ICD and the police. The Regulations can provide, *inter alia*, for co-ordinating structures at provincial (and national) level; the appointment of liaison officials within both the ICD and the police; and additional guidelines to fill procedural gaps in the Act.
- ❑ It should also be considered to provide, either in the Act or in the Regulations, for regular inspections at police offices to determine the outcome and impact of ICD recommendations. In this regard, a form of co-operation with the police's internal inspectorate should also be considered.
- ❑ ICD recommendations should be given due consideration, and if they are not implemented, acceptable reasons for non-compliance with the ICD recommendation or why alternative action was taken, should be given.
- ❑ ICD policy should set out the conditions and circumstances for the taking over of investigations from and the referral of investigations to the police, including the monitoring of and reporting on such investigations. This could relieve much of the pressures on the ICD as far as caseload is concerned.
- ❑ The ICD should provide for in-service training at police stations, inclusive of the sharing of information on the purpose, structure and functioning of the ICD. In addition, the ICD should be involved in the development of training curriculum for the police and the provision of relevant formal training (at police training colleges). The KZN office of the ICD has already taken this initiative, especially with regards to the Domestic Violence Act. This was due to the realization that police officers were adequately trained on how to deal with victims, but were neither trained on how to complete registers nor on the potential consequences of non-compliance with the Act. The KZN office has therefore been providing training to new SAPS recruits at training colleges in the Durban and surrounding areas in consultation with police trainers. Training generally focuses on the DVA and the ICD mandate. It takes place every six months with the new recruit intake and lasts typically up to three hours. ICD KZN reports that the feedback they have received about the training from the SAPS trainers, with whom they collaborate, has been extremely positive. They ascribe this to the fact that the real life cases which the ICD has dealt with in the past, are used in order give trainees a practical sense of what the DVA is all about and what the possible implications of non-compliance could be.
- ❑ In line with accepted international practice, it is also recommended that, in the event of SAPS complying with the ICD recommendations to institute disciplinary/departmental action against a member, it is recommended that the disciplinary panel/committee consist not only of SAPS members attached to the station where the accused are stationed, but also external SAPS members. In addition there should be representation from parties external to SAPS such as the ICD as observers. This will increase the possibility of an objective decision being reached.
- ❑ Regulations in terms of the South African Police Service Act, 1995 (or new Act) should provide clear instructions relating to the closure of files by the ICD.

CHAPTER 8 Conclusion

This research study determined the relationship between the ICD and the police as well as examining the processes and procedures used by the ICD to present their recommendations relating to disciplinary or administrative action. The main focus of the study was to establish the general level of police compliance and the impact of recommendations made by the ICD. Consequently, it was established that the level of police compliance with ICD recommendations appears to be relatively

high with regards to Class I cases, while it was relatively low in terms of misconduct cases (Class IV). In addition, it was found that there are a number of reasons for non-compliance by SAPS which were exposed in this project. Finally, it was concluded that the data collected and analyzed seem to support the initial conclusion that the impact of the ICD in terms of its recommendations to the police is fairly low due to non-compliance by the police.



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APPENDIX A
Questionnaire
ICD Compliance Project
Form A

Detail of individual cases referred to the police (list the following information per case per province):

1. Name of province

2. Case details

2.1 ICD case number

2.2 ICD complaint class

2.3 ICD incident description code

2.4 ICD incident sub code

2.5 Nature/summary of complaint

2.6 Place of occurrence

2.7 Date and time of occurrence

2.8 Date complaint was lodged

3. If a criminal case was registered:

3.1 Police Station

3.2 Case No

3.3 Offence

4. Victim Details

4.1 Names

4.2 Age

4.3 Races

4.4 Gender

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SAPS Compliance with Recommendations by the Independent Complaints Directorate

5. Complainant details (If complainant and victim are two different people)

- 5.1 Name _____
- 5.2 Age _____
- 5.3 Race _____
- 5.4 Gender _____
- 5.5 Relation _____

6. Perpetrator/s details

- 6.1 Name _____
- 6.2 Age _____
- 6.3 Race _____
- 6.4 Gender _____
- 6.5 Rank _____

7. How did the case come to the attention of the ICD?

- 7.1 Complaint was referred to the ICD in terms of section 53 (2) of the South African Police Service Act, 1995 (Act No 68 of 1995) (e.g. Minister or MEC)
- 7.2 Cases reported directly to the ICD
- 7.3 Cases taken over by the ICD (from the police):

8. If 7.1

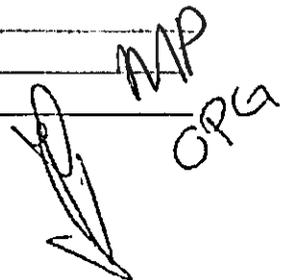
- 8.1 Name _____
- 8.2 Office _____
- 8.3 Date of referral _____
- 8.4 Place of referral _____

9. If 7.3

- 9.1 Date of taking over _____
- 9.2 Reason(s) for taking over _____
- _____
- _____
- _____

10. If the ICD referred the case to the police either for investigation, further investigation or with recommendations to deal with it in a particular way, the following information is needed:

- 10.1 Office referred to _____
- 10.2 Nature of referral (what was the request or recommendation) _____
- _____
- _____
- _____

10.3 Date of referral

10.4 Date of reply

10.5 Nature of reply

10.6 Were there any follow-up communications? If so, provide details (dates, requests, responses, etc.)

10.7 Were there any written communication (letters) to the complainant keeping him/her informed of progress? (provide number of letters sent and any important information relating to progress)

11. If the case was finalised, please provide the following information

11.1 How was it finalised (e.g. prosecution and outcome, withdrawn and by whom, disciplinary action, etc.)

11.2 Date of finalisation

11.3 Office where file (docket) is kept

12. If case is not yet finalised, provide reasons

13. Any other comments

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APPENDIX B
Questionnaire
ICD/SAPS Compliance Project
 Form B

Questions for ICD Provincial Head/ SAPS Provincial Commissioner

ICD:

■ What is your relationship with the SAPS?

■ Do you have regular contact with the PC or h's representative? If yes, provide details, if not, give reasons?

■ What, if any, impediments exist in terms of SAPS's compliance with ICD recommendations?

■ Do you have a dedicated person in your office for liaison with SAPS?

■ What measures could be put in place to increase the level of compliance? (Probe, legislation, regulation, etc)?

■ To what extent are you satisfied with feedback you get from SAPS regarding your recommendations in substantiated cases?

■ How do you think SAPS feel about being policed by an external civilian agency such as the ICD?

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SAPS

■ What, if any, problems does the SAPS have with recommendations made by the ICD?

■ Do you have regular contact with the Provincial Head of the ICD or his representative? If yes, provide details, if not, give reasons.

■ Do you have a dedicated person in your office for liaison with the ICD?

■ What could the ICD do to improve the level of compliance by SAPS with recommendations made by the ICD?

■ What can SAPS do to increase its compliance with the recommendations made by the ICD?

■ Do you have any problem with the type of recommendations you receive from the ICD (for example, in terms of the nature of disciplinary hearings, of the composition of the disciplinary committee, etc)?

■ How do you as a police officer personally feel about the ICD?

■ In your opinion, how do SAPS members generally feel about the ICD?



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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 0000 Fax: (012) 399 0144
<http://www.ipid.gov.za>

Enquiries: KI KGAMANYANE
E-mail: ikgamanyane@gov.za
Tel: (012) 399 0028

MR JS MARAIS
ADAMS & ADAMS ATTORNEYS
P. O. BOX 1014
PRETORIA
0001

PER E-MAIL: jac.marais@adamsadams.co.za

30 March 2015

Dear Mr. Marais

RE: NOTICE OF TERMINATION AS ATTORNEYS OF RECORD FOR THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE *IN RE: IPID AND THE MINISTER OF POLICE*
CASE NO: 6588/2015

1. The matter above refers.
2. This serves as notice of termination for your services as attorneys of record representing the IPID in the matter between IPID and the Minister of Police referred to above. The termination also includes your services relating to the investigations conducted by Werksmans Attorneys for investigations commissioned by the Minister of Police.
3. You are also instructed to deliver a notice of withdrawal as attorneys of IPID as the first applicant in the matter referred to above.
4. Further, the IPID will process all payments for services rendered up to the time you receive this letter of termination.
5. I trust you find the above in order.

Yours faithfully

MR KI KGAMANYANE
ACTING EXECUTIVE DIRECTOR
INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

IN THE DISCIPLINARY HEARING

ROBERT MCBRIDE

Applicant / "Employee"

and

THE MINISTER OF POLICE

Respondent / "Employer"

NOTICE OF MOTION

KINDLY TAKE NOTICE that the applicant intends to make application on a date to be determined by the Chairperson for a ruling in the following terms:

- 1** The disciplinary hearing is stayed pending the final determination of the constitutional challenge launched in the High Court, Gauteng Provincial Division, Pretoria, case number 6588/15.
- 2** In the alternative, the disciplinary hearing is stayed pending Cabinet's designation of a chairperson in terms of clause 7(3)(b) of the Disciplinary Code and Procedures of the Public Service.
- 3** In the further alternative, the disciplinary hearing is postponed to allow the applicant adequate time to prepare his defence to the charges, the terms of such postponement to be negotiated between the parties.



MP



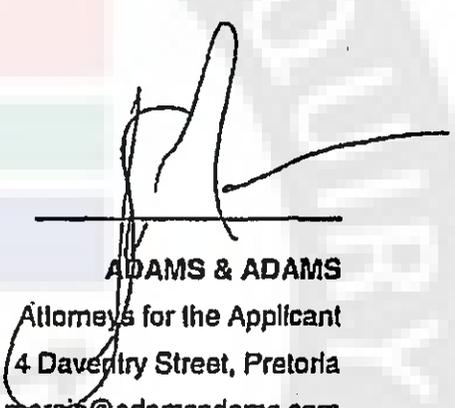
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TAKE NOTICE FURTHER that the accompanying affidavit of Robert McBride will be used in support of this application.

TAKE NOTICE FURTHER that the applicant has appointed the offices of ADAMS & ADAMS ATTORNEYS, as set out below, as the address at which he will accept service of all process in these proceedings.

TAKE NOTICE FURTHER that if you intend opposing this application you are required to notify the applicant's attorney in writing (and by email at jac.marais@adamsadams.com) on or before 9h00 on 21 May 2015.

DATED at PRETORIA this 20th day of May 2015.


ADAMS & ADAMS

Attorneys for the Applicant

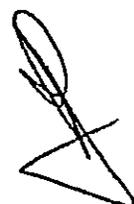
4 Davenport Street, Pretoria

Email: jac.marais@adamsadams.comCC: manisha.Mooloo@adamsadams.commichael.qwafa@adamsadams.com

TO: ADV. P. MOKOENA SC
Thulamela Chambers
1A Protea Place (off Fredman Drive)
Sandown
Sandton
pmokoena@thulamelachambers.co.za
011 217 5033
SERVICE VIA EMAIL

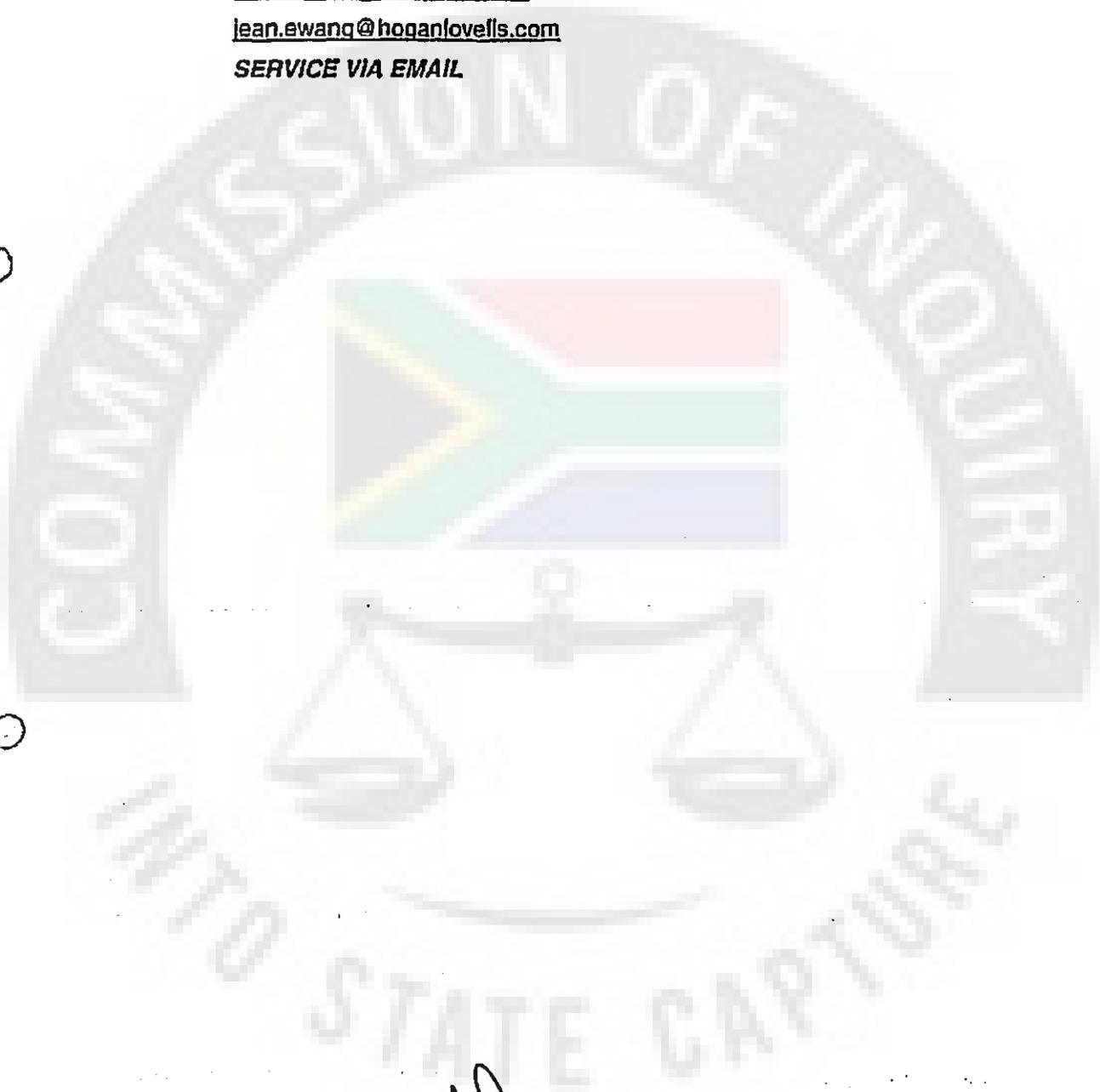


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CPG

AND TO: THE MINISTER OF POLICE
c/o HOGAN LOVELLS (SOUTH AFRICA)
First Respondent
22 Fredman Drive
Sandton
Johannesburg
Tel: 011 286 6900
sj.thema@hoganlovells.com
lean.ewang@hoganlovells.com
SERVICE VIA EMAIL



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MP

[Handwritten signature]

OPG

5 July/1P1D
23.04.15

INNOCENT KHUBA

VAN ZYL.

MR KHUBA:

Yes.

MR JULY:

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

MR KHUBA:

Yes.

MR JULY:

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

MR KHUBA:

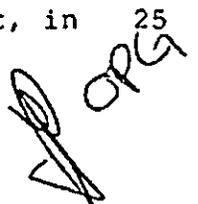
To tell you that as fact, I cannot remember. 10
I know that when we send dockets the report is part of "B". That docket, Section B was a separate lever arch file, because it had a lot of things talking about the Extradition Act, and what, what. It was a thick thing, but it 15
had that part. When we did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

MR JULY:

So who took the docket to the NDPP then?

MR KHUBA:

My role ended when I signed that report, in 25



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 10th 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

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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 Sibilya 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

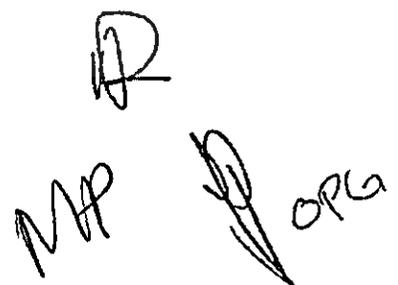
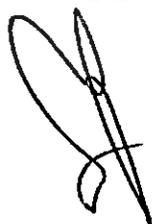
They held a telephonic discussion in Afrikaans and thereafter he handed the phone back to me. LT Botha indicated to me that the gentlemen said they will come back on Thursday with tools to open up the box and take the Data 6 box because they don't have the set of keys for it. Afterwards LT Colonel van 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 Sibilya 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

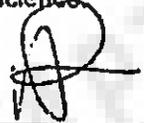
LT Botha then took the three IPID gentlemen to the walk in safe and I went into my office and made attempts to call Major General Dlamini. After several unsuccessful attempts I gave up. Afterwards the gentlemen returned and one of them, not Robert Mc Bride was carrying a device in his hands. I explained 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

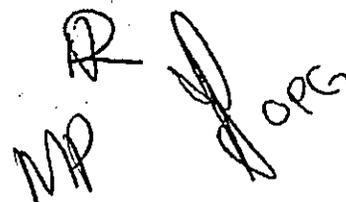
Later on I tried the office of General Ntsemeza, the lady told me that he is out of the Province and I requested for LT Colonel Gwayis number, but when I tried calling it went on to voicemail. Later I got hold of Colonel Eksteen, Commander of West Rand Organised Crime, she told me to send an sms to Colonel 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.



 DEPONENTS

PEARL ANGEL POMUSER

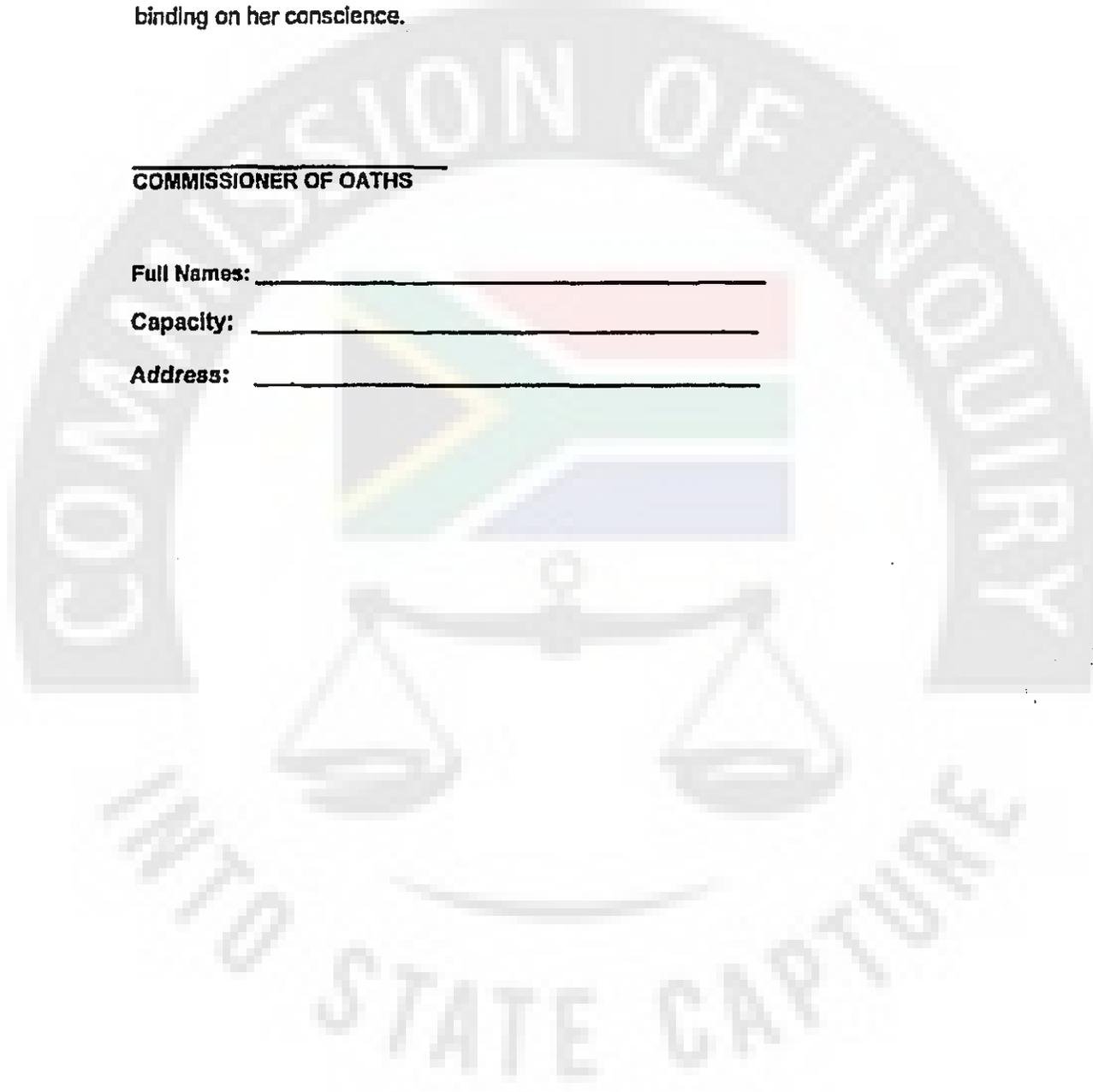
I certify that the above statement was taken by me, signed and sworn to before me at Johannesburg on the 03rd of March 2015, and that the deponent has acknowledged that she knows and understands the contents of this affidavit, that she has no objection in taking the prescribed oath and she considers the oath to be binding on her conscience.

COMMISSIONER OF OATHS

Full Names: _____

Capacity: _____

Address: _____



[Handwritten signature]

MP *[Handwritten signature]* *OPG*

I Bartlomeus Christoffel Botha hereby state in English under oath:

Adult male, 48 years old, force number 0432519-2, ID number 6612285031080, stationed at DPCI (Organised Crime), Germiston, 165 Meyer street, Germiston, (011) 776-5422, 0825684775 and resort under the command of Col. FE Steyn

1.

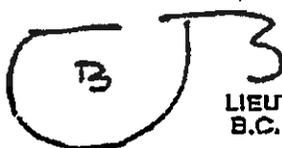
I am the key carrier of the Walk in Vault of Gen. Sibiya, which are situated at the Provincial Commissioners office, Parktown.

2.

The keys were given to me by Gen. Sibiya in person during 2014 and the two (2) keys of the Vault are still in my possession.

3.

On 2015.02.09 I received a phone call from Col. Van Eeden of Counter Intelligence, Head Office, Pretoria regarding an Encrypted Data 6 Fax machine, which was situated in the said Vault of Gen. Sibiya. I informed Col. Van Eeden that he must give me time so that I can go and see if there is such a Fax machine in the Vault, as I were in the Vault maybe three (3) times, as from receiving the keys. Col. Van Eeden further explain to me, that the Fax machine is situated inside a blue metal box / safe and I indicated to Col. Van Eeden that I will give him feedback on the following day.


LIEUTENANT
B.C. BOTHA

